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Presidential Documents

Title 3—

The President

Proclamation 8054 of September 20, 2006

Gold Star Mother's Day, 2006

By The President of the United States of America

A Proclamation

Since America's founding, every generation has produced patriots willing to sacrifice for our great Nation. Many of these proud sons and daughters have given everything for our freedom, and America has mourned the loss of every life. On Gold Star Mother's Day, we pay special tribute to the mothers of those lost while defending our country and extending the blessings of liberty to others.

Gold Star Mothers have long borne the hardships of war with dignity and devotion. Through heartbreaking loss and unimaginable grief, they continue to support each other through difficult times, stand up for those wearing the uniform of the United States, and serve their communities in the best traditions of the American spirit. Their strength, compassion, and determination are an inspiration to all and a source of great pride for our Nation.

America lives in freedom because of the sacrifices of America's finest citizens and of the mothers who raised them. In the words of President Franklin D. Roosevelt in 1944, ''There is nothing adequate which anyone in any place can say to those who are entitled to display the gold star in their windows.'' Each year, this observance is an opportunity to offer our solemn respect to Gold Star Mothers and renew our ongoing pledge that America will always remember those who died while wearing the uniform of the United States and forever honor their families' sacrifice.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895 as amended), has designated the last Sunday in September as ''Gold Star Mother's Day'' and has authorized and requested the President to issue a proclamation in its observance. On this day, we express our deep gratitude to our Nation's Gold Star Mothers, and we ask God's blessings on them and on their families.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Sunday, September 24, 2006, as Gold Star Mother's Day. I call upon all Government officials to display the flag of the United States over Government buildings on this solemn day. I also encourage the American people to display the flag and hold appropriate ceremonies as a public expression of our Nation's sympathy and respect for our Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–8286
Filed 9–25–06; 8:45 am]
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Presidential Documents

Title 3—

The President

Proclamation 8055 of September 21, 2006

National Employer Support of the Guard and Reserve Week, 2006

By the President of the United States of America

A Proclamation

In times of war or crisis, the citizen-soldiers of our National Guard and Reserve are ready and willing to answer the call of duty. During National Employer Support of the Guard and Reserve Week, we express our deep gratitude to these brave men and women and to the employers who support them and enable them to serve.

Members of the National Guard and Reserve put on the uniform of the United States when our country needs them most. In the war on terror, thousands of these civilians from all walks of life have been called away from their jobs and families and mobilized for duty around the world. They are performing many different missions, but all are working to deliver the blessings of freedom to people who have not known liberty.

Here at home, the National Guard is working to protect our borders, and National Guard personnel and Reservists help rebuild communities and bring comfort, security, and healing to individuals in the aftermath of hurricanes and other natural disasters. The dedicated service of our National Guard and Reserve personnel is vital to the security of our Nation, and these patriots are an inspiration and source of pride to all Americans.

We also appreciate the commitment of the civilian employers of these courageous men and women. By providing time off, pay, health care benefits, and job security, these employers help members of the National Guard and Reserve and their families serve our country and prepare for their return to civilian life. In offices, schools, factories, and small businesses across America, employers operate without some of their most talented people, and America appreciates their support and the support they provide to their employees in our National Guard and Reserve.

National Employer Support of the Guard and Reserve Week is an important opportunity to express our country's debt of gratitude to the men and women of the National Guard and Reserve and to all the employers who stand behind these dedicated individuals.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 24 through September 30, 2006, as National Employer Support of the Guard and Reserve Week. I encourage all Americans to join me in expressing our thanks to members of our National Guard and Reserve and their civilian employers for their patriotic sacrifice on behalf of our Nation. I also call upon State and local officials, private organizations, businesses, and all military commanders to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of September, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–8303
Filed 9–25–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB97

Common Crop Insurance Regulations; Peanut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Peanut Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of the insured producers. The changes will apply for the 2007 and succeeding crop years.

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

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On January 25, 2006, FCIC published a notice of proposed rulemaking in the **Federal Register** at 71 FR 4056–4061 to revise 7 CFR 457.134 Peanut Crop Insurance Provisions. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 12 sets of comments were received from reinsured companies, agents, trade associations, producers, an insurance

service organization and other interested parties. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization commented on the definition of ''base contract price'' by asking if the maximum amount of a base contract price will always be specified in the Special Provisions. The commenter asked if it will be a consistent value for all states and counties. The commenter also asked if this maximum amount is intended to be set high enough to reflect contracted values for organic peanuts (i.e., values as high as $0.45 per pound or $900.00 per ton).

Response: The maximum amount of the base contract price will not be in the Special Provisions, but rather a price factor will be specified in the Special Provisions, which will be used by multiplying such factor by the price election issued by FCIC, as applicable and by peanut type. FCIC anticipates providing a price factor that is consistent for all states and counties. The base contract price may or may not reflect the value of organic peanuts grown under contract.

Comment: An insurance service organization suggested a definition of ''damaged production'' or ''damaged peanuts'' should be added otherwise many non-insurable defects could be allowed and non-insurable discounts could be subtracted from the value of the peanuts by a buyer to result in a value less than 85 percent of the applicable price election when determining quality loss adjustment.

Response: The definition of ''damaged'' in the Basic Provisions requires that the peanuts be injured or deteriorated before they are considered damaged. Further, section 14(e) of the Peanut Crop Provisions requires the damage to be due to an insurable cause of loss before quality adjustment will apply. As always, it is the producer's burden to establish the insured cause of loss that caused the damage. If such burden cannot be met or such cause of loss would not likely cause the type of damage found, quality adjustment would not be applicable. In addition, the peanuts must be graded, which will establish whether they have been injured or deteriorated. These provisions should be sufficient to ensure that only peanuts injured or deteriorated by insured causes of loss are subject to quality adjustment and preclude the possibility that non-insurable defects or non-insurable discounts are covered. Therefore, no change has been made.

Comment: Three trade associations and an approved insurance provider commented that requiring the peanut producers to include all of their peanut acres in an enterprise unit would impose undue hardship. The commenters state that the number of peanut producers is decreasing; however, their acreage is increasing because of not being limited by the quota program. The commenters also claim that peanut producers deal with multiple farm serial numbers and under the current peanut loan program, virtually every load of peanuts is placed under loan through the Farm Service Agency (FSA) peanut loan program. Each farm has potentially differing land or soils characteristics, disease patterns, and rainfall frequency. The commenters state that a peanut loan is not made to the producer if the yield varies substantially from the average peanut yield history for the county.

Response: FCIC agrees with the commenters and has removed the provision that limits peanuts grown under contract to an enterprise unit. Basic and optional units for peanuts will be allowed on peanuts consistent with other Category B crops, unless limited by the Special Provisions.

Comment: An insurance service organization commented the definition of ''harvest'' would be better defined as ''the completion of digging and threshing'' rather than ''removal from the field.'' The commenter asked if removal from the field has been a problem for peanuts as it has for cotton.

Response: FCIC agrees that digging and threshing are part of the harvest process and should be included in the definition. However, referring to removal from the field in the definition will also allow harvest to remain an event that ends the insurance period. Previously, section 10(c) stated that ''removal of peanuts from the field'' replaced harvest as the event marking the end of the insurance period for the purposes of section 11 of the Basic Provisions, but this definition of harvest will make section 10(c) no longer necessary and it will be removed.

Comment: An insurance service organization asked why the definition of ''inspection certificate and sales memorandum'' was deleted. The commenter states that the memorandum is referring to the Farm Service Agency (FSA)–1007 and asks whether this form is still being utilized by FSA and buyers.

Response: The inspection certificate and sales memorandum were mainly used to obtain the ''value per pound,'' which was a term used in the loss adjustment process. However, value per pound is no longer used in the policy now that price elections have been established through the contract or by FCIC. Therefore, the inspection certificate and sales memorandum are no longer necessary to determine the terms of the policy but the documents can be used as supporting documentation for production reporting and loss adjustment purposes.

Comment: An insurance service organization commented on the definition of ''price election'' and stated that it should be clearer that the base contract price in the sheller contract may be limited if it exceeds the maximum amount in the Special Provisions. This also could be clearer about the distinctions between peanuts not grown under a sheller contract and those grown under a sheller contract.

Response: The definition of ''base contract price'' specifies that it is limited to an amount not greater than the price election times the price factor contained in the Special Provisions. Therefore, it is not necessary to reiterate this limitation in the definition of ''price election.'' Further, sections 3(a) and (b) of the Peanut Crop Provisions specify what price will be used when peanuts are grown under a sheller contract and not grown under a sheller contract. However, FCIC agrees the provisions could be clearer and has revised them accordingly.

Comment: An insurance service organization commented on the definition of ''segregation I, II, or III'' and indicated the definition may still be used in the minimum quality and handling standards for domestic and imported peanuts in the United States and Farm Service Agency (FSA) Notice PS–521.

Response: The definition of ''segregation I, II, or III'' peanuts was necessary because the price election was originally based on average Commodity Credit Corporation support price for these type of quota and non-quota peanuts. However, with the elimination of quotas, FCIC is now establishing the price elections or the base contract price is used. Therefore, the term ''segregation I, II, or III'' is no longer necessary to establish a term of the policy. However, the Notice PS–521 may be used as supporting documentation for production reporting and loss adjustment purposes.

Comment: An insurance service organization asked with respect to section 12(a)(1) whether the insured (tenant and/or landlord) has to incur replant expense to collect a replant payment under this policy.

Response: Under these Crop Provisions, replant payments are made

based on share. Therefore, if the tenant and/or landlord have an insured share of the insured crop, they are entitled to receive a replant payment for their applicable share, regardless of whether they have incurred any expenses. Since all other obligations and payments under the policy are based on share, it seemed more equitable and less burdensome to make replant payments also on a share basis.

Comment: An insurance service organization commented regarding section 12(b)(1) and asked what price election is used for a replant payment when the insured has multiple sheller contracts each with differing base contract prices and/or the insured also has peanuts insurable but not grown under a contract and the price election is the FCIC announced price.

Response: If the producer did not elect the price election specified in the Special Provisions and there are different base contract prices and/or the insured also has insurable peanuts not grown under a contract, replanting payments will be valued using the price election elected by the insured for planted acreage in each unit, as applicable. For an example, if the insured has two sheller contracts and the first base contract price is $0.23 per pound for Runner type peanuts, then $0.23 per pound will be used for the value of any replanted Runner type peanut acreage. If the second base contract is priced $0.21 per pound for Spanish type peanuts, then $0.21 per pound will be used for the value of any replanted Spanish type peanut acreage. If there are two separate sheller contracts for the same type peanuts, for example two contracts for Runner type peanuts at $0.23 and $0.21, respectively, if the contracts apply to separate optional units, each respective price election will apply to each respective unit. If the peanuts under both contracts are insured in the same unit, then the replanted acreage will be prorated to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for $0.23 was for 25,000 pounds and the contract for $0.21 was for 15,000 pounds, then the acreage under the $0.23 contract constitutes 62.5 percent of the acreage in the unit (25,000/40,000) and the other contract 37.5 percent of the acreage (15,000/40,000). Of the 10 acres replanted, 6.25 (10 × .625) would be paid at the $0.23 price election and 3.75 (10 × .375) acres would be paid at the $0.21 price election). If the insured has peanuts not grown under a contract or the producer selects the price election specified in the Special Provisions, the replanting payments will be valued using the price election as specified in the Special Provisions. The provisions will be so clarified.

Comment: An insurance service organization commented regarding section 15 and asked what price election will be used for prevented planting acres when the insured has multiple sheller contracts each with the contracts based on production and/or other peanuts are insurable without a sheller contract.

Response: If the producer did not elect the price election specified in the Special Provisions and there are different base contract prices and/or the insured also has insurable peanuts not grown under a contract, the prevented planting payment will be based on the price election elected by the insured. For an example, if the insured has two sheller contracts and if the first base contract price is $0.23 per pound for Runner type peanuts, then $0.23 per pound will be used for the value of any prevented planted Runner type peanut acreage. If the second base contract price is $0.21 per pound for Spanish type peanut, then $0.21 per pound will be used for the value of any prevented planted Spanish type peanut acreage. If there are two separate sheller contracts for the same type peanuts, for example two contracts for Runner type peanuts at $0.23 and $0.21, respectively, if the contracts apply to separate optional units, each respective price election will apply to each respective unit. If the peanuts under both contracts are insured in the same unit, then the prevented planting acreage will be prorated to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for $0.23 was for 25,000 pounds and the contract for $0.21 was for 15,000 pounds, then the acreage under the $0.23 contract constitutes 62.5 percent of the acreage in the unit (25,000/40,000) and the other contract 37.5 percent of the acreage (15,000/40,000). Of the 10 acres prevented from planting, 6.25 (10 × .625) would be paid at the $0.23 price election and 3.75 (10 × .375) acres would be paid at the $0.21 price election). If the insured has peanuts not grown under a contract or the producer selects the price election specified in the Special Provisions, the prevented planting payments will be valued using the price election as specified in the Special Provisions. The provisions will be so clarified.

Comment: An insurance service organization asked if the peanut program would be rated accordingly for the addition of the prevented planting insurance coverage.

Response: FCIC will adjust premium rates to reflect the addition of prevented planting coverage.

In addition to the changes described above, FCIC has made minor editorial changes and the following changes:

1. Removed the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and has been removed in the Crop Provisions.

2. Revised the definition of ''marketing association'' to clarify it is a cooperative approved by the Secretary of Agriculture to administer payment programs for peanuts.

3. Revised section 14(b)(1) to remove redundant language for clarification.

List of Subjects in 7 CFR Part 457

Crop insurance, Peanut, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2007 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

■ 2. Revise § 457.134 to read as follows:

§ 457.134 Peanut Crop Insurance Provisions.

The Peanut Crop Insurance Provisions for the 2007 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies.

Peanut Crop Insurance Provisions.

1. Definitions

Base contract price. The price for farmers' stock peanuts stipulated in the sheller contract, without regard to discounts or incentives that may apply, not to exceed the price election times the price factor specified in the Special Provisions.

Farmers' stock peanuts. Picked or threshed peanuts produced in the United States, which are not shelled, crushed, cleaned, or

otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which peanuts are customarily marketed by producers.

Green peanuts. Peanuts that are harvested and marketed prior to maturity without drying or removal of moisture either by natural or artificial means.

Handler. A person who is a sheller, a buying point, a marketing association, or has a contract with a sheller or a marketing association to accept all of the peanuts marketed through the marketing association for the crop year. The handler acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

Harvest. The completion of digging and threshing and removal of peanuts from the field.

Marketing association. A cooperative approved by the Secretary of the United States Department of Agriculture to administer payment programs for peanuts.

Planted acreage. In addition to the requirement in the definition in the Basic Provisions, peanuts must initially be planted in a row pattern which permits mechanical cultivation, or that allows the peanuts to be cared for in a manner recognized by agricultural experts as a good farming practice. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Price election. In addition to the definition in the Basic Provisions, the price election for peanuts insured in accordance with a sheller contract will be the base contract price specified in the sheller contract.

Price factor. The factor specified in the Special Provisions that places limits on the base contract price.

Sheller. Any business enterprise regularly engaged in processing peanuts for human consumption; that possesses all licenses and permits for processing peanuts required by the state in which it operates; and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted peanuts within a reasonable amount of time after harvest.

Sheller contract. A written agreement between the producer and a sheller, or the producer and a handler, containing at a minimum:

(a) The producer's commitment to plant and grow peanuts, and to deliver the peanut production to the sheller or handler;

(b) The sheller's or handler's commitment to purchase all the production stated in the sheller contract (an option to purchase is not a commitment); and

(c) A base contract price.

If the agreement fails to contain any of these terms, it will not be considered a sheller contract.

2. Unit Division

In accordance with the Basic Provisions, basic and optional units are applicable, unless limited by the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) The price election percentage you choose for peanuts which are not insured in accordance with a sheller contract (may also include peanuts in excess of the amount required to fulfill your sheller contract) and for peanuts insured in accordance with a sheller contract must have the same percentage relationship to the maximum price election offered by us for peanuts not insured in accordance with a sheller contract. For example, if you choose 100 percent of the maximum price election for peanuts not insured in accordance with a sheller contract, you must also choose 100 percent of the applicable price election for peanuts insured in accordance with a sheller contract.

(b) You may not insure more pounds of peanuts than your production guarantee (per acre) multiplied by the number of acres that will be planted to peanuts. For the purposes of determining the guarantee, premiums, indemnities, replant payments, and prevented planting payments:

(1) Where all production of peanuts is grown under one or more sheller contracts, you may elect a price election to cover all insurable peanuts that is the base contract price contained in such sheller contracts or the price contained in the Special Provisions.

(2) Where some peanuts are grown under one or more sheller contracts but some peanuts are not grown under a sheller contract, you may elect:

(i) The price election contained in the Special Provisions to cover all insurable peanuts; or

(ii) The price election using the base contract price for peanuts grown under a sheller contract and the price contained in the Special Provisions for peanuts not grown under a sheller contract.

(3) Where none of the peanuts are grown under a sheller contract, the price election will be the price contained in the Special Provisions.

(c) Any peanuts excluded from the sheller contract at any time during the crop year will be insured at the price election specified in the Special Provisions.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Dates
Jackson, Victoria, Golliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas Counties lying south, thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof; and all other states, except New Mexico, Oklahoma, and Virginia.	February 28.
New Mexico; Oklahoma; Virginia; and all other Texas counties	March 15.

6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of all sheller contracts to us on or before the acreage reporting date if you wish to insure your peanuts in accordance with your sheller contract.

7. [Reserved]

8. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the peanuts in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for the purpose of marketing as farmers' stock peanuts;

(3) That are a type of peanut designated in the Special Provisions as being insurable;

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted for the purpose of harvesting as green peanuts;

(ii) Interplanted with another crop; or

(iii) Planted into an established grass or legume; and

(5) Whether or not the peanuts are grown in accordance with a sheller contract (if not grown in accordance with the sheller contract, the peanuts will be valued at the price election issued by FCIC for the purposes of determining the production guarantee, premium, and indemnity).

(b) You will be considered to have a share in the insured crop if, under the sheller contract, you retain control of the acreage on which the peanuts are grown, you are at risk of a production loss, and the sheller contract provides for delivery of the peanuts to the sheller or handler and for a stipulated base contract price.

(c) A peanut producer who is also a sheller or handler may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the sheller or handler must execute and adopt a resolution that contains the same terms as a sheller

contract. Such resolution will be considered a sheller contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a sheller contained in these Crop Provisions.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical.

(b) We will not insure any acreage:

(1) On which peanuts are grown using no-till or minimum tillage farming methods unless allowed by the Special Provisions or written agreement; or

(2) Which does not meet the rotation requirements, if any, contained in the Special Provisions.

10. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) November 30 in all states except New Mexico, Oklahoma, and Texas; and

(b) December 31 in New Mexico, Oklahoma, and Texas.

11. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if due to a cause of loss contained in section 11(a) through (g) that occurs during the insurance period.

12. Replanting Payments

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 12(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions; and

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of:

(1) 20.0 percent of the production guarantee, multiplied by your price election, multiplied by your share; or

(2) $80.00 multiplied by your insured share.

(c) If there are different base contract prices or you also have insurable peanuts not grown under a contract:

(1) If the sheller contracts are for different types of peanuts or one type of peanut is grown under a sheller contract and another is not, replanting payments will be valued using the price election elected by you for the planted acreage, as applicable (For an example, you have two sheller contracts and the base contract price is $0.23 per pound for Runner type peanuts, then $0.23 per pound will be used for the value of any replanted Runner type peanut acreage. If the base contract price is $0.21 per pound for Spanish type peanuts, then $0.21 per pound will be used for the value of any replanted Spanish type peanut acreage.

(2) If the sheller contracts are for the same type of peanuts but they have different base contract prices:

(i) If the peanuts under each sheller contract are insured in separate optional units, each respective price election from each sheller contract will apply to each respective unit; or

(ii) If all or some of peanuts under both sheller contracts are insured in the same unit, then the replanted acreage will be prorated to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for $0.23 was for 25,000 pounds and the contract for $0.21 was for 15,000 pounds, then the acreage under the $0.23 contract constitutes 62.5 percent of the acreage in the unit (25,000/40,000) and the other sheller contract 37.5 percent of the acreage (15,000/40,000). Of the 10 acres replanted, 6.25 acres (10 × .625) would be paid at the $0.23 price election and 3.75 acres (10 × .375) would be paid at the $0.21 price election).

(3) If the peanuts are not grown under a contract, the replanting payments will be valued using the price election as specified in the Special Provisions. If the unit has peanuts grown under a sheller contract and peanuts not grown under a sheller contract, the replanted acreage must be prorated between the contract and non-contract acreage by determining the acreage grown under a contract and the remaining acreage in the unit (For example, if there are 20 acres in the unit and 10 were replanted, the production guarantee per acre for the unit is 2,000 pounds per acre, there is a sheller contract for $0.23 for 25,000 pounds, the remaining peanuts are not grown under a sheller contract, and the price election in the Special Provisions is for $0.20. The peanuts under the sheller contract constitute 62.5 percent (25,000/40,000) of the acreage in the unit and remaining peanuts constitute 37.5 percent (40,000 − 25,000/40,000) of the acreage. Of the 10 acres replanted, 6.25 acres (10 × .625) would be paid with the liability based on the $0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the $0.20 price election).

(d) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(e) Replanting payments will be calculated using your price election and production guarantee for the crop type that is replanted and insured. A revised acreage report will be required to reflect the replanted type, if applicable.

13. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability for the harvested acreage for the unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres by the respective production guarantee (per acre) for peanuts insured under a sheller contract or not insured under a sheller contract, as applicable;

(2) Multiplying each result of section 14(b)(1) by the applicable price election for peanuts insured at the base contract price or the price election specified in the Special Provisions, as applicable;

(3) Totaling the results of section 14(b)(2);

(4) Multiplying the production to count by the respective price election (If you have one or more sheller contracts, we will value your production to count by using your highest price election first and will continue in decreasing order to your lowest price election based on the amount of peanuts insured at each price election);

(5) Totaling the results of section 14(b)(4);

(6) Subtracting the result of section 14(b)(5) from the result of section 14(b)(3); and

(7) Multiplying the result in section 14(b)(6) by your share.

Example #1 (without a sheller contract):

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a production guarantee (per acre) of 2,000 pounds, the price election specified in the Special Provisions is $0.17 per pound, and your production to count is 43,000 pounds.

(1) 25 acres × 2,000 pounds = 50,000 pound guarantee;

(2) 50,000 pound guarantee × $0.17 price election specified in the Special Provisions = $8,500.00 guarantee;

(3) 43,000 pounds of production to count × $0.17 price election specified in the Special Provisions = $7,310.00;

(4) $8,500.00 guarantee − $7,310.00 = $1,190.00; and

(5) $1,190.00 × 1.000 = $1,190.00; Indemnity = $1,190.00.

Example #2 (with a sheller contract):

You have 100 percent share in 25 acres of Valencia peanuts in the unit, with a

production guarantee (per acre) of 2,000 pounds. You have two sheller contracts, the first is for 25,000 pounds, price election (contract) is $0.23 per pound, and the second is for 10,000 pounds, price election (contract) is $0.21 per pound. The price election (non-contract) specified in the Special Provisions is $0.17 per pound, and your production to count is 43,000 pounds.

(1) 25 acres × 2,000 pounds = 50,000 pound guarantee;

(2) 25,000 pounds contracted × $0.23 price election (contract) = $5,750.00;

10,000 pounds contracted × $0.21 price election (contract) = $2,100.00;

50,000 pound guarantee − 25,000 pounds contracted − 10,000 pounds contracted = 15,000 pounds not contracted;

15,000 pounds not contracted × $0.17 price election (non-contract) specified in the Special Provisions = $2,550.00;

(3) $5,750.00 + $2,100.00 + $2,550.00 = $10,400.00 guarantee;

(4) 43,000 pounds of production to count:

25,000 pounds contracted × $0.23 price election (contract) = $5,750.00;

10,000 pounds contracted × $0.21 price election (contract) = $2,100.00;

43,000 pounds of production to count − 25,000 pounds contracted (at $0.23 per pound) − 10,000 pounds contracted (at $0.21 per pound) = 8,000 pounds;

8,000 pounds × $0.17 price election (non-contract) specified in the Special Provisions = $1,360.00;

(5) $5,750.00 + $2,100.00 + $1,360.00 = $9,210.00;

(6) $10,400.00 guarantee − $9,210.00 = $1,190.00; and

(7) $1,190.00 × 1.000 = $1,190.00;

Indemnity = $1,190.00.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include all appraised and harvested production.

(d) All appraised production will include:

(1) Not less than the production guarantee for acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) Damaged solely by uninsured causes; or

(iv) For which you fail to provide production records that are acceptable to us.

(2) Production lost due to uninsured causes;

(3) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 14(e));

(4) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for the acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(i) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(ii) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(5) All harvested production from the insurable acreage.

(e) Mature peanuts may be adjusted for quality when production has been damaged by an insured cause of loss.

(1) To enable us to determine the number of pounds, price per pound, and the quality of production for any peanuts that qualify for quality adjustment, we must be given the opportunity to have such peanuts inspected and graded before you dispose of them.

(2) If you dispose of any production without giving us the opportunity to have the peanuts inspected and graded, the gross weight of such production will be used in determining total production to count unless you submit a marketing record satisfactory to us which clearly shows the number of pounds, price per pound, and quality of such peanuts.

(3) Such production to count will be reduced if the price per pound received for damaged peanuts is less than 85 percent of the price election by:

(i) Dividing the price per pound for the damaged peanuts, as determined by us in accordance with section 14(e)(1), received for the insured type of peanuts by the applicable price election; and

(ii) Multiplying this result by the number of pounds of such production.

15. Prevented Planting

(a) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

(b) In addition to the provisions of section 17(i) of the Basic Provisions, if there are different base contract prices or you also have insurable peanuts not grown under a contract:

(1) If the sheller contracts are for different types of peanuts or one type of peanut is grown under a sheller contract and another is not, the liability will be determined using the price election elected by you for planted acreage, as applicable (For an example, you have two sheller contracts and the base contract price is $0.23 per pound for Runner type peanuts, then $0.23 per pound will be used for the value of any prevented planting Runner type peanut acreage. If the base contract price is $0.21 per pound for Spanish type peanuts, then $0.21 per pound will be used for the value of any prevented planting Spanish type peanut acreage.

(2) If the sheller contracts are for the same type of peanuts but they have different base contract prices:

(i) If the peanuts grown under each sheller contract are insured in separate optional units, the liability will be determined using each respective price election for the prevented planting acreage in each respective unit; or

(ii) If all or some of the peanuts grown under the sheller contracts are insured in the same unit, then the liability for each contract must be determined separately using the respective price election and the number of eligible prevented planting acres to which the liability applies and will be determined by prorating prevented planting acreage to each contract based on the number of acres needed to fulfill each contract (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, and the contract for $0.23 was for 25,000 pounds and the contract for $0.21 was for 15,000 pounds, then the acreage under the $0.23 contract constitutes 62.5 percent (25,000/40,000) of the acreage in the unit and the other contract 37.5 percent (15,000/40,000) of the acreage. Of the 10 acres prevented from planting, 6.25 acres (10 × .625) would be paid with the liability based on the $0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the $0.21 price election).

(3) If the peanuts are not grown under a contract, the liability for such peanuts will be based on the price election as specified in the Special Provisions. If the unit has peanuts grown under a sheller contract and peanuts not grown under a sheller contract, the eligible prevented planting acreage must be determined by determining the acreage grown under a contract and the remaining acreage in the unit (For example, if there are 20 acres in the unit and 10 were prevented from planting, the production guarantee per acre for the unit is 2,000 pounds per acre, there is a sheller contract for $0.23 for 25,000 pounds, the remaining peanuts are not grown under a sheller contract, and the price election in the Special Provisions is for $0.20. The peanuts under the sheller contract constitute 62.5 percent (25,000/40,000) of the acreage in the unit and remaining peanuts constitute 37.5 percent (40,000 − 25,000/40,000) of the acreage. Of the 10 acres prevented from planting, 6.25 acres (10 × .625) would be paid with the liability based on the $0.23 price election and 3.75 acres (10 × .375) would be paid with the liability based on the $0.20 price election).

Signed in Washington, DC, on September 18, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 06–8146 Filed 9–25–06; 8:45 am]

BILLING CODE 3410–08–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN 3133–AD18

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its share insurance rules to implement amendments to the Federal Credit Union Act (FCU Act) made by the Federal Deposit Insurance Reform Act of 2005 (Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Conforming Amendments Act). In this regard, the final rule: Defines the ''standard maximum share insurance amount'' as $100,000 and provides that beginning in 2010, and in each subsequent 5-year period thereafter, NCUA and the Federal Deposit Insurance Corporation (FDIC) will jointly consider if an inflation adjustment is appropriate to increase that amount; increases the share insurance limit for certain retirement accounts from $100,000 to $250,000, subject to the above inflation adjustments; and provides pass-through coverage to each participant of an employee benefit plan, but limits the acceptance of shares in employee benefit plans to insured credit unions that are well capitalized or adequately capitalized. Additionally, NCUA is amending its share insurance rules to clarify insurance coverage for qualified tuition savings programs, commonly referred to as 529 plans, and share accounts denominated in foreign currencies.

DATES: This final rule is effective October 26, 2006.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, or Moisette Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Federal Deposit Insurance Reform Act of 2005 and Federal Deposit Insurance Reform Conforming Amendments Act of 2005

The Reform Act and Conforming Amendments Act, (Pub. L. 109–171) and (Pub. L. 109–173), amended the share insurance provisions of the FCU Act in a number of ways. 12 U.S.C. 1781–1790d. Specifically, section 2103(a) of the Reform Act provides that beginning April 1, 2010, and each subsequent 5-year period thereafter, NCUA and the FDIC will jointly consider if an inflation adjustment is appropriate to increase the NCUA's current ''standard maximum share insurance amount'' (SMSIA), which is defined in 12 U.S.C. 1787(k) as $100,000, and the ''standard maximum deposit insurance amount'' (SMDIA), the FDIC equivalent. Any increase to the SMSIA or SMDIA will be calculated using a formula comparing, over time, the published annual values of the Personal Consumption Expenditures Chain-Type Price Index, published by the Department of Commerce, and rounded down to the nearest $10,000. The Reform Act also requires NCUA and FDIC to consider certain other factors in determining whether to increase the SMSIA and SMDIA. Additionally, if an adjustment is warranted, NCUA and FDIC are required to publish information in the **Federal Register** and provide a corresponding report to Congress by April 5, 2010, and every succeeding fifth year. Subsequently, under those circumstances, an inflation adjustment will take effect on January 1st of the year immediately succeeding the year in which the adjustment is calculated unless an act of Congress provides otherwise.

Section 2(d)(1)(C) of the Conforming Amendments Act mandates that NCUA provide ''pass-through'' share insurance coverage for shares in any employee benefit plan account on a per-participant basis. This type of coverage is called ''pass-through'' because it passes through the employee benefit plan administrator to each of the participants in the plan. The employee benefit plans to which this section refers include those described in: (1) Section 3(3) of the Employee Retirement Income Security Act of 1974; (2) section 401(d) of the Internal Revenue Code (IRC); and (3) section 457 of the IRC. This section, however, limits the acceptance of employee benefit plan shares to insured credit unions that are ''well capitalized'' or ''adequately capitalized'' as those terms are defined in section 216(c) of the FCU Act. 12 U.S.C. 1790d(c).

Section 2(d)(2) of the Conforming Amendments Act amended 12 U.S.C. 1787(k)(3) of the FCU Act to increase the share insurance limit for certain retirement accounts from $100,000 to $250,000. The increased limit is also subject to the inflation adjustments discussed above. The types of accounts within this category of coverage include those specifically enumerated in 12 U.S.C. 1787(k)(3): Individual retirement accounts (IRAs) described in section 408(a) of the IRC and any plan described in section 401(d) of the IRC (Keogh accounts).

Additionally, the Conforming Amendments Act created the term ''government depositor'' in connection with public funds described in and insured under 12 U.S.C. 1787(k)(2). It also provides that the shares of a government depositor are insured in an amount up to the SMSIA. The amendments to NCUA's share insurance rules in part 745 implement the share insurance coverage revisions made by the Reform Act and the Conforming Amendments Act.

B. Interim Final Rule

In March 2006, the NCUA Board issued an interim final rule with request for comments to implement the statutory amendments summarized above. 71 FR 14631 (March 23, 2006). It put in place share insurance rules, effective on April 1, 2006, that enhance share insurance coverage, clarify legal positions already taken by NCUA, maintain parity with the FDIC, and are consistent with the regulatory changes FDIC made under the Reform Act and Conforming Amendments Act. Additionally, the interim final rule clarified and incorporated prior interpretations of the share insurance rules that provide coverage for qualified tuition savings plans created pursuant to section 529 of the IRC (529 plans) and share accounts denominated in foreign currencies.

C. Summary of Comments

NCUA received 14 comments regarding the interim rule: Three from FCUs, six from state credit unions, two from credit union trade associations, and three from a professional association of state and territorial regulatory agencies. All 14 commenters supported the rule.

Two commenters, while supporting the rule in general, limited their comments to NCUA's clarification of share insurance coverage for shares denominated in foreign currency. One of those commenters also requested NCUA permit credit unions to invest foreign currencies received from members at pre-approved corporate credit unions. Permissible investments for FCUs are beyond the scope of this rulemaking, but the Board may consider this authority in other rulemakings.

The other twelve commenters supporting the rule responded to NCUA's request for comments on whether pass-through coverage for employee benefit plans should depend on the participants' membership in the credit union where the employee benefit plan is maintained. All agreed share

insurance coverage should be extended to all participants of the employee benefit plan regardless of the participants' membership in the credit union. Many of the commenters noted that: (1) Employers generally establish employee benefit plans at credit unions where there is already some membership connection; (2) participants may not control where their interests in the employee benefit plan are deposited; and, (3) the Conforming Amendments Act prohibits credit unions that are not well or adequately capitalized from accepting employee benefit plan shares.

Seven commenters requested NCUA extend pass-through coverage to attorney trust accounts commonly known as IOLTA accounts (interest-on-lawyer-trust accounts) in a fashion similar to employee benefit plans accounts. These comments are beyond the scope of this rulemaking. The Conforming Amendments Act does not address IOLTA accounts, and NCUA will continue to insure IOLTA accounts by providing pass-through coverage only to members.

D. Standard Maximum Share Insurance Amount

The interim final rule added a definition of SMSIA to § 745.1, the definitions section of the share insurance rules. 12 CFR 745.1. The definition of SMSIA tracks the language of the Conforming Amendments Act and reads ''$100,000, adjusted as provided under section 11(a)(1)(F) of the Federal Deposit Insurance Act.'' 12 U.S.C. 1821 (a)(1)(F). Revised section 11(a)(1)(F) of the Federal Deposit Insurance Act details how every five years, the NCUA and FDIC will consider and calculate the inflation adjustment to the SMSIA and SMDIA, as discussed above. Also, the definition of SMSIA notes: (1) The current SMSIA is $100,000; (2) the acronym SMSIA is used throughout the regulatory text of part 745; and (3) all examples of share insurance coverage in part 745 use the current SMSIA of $100,000, unless a higher limit is presented and specifically noted. Accordingly, all references to the current insurance amount of $100,000 in the appendix to part 745, except for the examples in the appendix, are replaced by the acronym SMSIA. Examples in the appendix to part 745, which NCUA believes are helpful in illustrating a member's insurance coverage, will continue to provide the dollar amount of insurance for the particular example so members can calculate and know the insurance available on their accounts. The use of the acronym SMSIA throughout the regulatory text of part 745, instead of an actual number, will allow NCUA to avoid having to change the numerical limit of share insurance throughout the rule each time the SMSIA is adjusted for inflation.

The amendments regarding the SMSIA in the interim final rule are adopted in this final rule without change.

E. Retirement and Other Employee Benefit Plan Accounts

In implementing amendments to the FCU Act by the Conforming Amendments Act, the interim final rule consolidated § 745.9–3 into § 745.9–2. This section now addresses share insurance coverage for IRA/Keogh accounts and deferred compensation accounts, establishes pass-through insurance coverage for employee benefit plan accounts, and increases share insurance coverage to $250,000 for certain retirement accounts.

Although the Conforming Amendments Act prohibits insured credit unions that are not ''well capitalized'' or ''adequately capitalized'' from accepting employee benefit plan shares, pass-through coverage is granted for shares in employee benefit plan accounts in existence before this rule even if the credit unions do not meet the requisite capital levels. Credit unions that do not meet the requisite capital levels, or those that previously met the requisite capital levels but fall below those levels, are prohibited from accepting shares in employee benefit plan accounts until their capital levels improve.

Previously, full share insurance coverage in an employee benefit plan, such as a deferred compensation account, had been limited to plan participants who are also members of the credit union in which the account is maintained. In the interim final rule, NCUA noted that, during the rulemaking process, it intended to continue to insure employee benefit plan participants in accordance with the example for retirement funds then provided in the appendix to NCUA's insurance rule. 12 CFR part 745, Appendix, Paragraph G, Examples 3(a) and 3(b). That meant participants in an employee benefit plan who are credit union members would receive up to $100,000 as to their determinable interest but member interests not capable of evaluation and nonmember interests would be added together and insured up to $100,000 in the aggregate.

NCUA also noted in the interim final that the language of the Conforming Amendments Act suggests greater NCUA authority to provide pass-through coverage on a per-participant basis, regardless of membership status. Specifically, the Conforming Amendments Act defines pass-through insurance as ''insurance coverage based on the interest of each participant'' without including any limitations or qualifications requiring the membership status of each participant. Federal Deposit Insurance Reform Conforming Amendments Act of 2005, Public Law 109–173. Also, the legislative history of the Reform Act evidences congressional intent to advance as a national priority the enhancement of retirement security for all Americans. H.R. Rep. No. 109–67 at 22 (2005).

On those bases, and in consideration of the comments received, NCUA believes it is appropriate to extend full coverage to all participants in an employee benefit plan. NCUA does not believe it is necessary to restrict this extended coverage only to plans where the plan trustee or the employer sponsoring the plan is a member or if some percentage of plan participants are members. NCUA finds the language of the Conforming Amendments Act does not impose any membership restrictions and supports the agency's position.

Furthermore, NCUA believes extending full coverage to all participants, regardless of membership status, is both fair and reasonable for two additional reasons. First, it is extremely likely that employers or trustees will only establish employee benefit plans at a credit union if there is already some membership connection, for example, the employee group is within the field of membership of the credit union. Second, participants may not be able to control or readily determine where their interests in an employee benefit plan are maintained. Therefore, as a matter of fairness to participants, all should be assured of full, pass-through coverage. As discussed above, NCUA will extend full pass-through coverage to member and nonmember participants alike. Accordingly, examples 3(a) and (b) in paragraph G of the appendix are revised to illustrate the pass-through coverage provided to employee benefit plans.

F. Public Unit Accounts

The interim final rule changed the heading of § 745.10 from ''Public Unit Accounts'' to ''Accounts Held By Government Depositors'' to reflect the amendments to 12 U.S.C. 1787(k)(2) by the Conforming Amendments Act. The interim rule did not make any substantive changes to § 745.10 other than replacing references to $100,000 with references to the SMSIA. The amendments regarding public unit

accounts in the interim rule are adopted in this final rule without change.

G. 529 Programs

Section 529 of the IRC provides tax benefits for 529 plans. 26 U.S.C. 529(a). These programs include prepaid tuition programs, which educational institutions may create, as well as tuition savings programs that states or public instrumentalities sponsor. 26 U.S.C. 529(b)(1). Section 529 defines a tuition savings program as a program under which a person ''may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account'' and which meets certain requirements. 26 U.S.C. 529(b)(1)(A)(ii). A participant in a 529 program acquires an interest in a state trust and does not directly deposit funds with a financial institution.

In April 2005, a state contacted NCUA about share insurance coverage for its 529 plan. The state asked NCUA to adopt a rule similar to the FDIC's interim final rule to allow pass-through coverage for participants in the 529 program. 70 FR 33689 (June 9, 2005). The FDIC's interim final rule provided pass-through coverage to each participant aggregated with the participant's other single ownership accounts at the same financial institution up to $100,000, provided that each deposit may be traced to one or more particular investors and the FDIC's disclosure rules for pass-through coverage had been satisfied. 70 FR at 33691.

NCUA's Office of General Counsel (OGC) issued a legal opinion concluding that NCUA's insurance rules provide pass-through coverage to a 529 program participant if the participant is a member of the federally insured credit union where the 529 program account is maintained and if the account is properly titled. OGC Legal Opinion 05–0630 (July 1, 2005). This interpretation of the NCUA rule reached the same result in terms of coverage and maintained parity with the deposit insurance provided by the FDIC in its interim rule, although on a slightly different basis. The legal opinion also noted that NCUA would consider amending its insurance rule when FDIC issued a final one. *Id.* In October 2005, FDIC issued a final rule without any substantive changes. The interim rule incorporated OGC Legal Opinion 05–0630 into part 745 to clarify that share insurance coverage is available for 529 program participants.

In 529 programs of which NCUA is aware, the state holds 529 program funds as an agent for the participants. Accordingly, these accounts are insured as single ownership accounts under NCUA's share insurance rule covering accounts held by agents or nominees. 12 CFR 745.3(a)(2).

Agent or nominee accounts are insured as individual accounts and are aggregated with all other individual accounts a participant has at the same credit union up to the SMSIA. To be fully insured, the participant's interest must be ascertainable from the credit union's or state's records. 12 CFR 745.2(c)(2). Therefore, careful titling of the accounts and proper records are necessary to ensure each participant receives individual account coverage. NCUA insurance regulations require a participant to be a member of the credit union or otherwise eligible to maintain an insured account in the credit union. 12 CFR 745.0. The amendments regarding 529 programs in the interim rule are adopted in this final rule without change.

H. Share Accounts Denominated in a Foreign Currency

The FCU Act authorizes the NCUA Board to limit the type of share payments a credit union may accept and to determine the types of funds that will be insured. 12 U.S.C. 1766, 1782, 1782(h)(3). If NCUA permits federal credit unions (FCUs) to accept member accounts denominated in a foreign currency, then NCUA must insure them. 12 U.S.C. 1781(a). Under the FCU Act's nondiscrimination provision, NCUA must provide the same coverage for member accounts of state-chartered credit unions that comply with the FCU Act and NCUA regulations. *Id.*; 12 U.S.C. 1790.

Under the incidental powers rule, FCUs can provide monetary instrument services that enable members to purchase, sell, or exchange various currencies. 12 CFR 721.3(i). FCUs can use their accounts in foreign financial institutions to facilitate transfer and negotiation of member share drafts denominated in foreign currencies or engage in monetary transfer services. FCU funds deposited in a foreign financial institution are not insured by NCUA and may not be insured by the foreign country. Consequently, NCUA has highlighted the need for FCUs to exercise due diligence to ensure the foreign financial institutions with which it has accounts are financially sound, suitably regulated, and authorized to accept its transactions before opening any accounts. OGC Legal Opinion 99–1031 (December 9, 1999). FCUs assume the risk of currency fluctuations when they maintain an account in a foreign financial institution. NCUA recognized this risk and, before adopting § 721.3(i), had recommended FCUs either purchase or deposit only the amount of foreign currency needed to satisfy immediate short-term needs of their members. OGC Legal Opinions 99–1031 (December 9, 1999); 90–0637 (June 29, 1990).

While the FCU Act does not prohibit FCUs from accepting foreign-denominated shares, potential safety and soundness concerns associated with currency fluctuations have kept FCUs from offering these accounts. Accordingly, NCUA has only permitted FCUs to provide foreign currency services as an incidental powers activity rather than allowing FCUs to maintain shares in foreign currency. *See* OGC Legal Opinions 89–0822 (September 15, 1989); 89–0613 (July 31, 1989). Simply accepting shares denominated in a foreign currency presents little risk, if any, to credit unions. NCUA believes federally insured credit unions can effectively manage the risks associated with accepting shares denominated in foreign currency and issued provisions similar to the FDIC's in the interim final rule. Lending or investing funds in foreign currency still presents an increased risk to credit unions due to currency fluctuations that cannot be easily ameliorated, so the interim final rule did not permit lending or investing funds denominated in a foreign currency.

Previously, NCUA had not expressly addressed the insurability of member accounts denominated in foreign currency except in the foreign branching regulation, where NCUA has limited the insurability of member accounts at foreign branches of an insured credit union to accounts denominated in U.S. dollars. 12 CFR 741.11(e). The interim final rule provided share insurance coverage for shares denominated in a foreign currency and for conversion of foreign currency to U.S. dollars before an insurance payout in the event a credit union is liquidated similarly to the FDIC.

The FDIC provides insurance coverage for deposits at insured banks denominated in a foreign currency equal to the amount of U.S. dollars equivalent in value to the amount of the deposit denominated in the foreign currency up to the SMDIA. 12 CFR 330.3(c). Under the FDIC rule, if an insured bank is liquidated, the value of the foreign currency deposit is determined using the rate of exchange quoted by the Federal Reserve Bank of New York at noon on the day the bank defaults, unless the deposit agreement states otherwise. *Id.* Deposits payable solely

outside of the U.S. and its territories are not insurable deposits. 12 CFR 330.3(e).

As noted above, accepting shares denominated in a foreign currency presents little risk. If a credit union is able to fund an operation that is fully integrated and supportable in foreign currency, it will have minimized its exposure to risk of loss due to currency fluctuation. Actually, the risk would shift to the members who deposit and withdraw funds denominated in the foreign currency.

The interim final rule permitted credit unions to accept shares denominated in foreign currency and provided share insurance coverage of those shares. By accepting shares denominated in foreign currencies, credit unions can better serve members who, for example, receive payments in foreign currencies. Additionally, members who deposit shares denominated in a foreign currency will have the same share insurance coverage available for share accounts denominated in U.S. dollars. Credit unions must carefully consider any risk associated with maintaining shares denominated in foreign currencies before offering this service to their members. Federally insured credit unions that maintain shares denominated in a foreign currency will receive instructions on how to report these deposits on 5300 call reports.

The interim final did not permit insured credit unions to make loans or invest funds denominated in foreign currencies. These transactions may require credit unions to participate in trading currency, also called hedging or currency swaps, to manage the risk of potential loss due to currency fluctuations. While hedging may help credit unions protect against risks associated with changing currency rates, NCUA rules currently prohibit natural person FCUs from investing in derivatives like currency swaps. 12 CFR 703.16(a). FCUs that wish to engage in swaps to hedge against currency fluctuation must apply for NCUA approval as a part of a properly designed investment pilot program. 12 CFR 703.19. This rulemaking only addresses share insurance coverage. During NCUA's annual regulatory review, staff will consider the investments rules in part 703 and may recommend amendments to FCU investment authority. The amendments regarding share accounts denominated in a foreign currency in the interim final rule are adopted in this final rule without change.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This final rule clarifies and improves available share insurance coverage, without imposing any regulatory burden. The final amendments would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this final rule is not a major rule for purposes of SBREFA.

List of Subjects in 12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board on September 21, 2006.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA adopts the interim rule amending 12 CFR part 745, which was published at 71 FR 14631 on March 23, 2006, as a final rule with the following change:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 2. The Appendix to part 745 is amended by revising Examples 3(a) and 3(b) of Paragraph G to read as follows:

Appendix to Part 745—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

* * * * *

G. How Are Trust Accounts and Retirement Accounts Insured?

* * * * *

Example 3(a)

Question: Member T invests $500,000 in trust for ABC Employees Retirement Fund. Some of the participants are members and some are not. What is the insurance coverage?

Answer: The account is insured as to the determinable interests of each participant to a maximum of $100,000 per participant regardless of credit union member status. T's member status is also irrelevant. Participant interests not capable of evaluation shall be added together and insured to a maximum of $100,000 in the aggregate (§ 745.9–2).

Example 3(b)

Question: T is trustee for the ABC Employees Retirement Fund containing $1,000,000. Fund participant A has a determinable interest of $90,000 in the Fund (9% of the total). T invests $500,000 of the Fund in an insured credit union and the remaining $500,000 elsewhere. Some of the participants of the Fund are members of the credit union and some are not. T does not segregate each participant's interest in the Fund. What is the insurance coverage?

Answer: The account is insured as to the determinable interest of each participant, adjusted in proportion to the Fund's investment in the credit union, regardless of the membership status of the participants or trustee. A's insured interest in the account is $45,000, or 9% of $500,000. This reflects the fact that only 50% of the Fund is in the

account and A's interest in the account is in the same proportion as his interest in the overall plan. All other participants would be similarly insured. Participants' interests not capable of evaluation are added together and insured to a maximum of $100,000 in the aggregate (§ 745.9–2).

* * * * *

[FR Doc. 06–8258 Filed 9–25–06; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 91

[Docket No. FAA–2003–14825; Amendment No. 21–88, 91–293]

RIN 2120–AH90

Standard Airworthiness Certification of New Aircraft; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the **Federal Register** on September 1, 2006 (71 FR 52250), which amends regulations for issuing airworthiness certificates to certain new aircraft manufactured in the United States. This action is necessary to add an amendment number to the headings section at the beginning of the final rule. This correction does not make substantive changes to the final rule.

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

FOR FURTHER INFORMATION CONTACT: Dan Hayworth, Airworthiness Certification Branch, AIR–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8449.

SUPPLEMENTARY INFORMATION:

Background

The September 1, 2006, final rule (71 FR 52250) inadvertently failed to include in the headings section at the beginning of the rule an amendment number for the change to 14 CFR part 91. Amendment numbers are a means by which the FAA keeps track of changes to its regulations. The final rule included an amendment number for the changes to 14 CFR part 21 (No. 21–88), but not for part 91. For this reason, we are adding amendment number 91–293 to the headings section at the beginning of the rule.

Correction

In final rule FR Doc. 06–7355, beginning on page 52250 in the issue of September 1, 2006, make the following correction in the headings section. On page 52250 in the first column, change the agency docket information to read as follows:

''[Docket No. FAA–2003–14825; Amendment Nos. 21–88, 91–293]''

Issued in Washington, DC, on September 11, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. 06–8234 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 413 and 417

[Docket No. FAA–2000–7953; Amendment Nos. 401–4, 406–3, 413–7, 415–4, 417–0]

RIN 2120–AG37

Licensing and Safety Requirements for Launch; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes two minor corrections to a final rule that amends commercial space transportation regulations governing the launch of expendable launch vehicles. 71 FR 50507 (Aug. 25, 2006). This action is necessary to correct a paragraph designation and add a notation of a reserved appendix. This correction does not make substantive changes to the final rule.

EFFECTIVE DATES: September 25, 2006.

FOR FURTHER INFORMATION CONTACT: René Rey, Licensing and Safety Division, AST–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7538; e-mail *Rene.Rey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In the August 25, 2006, final rule (71 FR 50507, 50531), amendatory instruction no. 6 added paragraph (d), *Measurement system consistency* to 14 CFR 413.7. However, an earlier FAA action had added paragraph (d), *Safety approval* to § 413.7. 71 FR 46847, 46852 (Aug. 15, 2006). It was not the FAA's intention in the August 25, 2006 rule to supersede the previously added paragraph (d). Thus, we are changing the paragraph designation of *Measurement system consistency* to 14 CFR 413.7(e).

Also, in the August 25, 2006 rule, amendatory instruction no. 21 added 14 CFR part 417 in its entirety. 71 FR at 50537. The table of contents for the part indicated that appendix F was reserved for future use. However, the text of part 417 inadvertently failed to include any reference to the existence of the reserved appendix. To avoid any possible confusion, we are adding a notation referencing the reserved appendix between the text of appendix E of part 417 and the text of appendix G of part 417.

Justification for Expedited Rulemaking

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined there is good cause for making today's action final without prior proposal and opportunity for comment because the changes are minor technical corrections and do not change the substantive requirements of the rule. Thus, notice and public procedure are unnecessary.

List of Subjects

14 CFR Part 413

Rockets, Space transportation and exploration.

14 CFR Part 417

Rockets, Space transportation and exploration.

The Amendment

■ Accordingly, the FAA amends Chapter 1 of Title 14 of the Code of Federal Regulations as follows:

PART 413—LICENSE APPLICATION PROCEDURES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 2. Amend § 413.7 by removing paragraph (d) that was added on August 25, 2006 (71 FR 50531), and by adding paragraph (e) to read as follows:

§ 413.7 Application.

* * * * *

(e) *Measurement system consistency.* For each analysis, an applicant must employ a consistent measurements system, whether English or metric, in its application and licensing information.

PART 417—LAUNCH SAFETY

■ 3. The authority citation for part 417 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 4. Amend part 417 by adding the heading of Appendix F in alphabetical order as follows:

Appendix F of Part 417—[Reserved]

Issued in Washington, DC, on September 11, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. 06–8235 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

RIN 2700–AC40

[Notice: (06–067)]

Code of Conduct for International Space Station Crew

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) has adopted as final, without change, an interim final rule regarding the policy and procedures for International Space Station crewmembers provided by NASA for flight to the International Space Station.

DATES: *Effective Date:* September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Mick Schlabs, Senior Attorney, International Law Practice Group, Office of the General Counsel, NASA Headquarters, telephone (202) 358–2068, fax (202) 358–4117.

SUPPLEMENTARY INFORMATION:

A. Background

NASA published an interim final rule at 65 FR 80303 on December 21, 2000 to set forth policy and procedures with respect to International Space Station crewmembers provided by NASA for flight to the International Space Station. They apply to all persons so provided, including U.S. Government employees, uniformed members of the Armed Services, citizens who are not employees of the U.S. Government, and foreign nationals.

NASA received no comments on the interim final rule. Therefore, NASA has adopted the interim final rule as a final rule without change.

This rule is not a major Federal action as defined in Executive Order 12866.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the administrative notification requirements of the rule are expected to affect less than 10 contracts per year.

C. Paperwork Reduction Act

The information collection requirements of the rule do not reach the threshold for requiring the Office of Management and Budget's approval under 44 U.S.C. 3501, et seq.

List of Subjects in 14 CFR Part 1214

Code of Conduct for International Space Station Crew.

Michael D. Griffin,

Administrator.

■ Interim Final Rule Adopted as Final without Change.

■ Accordingly, the interim final rule implementing certain provisions of the International Space Station (ISS) Intergovernmental Agreement (IGA) regarding ISS crewmembers' observance of an ISS Code of Conduct, which was published at 65 FR 80303 on December 21, 2000, is adopted as a final rule without change.

[FR Doc. 06–8186 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1 and 11

[Docket No. 2005D–0356]

Guidance for Industry: Questions and Answers Regarding the Final Rule on Establishment and Maintenance of Records (Edition 4); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Questions and Answers Regarding Establishment and Maintenance of Records (Edition 4).'' The guidance responds to various questions raised about the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food. Persons covered by the regulation who employ 500 or more full-time equivalent employees (FTEs) had to be in compliance by December 9, 2005, and those who employ 11 to 499 FTEs had to be in compliance by June 9, 2006. Persons who employ 10 or fewer FTEs have until December 11, 2006, to be in compliance. ''Person'' includes an individual, partnership, corporation, and association.

DATES: Submit written or electronic comments on the agency guidance at any time.

ADDRESSES: You may submit comments, identified by 2005D–0356, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Center for Food Safety and Applied Nutrition at 1–888–SAFEFOOD, Fax: 1–877–366–3322, or by e-mail: *industry@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 9, 2004 (69 FR 71562), FDA issued a final rule to implement section 306 of the Bioterrorism Act. The regulation requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records are to allow for the identification of the immediate previous sources and the immediate subsequent recipients of food. Persons subject to the regulation who employ 500 or more FTEs had to be in compliance by December 9, 2005, and those who employ 11–499 FTEs had to be in compliance by June 9, 2006. Persons who employ 10 or fewer FTEs have until December 11, 2006 to be in compliance. ''Person'' includes an individual, partnership, corporation, and association.

On September 12, 2005, FDA issued the first edition of a guidance entitled ''Questions and Answers Regarding Establishment and Maintenance of Records.'' On November 22, 2005, FDA issued a second edition of that guidance and on June 6, 2006, FDA issued a third edition of that guidance. This document is the fourth edition of that guidance entitled ''Questions and Answers Regarding Establishment and Maintenance of Records (Edition 4)'' and responds to questions regarding persons covered by the regulation, and persons excluded by the regulation, including additional guidance on the farm exclusion. In addition, we are amending the response to question 4.2 to clarify that while post-harvesting activities related to hay are subject to the rule, certain activities that are part of harvesting remain within the farm exemption. This guidance is intended to help the industry better understand and comply with the regulation in 21 CFR part 1, subpart J. FDA is issuing this guidance as a Level 1 guidance. The guidance represents the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

Consistent with FDA's good guidance practices regulation § 10.115(g)(2) (21 CFR 10.115), the agency will accept comments, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, persons who employ 500 or more FTEs had to begin to establish and maintain records identifying the immediate previous sources and immediate subsequent recipients of food by December 9, 2005, and those who employ 11–499 FTEs had to be in compliance by June 9, 2006. Persons who employ 10 or fewer FTEs have until December 11, 2006, to be in compliance. Clarifying the provisions of the final rule will facilitate prompt compliance with these requirements and complete the rule's implementation.

FDA continues to receive large numbers of questions regarding the records final rule, and is responding to these questions under § 10.115 as promptly as possible, using a question-and-answer format. The agency believes that it is reasonable to maintain all responses to questions concerning establishment and maintenance of records in a single document that is periodically updated as the agency receives and responds to additional questions. The following four indicators will be employed to help users of this guidance identify revisions: (1) The guidance will be identified as a revision of a previously issued document, (2) the revision date of the guidance will appear on its cover, (3) the edition number of the guidance will be included in its title, and (4) questions and answers that have been added to the original guidance will be identified as such in the body of the guidance.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments and the guidance may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/~dms/recguid3.html*.

Dated: September 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–8241 Filed 9–21–06; 1:22 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Purina Mills, Inc. The supplemental NADA provides for the use of a lasalocid Type A medicated article containing 20 percent lasalocid activity per pound to make free-choice Type C medicated feed mineral blocks used for increased rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers).

DATES: This rule is effective September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *eric.dubbin@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812, filed a supplement to NADA 141–171 for use of BOVATEC 91 (lasalocid) Type A medicated article to make Purina Sugar Mag Block 1440 BVT Medicated Mineral Block, a free-choice Type C medicated feed used for increased rate of weight gain in pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers). The supplement provides for the use of a lasalocid Type A medicated article containing 20 percent lasalocid activity per pound. The supplemental NADA is approved as of August 18, 2006, and the regulations are amended in § 558.311 (21 CFR 558.311) to reflect the approval.

The basis of approval is discussed in the freedom of information summary.

In addition, FDA is amending § 558.311 to remove redundant text in an entry for combination use of single-ingredient lasalocid and chlortetracycline in cattle feed which was published in error in the **Federal Register** of April 27, 2006 (71 FR 24816). This correction is being made to improve the accuracy of the regulations.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.311 [Amended]

■ 2. In § 558.311, in paragraph (b)(8), after the number ''15'' add the words ''and 20''; and in paragraph (e)(1)(xxvii) in the ''Indications for use'' column, remove ''control of control of'' and in its place add ''control of''.

Dated: September 15, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 06–8261 Filed 9–25–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, 1310, 1314

[Docket No. DEA–291I]

RIN 1117–AB05

Retail Sales of Scheduled Listed Chemical Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim final rule with request for comment.

SUMMARY: In March 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005, which establishes new requirements for retail sales of over-the-counter (nonprescription) products containing the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The three chemicals can be used to manufacture methamphetamine illegally. DEA is promulgating this rule to incorporate the statutory provisions and make its regulations consistent with the new requirements. This action establishes daily and 30-day limits on the sales of scheduled listed chemical products to individuals and requires recordkeeping on most sales.

DATES: *Effective Dates:* September 21, 2006, except that §§ 1314.20, 1314.25, and 1314.30 (with the exception of § 1314.30(a)(2)) are effective September 30, 2006. Section 1314.30(a)(2) is effective November 27, 2006.

Comment Date: Written comments must be postmarked on or before November 27, 2006.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–291I'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION:

DEA's Legal Authority

DEA implements the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1399. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes and to deter the diversion of controlled substances to illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA as amended also requires DEA to regulate the manufacture and distribution of chemicals that may be used to manufacture controlled substances illegally. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). DEA is promulgating this rule as an interim final rule rather than a proposed rule because the changes being made codify statutory provisions, some of which are already in effect. Parts of the statute are self-implementing; certain changes related to retail sales became effective upon signature (March 9, 2006), others

became effective on April 8, 2006, and still others will become effective September 30, 2006. An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. Many of the requirements of the Combat Methamphetamine Epidemic Act of 2005 included in this rulemaking were set out in such detail as to be self-implementing. Therefore the changes in this rulemaking provide conforming amendments to make the language of the regulations consistent with that of the law. DEA is accepting comments on other aspects of this rulemaking, particularly those not specifically mandated by the Combat Methamphetamine Epidemic Act of 2005.

Combat Methamphetamine Epidemic Act of 2005

The Combat Methamphetamine Epidemic Act of 2005 (CMEA) amends the CSA to change the regulations for selling nonprescription products that contain ephedrine, pseudoephedrine, and phenylpropanolamine, their salts, optical isomers, and salts of optical isomers. CMEA creates a new category of products called ''scheduled listed chemical products.'' Ephedrine, pseudoephedrine, and phenylpropanolamine are List I chemicals because they are used in, and important to, the illegal manufacture of methamphetamine. Products containing these List I chemicals also have legitimate medical uses. Ephedrine is used in some products for treating asthma. Pseudoephedrine, a decongestant, is a common ingredient in cold and allergy medications. In November 2000, the Food and Drug Administration (FDA) issued a public health advisory concerning phenylpropanolamine and requested that all drug companies discontinue marketing products containing phenylpropanolamine due to risk of hemorrhagic stroke. In response, many companies voluntarily reformulated their products to exclude phenylpropanolamine. Subsequently, on December 22, 2005, FDA published a Notice of Proposed Rulemaking (70 FR 75988) proposing to categorize all over-the-counter nasal decongestants and weight control drug products containing phenylpropanolamine preparations as Category II, nonmonograph, *i.e.*, not generally recognized as being safe for human consumption. Most products containing phenylpropanolamine intended for humans have been withdrawn from the market, but phenylpropanolamine is still sold by prescription for veterinary uses.

Under previous CSA amendments (the Comprehensive Methamphetamine Control Act of 1996 (MCA) and the Methamphetamine Anti-Proliferation Act of 2000 (MAPA)), Congress limited the quantity of products containing ephedrine, pseudoephedrine, and phenylpropanolamine that could be sold as nonprescription drugs at retail (which were, along with certain liquid products, defined as ''ordinary over-the-counter pseudoephedrine or phenylpropanolamine products'') without recordkeeping, but generally exempted products sold in blister packs sold by ''retail distributors''. The MCA established thresholds for these drug products, including a threshold of 24 grams of combination ephedrine products; single-entity ephedrine products had been regulated by the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200). MAPA reduced existing thresholds for pseudoephedrine and phenylpropanolamine to 9 grams per transaction, with each package containing not more than 3 grams of pseudoephedrine base or phenylpropanolamine base, but retained the so-called ''blister pack'' exemption. Because most retail outlets did not want to create and maintain records of sales or register as a retail distributor, the threshold for recordkeeping functioned for practical purposes similarly to a sales limit. Much of the product was also sold in blister packs.

Congress determined that the existing limits were not sufficient to prevent people from buying these products and using them to illegally manufacture methamphetamine. In the Combat Methamphetamine Epidemic Act of 2005, Congress adopted provisions that do the following:

- Limit the quantity of each of the chemicals that may be sold to an individual in a day to 3.6 grams of the chemical, without regard to the number of transactions.
- For nonliquids, limit packaging to blister packs containing no more than 2 dosage units per blister. Where blister packs are not technically feasible, the product must be packaged in unit dose packets or pouches.
- Require regulated sellers to place the products behind the counter or in locked cabinets.
- Require regulated sellers to check the identity of purchasers and maintain a log of each sale that includes the purchaser's name and address, signature of the purchaser, product sold, quantity sold, date, and time.
- Require regulated sellers to maintain the logbook for at least two years.
- Require regulated sellers to train employees in the requirements of the law and certify to DEA that the training has occurred.
- For mobile retail vendors and mail order sales, require sellers to limit sales to an individual in a 30-day period to 7.5 grams.
- For individuals, limit purchases in a 30-day period to 9 grams, of which not more than 7.5 grams may be imported by means of a common or contract carrier or the U.S. Postal Service.

The numbers of dosage units and milliliters (mL) that may be purchased under the sales limits are shown in Table 1 below. As noted previously, the FDA issued a voluntary recall on phenylpropanolamine products as being unsafe for humans so no phenylpropanolamine over-the-counter (OTC) product should be available for human consumption. Veterinary use is by prescription only.

TABLE 1.—NUMBER OF TABLETS/MILLILITERS THAT EQUAL RETAIL TRANSACTION LIMITS (AS BASE) FOR SCHEDULED LISTED CHEMICAL PRODUCTS

Scheduled listed chemical product	Transaction limits		
	3.6 gm	7.5 gm	9.0 gm
	Tablets		
Ephedrine:			
25 mg Ephedrine HCl	175	366	439
25 mg Ephedrine Sulfate	186	389	466
Pseudoephedrine (as HCl):			

TABLE 1.—NUMBER OF TABLETS/MILLILITERS THAT EQUAL RETAIL TRANSACTION LIMITS (AS BASE) FOR SCHEDULED LISTED CHEMICAL PRODUCTS—Continued

Scheduled listed chemical product	Transaction limits		
	3.6 gm	7.5 gm	9.0 gm
30 mg Pseudoephedrine HCl	146	305	366
60 mg Pseudoephedrine HCl	73	152	183
120 mg Pseudoephedrine HCl	36	76	91
Pseudoephedrine (as Sulfate):			
30 mg Pseudoephedrine Sulfate	155	324	389
60 mg Pseudoephedrine Sulfate	77	162	194
120 mg Pseudoephedrine Sulfate	38	81	97
240 mg Pseudoephedrine Sulfate	19	40	48
	Number of mL		
Ephedrine:			
6.25 mg/5 ml Ephedrine HCl	3,515	7,323	8,788
Pseudoephedrine (as HCl):			
15 mg/1.6 mL Pseudoephedrine HCl	468	976	1,171
7.5 mg/5 mL Pseudoephedrine HCl	2,929	6,103	7,323
15 mg/5 mL Pseudoephedrine HCl	1,464	3,051	3,661
15 mg/2.5 mL Pseudoephedrine HCl	732	1,525	1,830
30 mg/5 mL Pseudoephedrine HCl	732	1,525	1,830
30 mg/2.5 mL Pseudoephedrine HCl	366	762	915
60 mg/5 mL Pseudoephedrine HCl	366	762	915

Provisions of CMEA

Overview. Before CMEA, requirements for sales of products containing ephedrine, pseudoephedrine, and phenylpropanolamine, which were then called regulated drug products or drug products regulated pursuant to 21 CFR 1300.02(b)(28)(i)(D), distinguished between in-person sales to a purchaser (retail distribution) and mail order sales, which covered any sale where the product is shipped using the Postal Service or any common or private carrier. Mail order sellers had to file monthly reports with DEA if they sold a purchaser drug products containing more than a threshold quantity (9 grams for pseudoephedrine and phenylpropanolamine (maximum per package of 3 grams), 24 grams for ephedrine combination products), regardless of how the products were packaged. Retailers conducting face-to-face transactions had to maintain records for sales above the same thresholds except that, as noted above, sales of products in blister packs generally were not covered. The status of such sales was discussed in detail in an interpretive rule (69 FR 2862, January 14, 2004; corrected at 69 FR 3198, January 22, 2004). Either type of seller had to register with DEA if they sold the products to individuals in amounts above the threshold quantity. Only two persons are registered as retail distributors.

The CMEA provisions on retail sales create differing requirements for the various types of retail sales. As discussed further below, Table 2 summarizes the applicability of the CMEA provisions as well as existing DEA provisions to the different types of sellers.

TABLE 2.—SUMMARY OF REQUIREMENTS BY TYPE OF SELLER

	Regulated sellers (store)	Mobile retail vendors	Mail order sellers
Daily sales limit	3.6 gm/chemical	3.6 gm/chemical	3.6 gm/chemical.
30-day sales limit		7.5 gm	7.5 gm.
Blister packs	Yes	Yes	Yes.
Storage	Behind the counter Locked cabinet.	Locked cabinet	NA.
Logbook	Yes	Yes	NA.
Customer ID	Examine photo ID	Examine photo ID	Verify ID.
Train employees	Yes	Yes	NA.
Self-Certify	Yes	Yes	NA.
Notice of misrepresentation	Yes	Yes	NA.
Monthly reports	No	No	Yes.
Theft and loss reports	Yes	Yes	Yes.

CMEA defines nonprescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine as ''scheduled listed chemical products.'' Direct, in-person sales to a customer, whether at a permanent store or movable site (*e.g.*, kiosk, flea market), are subject to new requirements for training of employees who take part in the sale of scheduled listed chemical products and certification to DEA that the employees have been trained. These sellers, called ''regulated sellers'' in CMEA, must also check photo identifications of purchasers and maintain specific records of each sale of scheduled listed chemical products. Under CMEA, the

only sales exempt from recordkeeping are sales of single packages of pseudoephedrine where the package contains not more than 60 milligrams. DEA will issue future guidance to further clarify remaining questions about how regulated entities may meet this regulation's training requirements.

The recordkeeping and reporting requirements for mail order sales basically remain the same as under the previous regulations, except that a waiver in the prior law that covered non face-to-face distributions by retail distributors has been eliminated for scheduled listed chemical products. As a result, retail stores that deliver these products to customers by mail or delivery services will need to comply with the provisions for mail order sales reporting for these transactions. Mail order sellers must file monthly reports with DEA. CMEA adds the requirement that these sellers verify the purchaser's identity prior to shipping.

As noted above, CMEA changes the limits on retail sales. Daily sales are now limited to a maximum of 3.6 grams of each chemical in scheduled listed chemical products. Mobile retail vendors and mail order vendors must also limit sales to an individual purchaser to 7.5 grams of each chemical in scheduled listed chemical products in any 30-day period. CMEA limits purchases by an individual purchaser to 9 grams of each chemical in scheduled listed chemical products in any 30-day period, not more than 7.5 grams of which may be imported by means of a private or commercial carrier or the U.S. Postal Service. Any imports of scheduled listed chemical products subject to the 7.5 gram purchase limit under CMEA must also otherwise comply with all other applicable Federal and State laws regarding their importation, including the Federal, Food, Drug, and Cosmetic Act. This provision is not included in this rule, but will be addressed in other rulemakings DEA is promulgating to implement the various provisions of the Combat Methamphetamine Epidemic Act of 2005. Finally, CMEA exempts all retail sellers and mail order distributors selling the products at retail from registration. The following sections discuss each of the statutory provisions in more detail.

Definitions. CMEA revises the definition of ''*regulated transaction*,'' adds several new definitions, and removes the definition of ''*ordinary over-the-counter pseudoephedrine or phenylpropanolamine product.*'' CMEA adds a definition of ''*scheduled listed chemical product,*'' which means any nonprescription product that contains ephedrine, pseudoephedrine, or phenylpropanolamine and is marketed lawfully under the Federal Food, Drug, and Cosmetic Act. References to ephedrine, pseudoephedrine, or phenylpropanolamine include their salts, optical isomers, and salts of optical isomers. CMEA exempts scheduled listed chemical products sold at retail by a regulated seller or by persons that sell the product for personal use and ship the product by mail or private or common carriers (mail order sellers) from the definition of regulated transaction. It also removes other references to the sale of these chemicals in drug products from the definition of regulated transactions. DEA notes that further clarification regarding regulated transactions will be addressed in a separate rulemaking. These changes remove retail sellers and mail order sellers from the registration system; in practice, retail and mail order sellers have not registered because they limited sales to below threshold quantities and to products sold in blister packs. At present, only two persons are registered as retail distributors.

CMEA adds definitions of ''*regulated seller*,'' to mean a retail distributor (including a pharmacy and mobile retail vendors), and ''*at retail,*'' to mean sale or purchase for personal use. It also revises the definition of ''*retail distributor*'' to remove the sentence referring to below threshold quantities. This change subjects all sales, except for sales of single packages containing not more than 60 milligrams of pseudoephedrine, to recordkeeping requirements.

Sales limits. Effective April 8, 2006, CMEA limits sales to an individual to 3.6 grams per day of each chemical in scheduled listed chemical products regardless of the number of purchases. Mobile retail vendors and mail order sellers may not sell an individual more than 7.5 grams of each chemical in scheduled listed chemical products in a 30-day period. A seller who violates these provisions is subject to civil penalties and possible criminal penalties.

Purchase limits. CMEA imposes a 9 gram purchase limit in a 30-day period on individuals. Not more than 7.5 grams of the 9 grams may be imported by means of common/contract carrier or the U.S. Postal Service. Any imports of scheduled listed chemical products subject to the 7.5 gram purchase limit under CMEA must also otherwise comply with all other applicable Federal and State laws regarding their importation, including the Federal, Food, Drug, and Cosmetic Act. This provision is not included in this rule, but will be addressed in other rulemakings DEA is promulgating to implement the various provisions of the Combat Methamphetamine Epidemic Act of 2005. In other rulemakings based on new CMEA provisions, imports, other than this 30-day individual limit, are limited to DEA registrants that have been issued a quota to import. (These rulemakings will be separately published in the **Federal Register**.) A purchaser who violates these limits is subject to criminal penalties.

Thirty-day limit. CMEA creates a 30-day sales limit. DEA interprets this to mean a rolling calendar where the sales limit is based on sales to the purchaser in the previous 30 days. DEA interprets the per day limit to refer to midnight to midnight, not a rolling 24-hour clock.

Blister packs. Effective April 8, 2006, nonliquid forms of scheduled listed chemical products (including gel capsules) must be sold only in blister packs, with no more than two dosage units per blister unless blister packs are technically infeasible. In that case, the dosage units must be in unit dose packets or pouches.

Product placement: Behind counter or locked cabinet. CMEA requires that on and after September 30, 2006, scheduled listed chemical products must be stored behind the counter or, if in an area where the public has access, in a locked cabinet. Although DEA is not including cabinet specifications in the rule, a locked cabinet should be substantial enough that it cannot be easily picked up and removed. In a store setting, the cabinet should be similar to those used to store items, such as cigarettes, that can be accessed only by sales staff.

Logbooks. CMEA requires retail sellers to maintain logbooks on and after September 30, 2006. If a retailer maintains the logbook on paper, DEA is requiring that the logbook be bound, as is currently the case for records of sales of Schedule V controlled substances that are sold without a prescription. Bound blank logbooks and ledger books meeting DEA's regulatory requirements are readily available on the commercial market. If the logbook is maintained electronically, the records must be readily retrievable by the seller and any DEA or other authorized law enforcement official. Logs must be kept for two years from the date the entry was made. The logs must include the information entered by the purchaser (name, address, signature, date, and time of sale) and the quantity and form of the product sold.

Where the record is entered electronically, the computer system may enter the date and time automatically. An electronic signature system, such as

the ones many stores use for credit card purchases, may be employed to capture the signature for electronic logs. The information that the seller must enter may be accomplished through a point-of-sales system and bar code reader.

DEA is aware that in some cases, such as pharmacy counters where the computer is behind the pharmacy counter, it may be difficult for the purchaser to enter the information electronically. DEA is seeking comments on whether systems currently used to capture signatures for credit or debit card purchases can be reprogrammed to allow customers to enter name and address, as well as the signature. DEA also recognizes that some purchasers will find it difficult or impossible to enter the information themselves. In these cases, the seller should ask for the name and address and enter it, rather than simply copy it off the photo ID. Regardless of how the information is entered, however, there must be a mechanism to allow the customer to sign the logbook.

Verification of photo ID. CMEA requires on and after September 30, 2006, that an individual must present an identification card that includes a photograph and is issued by a State or the Federal government or a document considered acceptable under 8 CFR 274a.2(b)(1)(v)(A) and (B). Those documents currently include the following:

- United States passport (unexpired or expired).
- Alien Registration Receipt Card or Permanent Resident Card, Form I–551.
- An unexpired foreign passport that contains a temporary I–551 stamp.
- An unexpired Employment Authorization Document issued by the Immigration And Naturalization Service which contains a photograph, Form I–766; Form I–688, Form I–688A, or Form I–688B.
- In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, an unexpired foreign passport with an Arrival-Departure Record, Form I–94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

For individuals 16 years of age or older:

- A driver's license or identification card containing a photograph, issued by a State or an outlying possession of the United States. If the driver's license or identification card does not contain a photograph, identifying information shall be included such as: Name, date of birth, sex, height, color of eyes, and address.
- School identification card with a photograph.
- Voter's registration card.
- U.S. military card or draft record.
- Identification card issued by Federal, State, or local government agencies or entities. If the identification card does not contain a photograph, identifying information shall be included such as: Name, date of birth, sex, height, color of eyes, and address.
- Military dependent's identification card.
- Native American tribal documents.
- United States Coast Guard Merchant Mariner Card.
- Driver's license issued by a Canadian government authority.

For individuals under age 18 who are unable to produce a document from the list above of acceptable documents for persons age 16 years and older:

- School record or report card.
- Clinic doctor or hospital record.
- Daycare or nursery school record.

The list of acceptable forms of identification, as cited in CMEA, may change (''in effect on or after the date of enactment''). DEA has no discretion to alter the list.

Notice on misrepresentations. CMEA requires that on and after September 30, 2006, the logbooks include a notice to purchasers that entering false statements or misrepresentations may subject the purchaser to criminal penalties under section 1001 of title 18 of the U.S. Code. DEA is requiring the inclusion of the following language in all logbooks:

Warning: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an individual or $500,000 if an organization, imprisoned not more than five years, or both.

With both a bound logbook and electronic log, inclusion of this notice may present difficulties. If the purchaser is not able to enter the information electronically in a store, providing the notice electronically will not meet the requirements. If not feasible in these situations, one alternative is that the seller prominently display the notice where the purchaser will see it when entering or providing the information.

Verification of identity for mail order sales. The Controlled Substances Act (21 U.S.C. § 830(b)(3)) requires that each regulated person, as defined in the Act, who engages in a transaction that involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each transaction conducted during the previous month to DEA. Data contained in the report includes, but is not limited to: Name of purchaser; quantity and form of ephedrine, pseudoephedrine, or phenylpropanolamine purchased; and the address to which such ephedrine, pseudoephedrine, or phenylpropanolamine was sent. DEA has specified further information regarding mail order reports by regulation (21 CFR 1310.05).

CMEA requires that effective April 8, 2006, the mail order seller confirm the identity of the purchaser prior to shipping the product. CMEA requires DEA to establish procedures for this identity verification by regulation. To parallel the identification requirements for regulated sellers, and to provide reasonable assurance that the person purchasing the product is who they claim to be, DEA is requiring that mail order sellers verify the identity of the purchaser by obtaining a copy of an identification card that includes a photograph and is issued by a State or the Federal government or a document considered acceptable under 8 CFR 274a.2(b)(1)(v)(A) and (B). Such a copy may be obtained through use of the Postal Service, facsimile transmission of a photocopy, or the scanning and transmission of the identification card, among other examples. The mail order seller must determine that the name and address on the identification card correspond to the name and address provided to the mail order seller as part of the sales transaction. If the information cannot be confirmed, the seller may not ship the items.

Selling at retail. CMEA requires that on and after September 30, 2006, a regulated seller must not sell scheduled listed chemical products unless it has self-certified to DEA, through DEA's Web site. The self-certification requires the regulated seller to confirm the following:

- Its employees who will be engaged in the sale of scheduled listed chemical products have undergone training regarding provisions of CMEA.
- Records of the training are maintained.
- Sales to individuals do not exceed 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine per day. (Mobile

retail vendors must also confirm that sales to an individual in a 30-day period do not exceed 7.5 grams.)

- Nonliquid forms are packaged as required.
- Scheduled listed chemical products are stored behind the counter or in a locked cabinet.
- A written or electronic logbook containing the required information on sales of these products is properly maintained.
- The logbook information will be disclosed only to Federal, State, or local law enforcement and only to ensure compliance with Title 21 of the United States Code or to facilitate a product recall.

The seller must train its employees and self-certify before either the seller or individual employees may sell scheduled listed chemical products. The self-certification is subject to the provisions of 18 U.S.C. 1001. A regulated seller who knowingly or willfully self-certifies to facts that are not true is subject to fines and imprisonment.

Training. DEA has developed training that it has made available on its Web site (*http://www.deadiversion.usdoj.gov*). Employers must use the content of this training in the training of their employees who sell scheduled listed chemical products. An employer may include additional content to DEA's, but DEA's content must be included in the training. For example, a regulated seller may elect to incorporate DEA's content into initial training for new employees.

Training records. On and after September 30, 2006, each employee of a regulated seller who is responsible for delivering scheduled listed chemical products to purchasers or who deals directly with purchasers by obtaining payment for the scheduled listed chemical products must undergo training and must sign an acknowledgement of training received prior to selling scheduled listed chemical products. This record must be kept in the employee's personnel file.

Self-certification. On and after September 30, 2006, the regulated seller must self-certify to DEA as described above. DEA has established a Web page that will allow regulated sellers to complete the self-certification on-line and submit it to DEA electronically. A self-certification certificate will be generated by DEA upon receipt of the application. The regulated seller will print this self-certification certificate, or if the regulated seller is unable to print it, DEA will print and mail the certificate to the self-certifier. The regulated sellers will be classified into three categories: Chain stores that are currently controlled substance registrants, chain stores that are not registrants, and individual outlets. Chain stores wishing to file self-certifications for more than 10 locations will have to print or copy the form electronically and submit the information to DEA by mail. DEA will work with these persons to facilitate this process. Persons interested in this self-certification option should contact DEA for assistance. For current DEA registrants, the system will pre-populate the form with basic information.

Because CMEA specifically states that a separate self-certification is required for each separate location at which scheduled listed chemical products are sold, mobile retail vendors must self-certify for each location at which sales transactions occur. This self-certification for locations is required even if the same person or persons sell at each of the different locations.

DEA requests comments on who should be authorized to sign the self-certification for the regulated seller. The person should be in a position to know that all employees who require training have been trained and that the retail outlet is complying with all other requirements and should be authorized to sign documents for the regulated seller.

Time for self-certification. CMEA requires that regulated sellers self-certify by September 30, 2006. Although CMEA appears to link self-certification to training of each individual who will deliver the products to customers, the high rate of employee turnover in the retail sector could require frequent submissions of self-certifications if the regulated seller needed to recertify each time a new employee is trained. DEA, therefore, will require regulated sellers to self-certify by September 30, 2006. When regulated sellers file the initial self-certification, DEA will assign them to groups. Each group will have an expiration date that will be the last day of a month from 12 to 23 months after the initial filing. After the second self-certification, regulated sellers will be required to self-certify annually. It is the responsibility of the regulated seller to ensure that all employees have been trained prior to self-certifying each time. It is also the responsibility of the regulated seller to ensure that they self-certify before the self-certification lapses. DEA requests comments on annual self-certifications versus certifications whenever new employees are trained or quarterly self-certification.

Fee for self-certification. In a separate Notice of Proposed Rulemaking, DEA is proposing that regulated sellers who are not DEA registrants pay a fee for self-certification. While DEA is not making this fee effective with this Interim Rule, DEA is providing background discussion and rationale for this decision here so that all persons will be aware of this issue.

Section 886a of the CSA defines the Diversion Control Program as ''the controlled substance and chemical diversion control activities of the Drug Enforcement Administration,'' which are further defined as the ''activities related to the registration and control of the manufacture, distribution and dispensing, importation and exportation of controlled substances and listed chemicals.'' The CSA also states that reimbursements from the Diversion Control Fee Account ''* * * shall be made without distinguishing between expenses related to controlled substances activities and expenses related to chemical activities.'' [Pub. L. 108–447 Consolidated Appropriations Act of 2005].

In addition, Section 111(b)(3) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102–395), codified at 21 U.S.C. 886a(3), requires that ''fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program.''

CMEA implements new requirements governing the sale of scheduled listed chemical products, defined as nonprescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine. CMEA requires self-certification for all regulated sellers of scheduled listed chemical products. CMEA also exempts retail distributors from registration requirements under the CSA; however, in practice, retail distributors have not previously registered with DEA because they limited their sales to below threshold quantities and to products sold in blister packs.

DEA considers the self-certification requirements of the CMEA to fall within the legal definition of control as governed by Section 886a of the CSA (see above). Accordingly, these activities fall under the general operation of the Diversion Control Program and are subject to the requirements of the Appropriations Act of 1993 that mandates that fees charged shall be set at a level that ensures the recovery of the full costs of operating the various aspects of the Diversion Control Program. The self-certification requirements of CMEA fall under these

''various aspects.'' Therefore, in its Notice of Proposed Rulemaking, DEA will propose to charge a fee for each self-certification to comply with these statutory requirements.

DEA is proposing, in its separate Notice of Proposed Rulemaking, that the fee for self-certification will cover all associated costs, including the initial one-time costs of setting up the self-certification program, Web site, and programmatic infrastructure, as well as ongoing costs associated with the provision of self-certifications, call center support, maintenance of the self-certification system, printing costs for certificates that regulated sellers cannot print, financial management, and other related costs. DEA must establish a program to train its employees to provide information regarding, and accept, self-certifications and must establish the infrastructure necessary for the program. Required systems include creation of history, renewal cycles, investigative tools, business validation rules, and development and maintenance of the self-certification Web site.

In its Notice of Proposed Rulemaking, DEA is proposing that when regulated sellers submit a self-certification online via the DEA self-certification Web site that they pay a fee by credit card at the time of self-certification. DEA calculated this fee based on estimated set-up costs in Fiscal Year 2006 ($117,198) and Fiscal Year 2007 operating costs ($1,624,443) totaling $1,741,641, as shown below in Table 3. The initial systems development and set-up costs will not be repeated in subsequent years. The operational and maintenance costs for Fiscal Year 2008 are estimated to be $1,099,782. Total annual costs associated with operating the self-certification process include staff costs, operational and administrative costs, Web hosting, monitoring and maintenance costs (including hardware and software maintenance), and annual inflation adjustments. Therefore, DEA will propose in its separate Notice of Proposed Rulemaking, that the 89,000 persons DEA estimates will self-certify with the Administration would pay a self-certification fee of $32 for the Fiscal Year 2006 through Fiscal Year 2008 period.

To calculate the fee, DEA divided the total costs for Fiscal Years 2006 through 2008 by the anticipated population of affected regulated sellers of 89,000. DEA estimates 89,000 current retail vendors of scheduled listed chemical products. All costs are shown in the table below for Fiscal Years 2006 through 2008. The self-certification costs reflect the cost per each self-certification per each facility as required by CMEA.

TABLE 3.—SELF-CERTIFICATION COSTS AND FEE CALCULATION

Project detail	2006 *	2007	2008	Total cost
Planning [1]	$3,029	$36,343	$37,002	$76,373
Design, Development, Deployment [2]	43,512	703,863	71,662	819,037
Call center, Finance, Mail room, Printing [3]	59,253	711,034	723,916	1,494,203
Maintenance [4]	11,405	173,203	176,341	360,949
Enhancements [5]	.....	90,861	90,861	
Total	117,198	1,624,443	1,099,782	2,841,423
Population	.....	89,000	89,000	.....
Cost per certification	.....	.....	.....	31.92

[1] Planning is the costs to the government to plan the development, design, and implementation of the self-certification online system. This item is the costs of three percent of the time used by five government employees to supervise and manage software development.

[2] Design, development and deployment of the online self-certification system represents the cost to pay contract programmers, web designers, system administrators and database administrators to design, develop, and deploy the new application. These costs include testing and quality assurance of the new software and establishment of new security controls. The self-certification system will be designed with business validation rules and provide investigative tools to ensure compliance with the new legislation.

[3] Call Center, finance, mail room and printing represent the following costs.

- DEA currently operates a registration Call Center. Based on current Call Center customer service representative costs, this item includes the cost of the additional time required to respond to inquiries regarding the CMEA self-certification program. DEA provides call center assistance to approximately 400,000 persons annually. DEA estimates that CMEA will increase that population by 89,000 persons, a 23% increase.
- DEA currently operates a registration Finance Center. Based on current Finance Center employee costs, this item includes the cost of the additional time required to process fees collected from CMEA self-certifications.
- DEA currently operates a registration Mail Room. Based on current Mail Room clerical costs, this item includes cost of employee time for handling and mailing out of CMEA self-certification certificates if the self-certifier is unable to print the certificate.
- DEA currently operates a Printing and Mailing Facility. Based on current Printing Costs, this item includes paper, toner, envelope, and postage costs to mail out the CMEA self-certification certificates.

[4] Maintenance. This item includes all employee salaries, hardware maintenance, and software license costs associated with the daily operation of the self-certification system.

[5] Enhancements. This item is the enhancement of the system to add the ability to maintain a history of changes to records and to allow for yearly renewal of records.

* 2006 is for 1 month of operations.

To minimize administrative and collection burdens, it is DEA's policy to round to the nearest dollar when calculating fees. The annual self-certification fee will be clearly defined on the self-certification Web site. However, in setting this fee DEA notes that it is based on assumptions about the total number of regulated sellers who will be required to self-certify. Should the total number of regulated sellers be significantly more or less than 89,000, DEA may adjust the self-certification fee as appropriate through future rulemakings. In any case, DEA will not exceed its operating budget as authorized by Congress.

In implementing this fee, DEA also notes that many of the affected regulated sellers are already registered with DEA to dispense controlled substances and therefore already pay a registration/reregistration fee to DEA. While these existing registrants are required by the CMEA to self-certify with DEA if selling scheduled listed chemical products, in its Notice of Proposed Rulemaking, DEA is proposing that the self-certification fee be waived upon submission of an active DEA registration number.

Other DEA activities associated with self-certification and compliance with CMEA include enforcement and judicial proceedings. CMEA gives DEA the authority to prohibit a regulated seller

from selling scheduled listed chemical products for certain violations of CMEA. If DEA issues an order to a regulated seller prohibiting that regulated seller from selling scheduled listed chemical products, the regulated seller is entitled to an administrative hearing if the seller files a timely request for a hearing. The costs of these enforcement activities and the subsequent proceedings must be supported through fees pursuant to the above described statutory requirements. DEA notes that these costs are not recovered in these fee calculations as DEA is uncertain of their utilization. However, once DEA is able to determine the frequency of use of these tools, and their associated costs, these costs will be recovered through fees associated with self-certification as established in future rulemakings.

Relationship to State Laws

Many States have enacted laws and/or regulations that impose conditions on the sale of scheduled listed chemical products.

- Eight states have enacted and six others have proposed legislation that makes these products Schedule V controlled substances. Among other requirements, Schedule V substances may be sold only by a pharmacist to individuals who are at least 18. A logbook of the sales must be maintained.
- Sixteen states have passed laws limiting sales to a pharmacist or pharmacy technicians or requiring that the products be stored behind the counter.
- Twenty-seven states require a photo ID for such purchases.
- Twenty-six states require a signed logbook.
- Twenty-seven states impose single transaction limits.
- Nineteen states have monthly or weekly limits.
- Twenty-seven states have exemptions for prescription drugs and various forms of over-the-counter (OTC) drugs (liquids, pediatric forms, *etc.*).
- One state requires a prescription to purchase these products.

As the list indicates, the State laws vary considerably. Some parts of a State law may be less stringent than the CMEA requirements; other parts may be more stringent. CMEA does not preempt those requirements under State laws/regulations that are more stringent than the CMEA requirements. Simply put, all persons subject to CMEA must comply with the CMEA and the laws in the State(s) in which they sell scheduled listed chemical products at retail. Where the CMEA is less stringent than a State law (*e.g.*, the State limits sales to licensed pharmacists or pharmacy technicians where CMEA does not), the State requirements continue to be in force. If there are State requirements that are less stringent than the CMEA provisions (*e.g.*, higher daily limits, exemptions of some products), CMEA supersedes the provisions. DEA emphasizes that if State requirements for records cover the information CMEA mandates, the record created to meet the State law is sufficient to meet DEA's regulation.

Regarding quantity sold, units may be specified in terms of the weight of the product or in terms of the number of packages sold. Logbook systems that display the quantity of the product sold by UPC code are sufficient to meet DEA's requirements. These options do not exclude other methods of displaying the quantity sold.

DEA is accepting public comment on the interaction between state and federal logbook requirements. In addition, DEA is accepting public comment on the broader interplay and potential overlap between state regulations and CMEA requirements, and whether compliance with state regulations, if comparable to or more stringent than an associated CMEA requirement, should constitute compliance with such Federal requirement.

Discussion of the Rule

To make the rule easier to follow for regulated sellers and mail order/Internet sellers, DEA is creating a new part 1314 that will include all requirements related to the sale of scheduled listed chemical products to end users. Regulations for the retail sale of these products that currently exist in part 1310 will either be moved, if still applicable, or removed. The new statutory definitions of ''scheduled listed chemical product,'' ''regulated seller,'' ''mobile retail vendor,'' and ''at retail'' are being added to part 1300 (Definitions). The definition of ''retail distributor'' is also being revised. Most of the new provisions in this Interim Final Rule are drawn from section 711 of the USA PATRIOT Improvement and Reauthorization Act of 2005.

Part 1314 is divided into four subparts. Subpart A contains requirements that apply to any retail sale. Subpart B applies to sales by regulated sellers (*i.e.*, sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions, by stores or mobile retail vendors). Subpart C applies to retail sales that are shipped by mail or common or private carriers, regardless of how those sales are ordered. Subpart D contains the procedural requirements for issuing and responding to an order to show cause why the regulated seller or distributor should not be prohibited from selling scheduled listed chemical products.

Sections 1314.01 and 1314.02 simply state the scope and applicability of the part. Section 1314.03 defines ''mail order sales'' using the language from § 1310.03(c) and further clarifies that mail order includes any retail sale for personal use where the product is shipped by U.S. mail or by private or common carriers whether the order is received by mail, phone, fax, the Internet, or any method other than a face-to-face transaction.

Section 1314.05 incorporates the statutory requirement for blister packs for nonliquids unless such packaging is not technically feasible.

Section 1314.10 states the regulations do not preempt State laws unless there is a positive conflict between the laws and the regulations such that the two cannot consistently stand together. This language is drawn from 21 U.S.C. 903.

Section 1314.15 copies the requirements for reporting losses, including thefts, that currently exist in § 1310.06. DEA emphasizes that thefts must be reported as well as unusual or excessive losses or disappearances.

In subpart B, § 1314.20 includes the statutory requirements limiting sales, the daily limit of 3.6 grams and the 30-day mobile retail vendor limit of 7.5 grams. The 30-day limit of 9 grams applies to purchasers who are not addressed by this regulation. As noted previously, this provision is not included in this rule, but will be addressed in other rulemakings DEA is promulgating to implement the various provisions of the Combat Methamphetamine Epidemic Act of 2005.

Section 1314.25 incorporates CMEA's provisions for storing the products behind the counter or in a locked cabinet. Mobile retail vendors are required to store the product in a locked cabinet.

Section 1314.30 covers recordkeeping (logbook) requirements from CMEA as well as requirements currently in § 1310.04. In addition to CMEA's requirements, DEA has copied the existing requirements from part 1310 relative to where the records must be kept (at the place of business or at a central location if DEA has been notified). DEA is including in this section language stating that if a regulated seller is already maintaining records of these sales under State law, those records may be used to meet this requirement if they include the information specified in CMEA.

The part 1310 requirements incorporated into the amended regulations do not include the provision that a regulated seller with multiple locations must have a system to detect a person purchasing from multiple locations owned or operated by the regulated seller. CMEA in section 711(f) provides for a civil penalty for a person who sells at retail a scheduled listed chemical product in violation of the daily 3.6 gram sales limit, ''knowing at the time of the transaction involved (independent of consulting the logbook * * *) that the transaction is a violation.'' While the availability of civil penalties is not necessarily co-extensive with the chemical control requirements of the new law, DEA is not mandating, by this rule, that regulated sellers, other than mail order and mobile retail vendors, track multiple sales to individuals on a single day within the same retail outlet or across outlets of the same company. CMEA explicitly requires mail order outlets and mobile retail vendors to limit sales to an individual to 7.5 grams in a 30-day period; it imposes no similar requirement on other retail sellers to limit 30-day sales to individuals. The 30-day limit of 9 grams is imposed on the purchaser, not the seller.

Section 1314.35 incorporates the statutory requirements for training of sales personnel. DEA has developed training material, which it has made available on its Web site (*http://www.deadiversion.usdoj.gov*).

Section 1314.40 covers CMEA's requirements on self-certification. As discussed above, DEA is setting an annual period for renewal of the certification.

DEA has developed a web site that will allow many regulated sellers to complete and submit the self-certification form on line and print out a self-certification certificate for their records. The information required will include the name and address of the location and a point of contact. The regulated sellers will be classified into three categories: Chain stores that are currently controlled substance registrants, chain stores that are not registrants, and individual outlets. Chain stores wishing to file self-certifications for more than 10 locations will have to print or copy the form electronically and submit the information to DEA by mail. DEA will work with these persons to facilitate this process. Persons interested in this self-certification option should contact DEA for assistance. For current DEA registrants, the system will pre-populate the form with basic information.

Section 1314.45 incorporates the privacy protection provisions of CMEA. These provisions define who may access the sales records and the use to which the data may be put. They also provide a good faith protection to regulated sellers that release the data to law enforcement authorities.

Section 1314.50 includes CMEA's provision that states that a seller may take reasonable measures to guard against employing people who may present a risk of diversion. The measures may include asking about convictions of any crimes involving controlled substances or scheduled listed chemical products.

In subpart C, § 1314.100 incorporates the daily and 30-day sales limits for mail order sales. Section 1314.105 provides the above described requirements for verifying identity of the purchaser prior to shipment of the product. Section 1314.110 covers reports on mail order sales and is copied from § 1310.06. Finally, § 1314.115 copies language from § 1310.05(f) on distributions not subject to reporting (sample packages, sales to long-term care facilities, prescription drugs).

CMEA added to 21 U.S.C. 842 a provision that authorizes DEA to prohibit a regulated seller or a mail order seller from selling scheduled listed chemical products if the seller is found to be knowingly or recklessly in violation of the provisions controlling retail sales. To take this step, DEA must issue an order to show cause, as it does to suspend or revoke registrations. DEA is including in subpart D in §§ 1314.150 and 1314.155 provisions on the process of issuing and responding to an order to show cause. These sections are taken from part 1309 and are the same as DEA uses to issue and reach a conclusion on orders to show cause under other DEA programs. If DEA issues an order to show cause, the regulated seller or mail order distributor must respond to the order to show cause within 30 days of service of the order to show cause. The regulated seller or mail order seller may request a hearing. The seller may continue to sell scheduled listed chemical products until DEA issues a final order. If DEA finds that a regulated seller or mail order distributor poses an imminent danger to public health or safety, DEA may suspend the seller's right to sell scheduled listed chemical products pending a final decision on the order to show cause.

Other Changes

As noted above, CMEA's new definitions will be added to § 1300.02. In addition, the definition of ''regulated transaction'' is revised as mandated by section 712 of CMEA.

In § 1309.71, paragraph (a)(2), which requires certain ephedrine products to be stored behind the counter, is being removed because the new CMEA requirements supersede it. CMEA imposes the same restrictions on all scheduled listed chemical products unless they are stored in a locked cabinet in areas where the public has access.

In § 1310.04, paragraph (f)(1)(ii) is revised to indicate that the thresholds presented in the previous paragraph and in paragraph (g) for ephedrine, pseudoephedrine, and phenylpropanolamine apply only to non-retail distribution, import, and export and references part 1314 for retail sales. The table of thresholds for retail distribution has been removed.

In § 1310.05, paragraph (f)(2) is revised to remove retail sales of scheduled listed chemical products.

Sections 1310.14 and 1310.15 are being removed because the CSA no longer treats certain ephedrine products differently from other scheduled listed chemical products. These sections are being replaced by new § 1310.16, which states that a manufacturer may apply to have a scheduled listed chemical product exempted from the requirements if DEA determines that the product cannot be used in the illicit manufacture of methamphetamine. DEA is adopting the application process that currently applies to ephedrine products that include other medically significant ingredients (§ 1310.14).

Regulatory Certifications

Administrative Procedure Act (5 U.S.C. 553)

The Administrative Procedure Act (APA) generally requires that agencies, prior to issuing a new rule, publish a Notice of Proposed Rulemaking in the **Federal Register**. The APA also provides, however, that agencies may be excepted from this requirement when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B).

With publication of this interim rule, DEA is invoking this ''good cause'' exception to the APA's notice requirement based on the combination of several extraordinary factors. CMEA requires that on and after September 30, 2006, regulated sellers selling scheduled listed chemical products at retail shall self-certify with DEA in order to

continue to sell these products. CMEA imposes sales limits, purchase limits, product placement requirements, mail order customer identification requirements, and other requirements, some of which must be specified by regulation, all with an effective date of September 30, 2006. Based on the effective date of this law, it is impracticable for DEA to comply with the APA's notice and comment requirements due to the limited time involved. Were DEA not to publish this Interim Rule with Request for Comment, regulated sellers selling scheduled listed chemical products at retail would not be able to self-certify by the date specified in the law. Were this not to occur, these regulated sellers would be forced to stop selling scheduled listed chemical products, or violate the law by doing so. Mail order distributors would also have difficulty, as DEA is required by regulation to establish procedures for these persons to identify their customers prior to shipping product. Without these regulations, mail order distributors would not be able to sell scheduled listed chemical products. Therefore, DEA also finds that it is contrary to the public interest not to issue these regulations as an Interim Rule, thereby allowing regulated sellers and mail order distributors to fully comply with the requirements of CMEA. While the CMEA was signed into law in March of 2006, most of the law must be in effect by September 30, 2006. The broad scope of the new law, as well as the expedited effective dates, is a clear reflection of Congress's concern about the nation's growing methamphetamine epidemic and its desire to act quickly to prevent further illicit use of these chemicals.

In light of these factors, DEA finds that ''good cause'' exists to issue this interim rule without engaging in traditional notice and comment rulemaking. In so doing, DEA recognizes that exceptions to the APA's notice and comment procedures are to be ''narrowly construed and only reluctantly countenanced.'' Am. Fed'n of Gov't Employees v. Block, 655 F2d 1153, 1156 (D.C.Cir. 1981) (quoting New Jersey Dep't of Envtl. Prot. v. EPA, 626 F.2d 1038, 1045 (D.C.Cir. 1980)). Based on the totality of the circumstances associated with the CMEA, however, DEA finds that invocation of the ''good cause'' exception is justified.

As noted throughout this document, DEA is seeking comments on details of implementation, particularly related to self-certification, where it has discretion.

Under section 553(d) of the APA, DEA must generally provide a 30-day delayed effective date for final rules. DEA may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule.'' Since it would be unnecessary to provide a delayed effective date for a change to the law that has already taken effect DEA has dispensed with the 30-day delayed effective date requirement. The sales limits and blister pack provisions became effective on April 8, 2006. The requirements for logbooks, training, and self-certification become effective September 30, 2006.

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)). The Regulatory Flexibility Act (RFA) applies to rules that are subject to notice and comment. Because this rule is simply codifying statutory provisions, DEA has determined, as explained above, that public notice and comment are not necessary. Consequently, the RFA does not apply. Where DEA has discretion in the way in which provisions of CMEA are implemented, however, DEA is seeking public comment and has sought, through the development of training materials and Web sites for self-certification, to reduce the cost to small entities.

Although the RFA does not apply to this final rule, DEA has reviewed the potential impacts. The rule will affect a substantial number of small entities, but DEA does not believe that it will have a significant economic impact on small entities. As shown in the next section, OTC medications as a whole represent less than two percent of sales except for drug stores and mail order houses. Even the highest estimate of the value of scheduled listed chemical products represents less than 10 percent of the OTC market. Consequently, the loss of sales, if that occurs, will reduce sales at most by a fraction of one percent, not a significant economic impact. DEA expects that regulated sellers will decide whether their sale of the products is great enough to justify the cost of compliance or whether they can retain sufficient sales revenues by shifting to non-regulated substitutes. The smallest stores, which DEA expects to be convenience stores, may limit their sales of the products to individual transactions involving packages containing not more than 60 milligrams of pseudoephedrine, which would allow them to avoid the recordkeeping requirements. In this case, their total cost of compliance could be about $50 for training and self-certification. DEA is specifically seeking public comments regarding the cost of this regulation to small entities, using a pre-statutory baseline of comparison (*i.e.*, the state of the market prior to the Combat Methamphetamine Epidemic Act of 2005).

Although not directly the subject of this rule, manufacturers and distributors will be affected by a reduction in sales of these products. The manufacturers of scheduled listed chemical products are also the manufacturers of the substitutes being marketed and the distributors handle both product lines; DEA has not been able to identify any manufacturer of these products that does not also market substitute products. DEA expects that the primary impact will be limited to reduction in sales that occurs because diversion is curbed. If the sales restrictions and quotas reduce the United States' demand for these chemical products, the world production of the chemicals is likely to drop, which will make less available to be diverted to superlabs operated by drug cartels. DEA seeks comments on impacts on manufacturers and distributors.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 § 1(b). It has been determined that this is ''a significant regulatory action.'' Therefore, this action has been reviewed by the Office of Management and Budget. As discussed above, this action is codifying statutory provisions and involves no agency discretion. However, DEA has reviewed the potential benefits and costs following OMB Circular A–4.

The CMEA requirements impose the following costs on regulated sellers:

- Training of employees who sell scheduled listed chemical product sales (0.5 hours).
- Time to file the self-certification (0.5 hours).
- Costs for logbooks ($47.55) or creating an electronic record system.
- Additional time per sale to verify purchaser IDs and enter information into the logbook (1 to 2 minutes).
- Storage space behind the counter or in locked cabinets ($200-$600).

DEA is seeking comments regarding all of the above assumptions and estimates.

The requirements may also affect the sales at regulated sellers. If a seller decides to avoid the requirements by eliminating the product line or selling only the available substitutes, some customers may seek the products from sellers that continue to carry them. Regulated sellers, manufacturers, and distributors will also see some reduction

in sales as a result of diversion from regulated sellers becoming more difficult.

Although DEA has estimated the unit cost of training, certification, logbooks, logbook entries, and storage space, DEA cannot estimate the total cost of the rule because the following critical items are unknown:

- The value of the existing market in these products and the number of transactions that this market represents.
- The number of stores that currently sell these products.
- The number and type of stores that will continue to sell the products, the number that will elect to sell only the substitutes, and the number that will limit sales of the products to individual transactions involving not more than one 60-milligram or two 30-milligram pseudoephedrine dosage units, which would not require recordkeeping, the most expensive part of compliance.
- The number of customers who will seek out these products rather than purchase substitutes available on open shelves.
- The number of stores that will elect to use bound logbooks versus using electronic systems.
- The number of existing electronic signature capture systems that are capable of accepting or linking to name and address records.
- The percentage of existing sales (and theft of the product) that is being diverted to illicit use.

DEA is seeking comments and data from the industry that would help address these items and provide an estimate of the impact. DEA recognizes that the answers to some of these issues will evolve over time as regulated sellers and manufacturers adjust to consumer choices. For example, regulated sellers may see little impact beyond the initial costs of training and self-certification if most consumers elect to purchase the substitute products that are already available under the same brand names as scheduled listed chemical products, either because the consumers are unaware of the product change, because the substitutes meet the consumers' needs, or because they are unwilling to spend extra time to buy scheduled listed chemical products.

Regulated Sellers. The 2002 Economic Census data on product line sales indicate that about 92,000 retailers sell OTC medications. These include pharmacies, grocery stores, discount stores, warehouse clubs and superstores, convenience stores, variety stores, and mail order stores. In addition, up to 40,000 gas stations with convenience stores may sell OTC drug products. The number of retailers in each sector, the number with pharmacies, the number that sell nonprescription OTC drugs, and the percentage of their sales represented by OTC drugs are shown in Table 4 below. DEA solicits comments on the number of these entities that sell these products.

TABLE 4.—SECTORS SELLING SCHEDULED LISTED CHEMICAL PRODUCTS

NAICS	Total number	Number w pharmacy	Number w OTC	Percent without pharmacy	OTC as percent of total sales *
44511 Grocery stores	66,150	19,721	26,029	70.2	1.30
44611 Pharmacy and drug stores	40,234	39,121	36,493	2.8	5.70
452112 Discount department stores	5,650	4,887	2,079	13.5	1.80
45291 Warehouse clubs and superstores	2,912	2,553	2,758	12.3	1.20
Subtotal	114,946	66,282	67,359		
44512 Convenience stores	29,212	370	12,399	98.7	1.60
44711 Gas stations with convenience stores	93,691	0	** 40,068	100	** 1.10
45299 All other general merchandise stores ***	28,456	577	11,840	98	1.20
4541 Electronic shopping and mail order houses	15,910	453	250	97.2	13
Total	167,269	1,400	24,489–64,557		

* For those firms that handle the product line.
** Drugs, health aids, beauty aids including cosmetics.
*** Includes variety stores.

Even if all gas stations with convenience stores sold OTC drugs, there would be fewer of these establishments than exist in the main sectors selling OTC drugs. Most gas stations and convenience stores do not have pharmacies; OTC products represent a very small percentage of sales for them.

DEA cannot determine what percentage of those selling OTC drugs sell scheduled listed chemical products, although it is likely that outlets that have pharmacies sell these products. Because 16 States representing 27 percent of the U.S. population already limit sales of these products to pharmacies, DEA estimates that the number of potentially regulated entities is between 89,000 and 118,000.[1] This estimate does not specifically include mobile retail vendors, but DEA does not believe that they constitute a large segment of retail sellers. The actual number could be lower; many of the stores, particularly convenience stores, do not carry a full range of OTC drug products, and some may not sell this category of drugs. DEA seeks comment on this issue. Conversely, large mail order distributors may handle large quantities of scheduled listed chemical products. DEA also seeks comment on the number, size, and sales of mail order entities.

Substitutes. As discussed above, many States have imposed sales restrictions on scheduled listed chemical products prior to CMEA. In reaction to those restrictions and to concern about diversion of their products, manufacturers have reformulated many product lines to alternative decongestants that cannot be used to make methamphetamine. These substitutes are being sold under the same product names and in boxes that look the same as those used for scheduled listed chemical products. One major manufacturer expected to have converted half of its decongestant product line to substitutes by January 2006. Two of the largest drug store

[1] The 27 percent is a conservation estimate; the 16 states represents 28 percent of the convenience stores in the country and 35 percent of the gas stations with convenience stores.

chains do not list scheduled listed chemical products on their online stores, but offer more than 60 cold medications containing other ingredients.

At present, there is little information on how consumers will react to sales restrictions. On April 7, 2004, Oklahoma made pseudoephedrine products Schedule V controlled substances, but exempted gel caps and liquids. According to IRI InfoScan, in the 52 weeks after implementation, sales of all pseudoephedrine products fell 16.2 percent and sales of the substitutes rose by 24 percent. Sales of exempted gel caps rose 109.3 percent and liquids 14.5 percent, but tablets fell 35.5 percent. Overall, sales in the cold and allergy group in Oklahoma fell 3.9 percent. Illinois, which imposed less stringent rules, saw little change in purchases, according to IRI InfoScan. The Slone Epidemiology Center at Boston University took a broader look at drug purchases in 2004 and found that between 2003 and 2004, the number of adults reporting use of pseudoephedrine fell from 7 percent to 4.8 percent. This decline occurred prior to State restrictions and to the availability of many substitute products, but after limits on purchases were set by Federal law and by many large chain stores.

If national patterns reflect Oklahoma's experience, a 3.9 percent drop in cold/allergy medicine sales would imply a $117,000,000 loss in sales. However, if they reflect national trends reported by the Slone Epidemiology Center, a 2.2 percent drop in cold/allergy medicine sales would imply a $33,000,000 loss in sales. Since market effects will occur within the context of increased marketing and distribution of substitutes, the direct effects on revenues could be lower than either estimate.

It is not clear how consumers and retailers will react to a nationwide limit on all scheduled listed chemical product sales because the availability of substitute products may increase. If consumers continue to ask for scheduled listed chemical products, retailers will incur costs to store them behind the counter or in locked cabinets and to record every transaction. The purchaser will take extra time and possibly delay other customers who have to wait while the transaction is completed. DEA notes that in stores with pharmacies, the recordkeeping requirements established by this rule may direct a higher proportion of transactions to the pharmacy versus the standard checkout line. DEA is seeking public comment on the effect of these recordkeeping and product placement requirements on pharmacy wait times and any staffing costs these requirements generate. Alternatively, if few consumers seek the products, many retailers may decide not to carry them. This decision would eliminate their costs, but could impose a cost on the consumer who has to go to multiple stores or travel greater distances to find the product. Regulated sellers who continue to sell the products will have to decide how to log the sales, which will impose costs. DEA is seeking comment on the cost of logging sales, whether this log be paper or electronic. Part of each seller's calculation will be whether the value of the sales is sufficient to offset the costs. As discussed above, OTC medications as a whole represent between one and two percent of the sales of sellers except for pharmacies and mail order sellers; scheduled listed chemical products probably represent less than 10 percent of those sales. For many smaller stores a small decline in sales, if that occurs, may be less costly than compliance. DEA has estimated that small convenience stores sell between $20 and $40 a month of these products for legitimate purposes (69 FR 8691, February 25, 2004).

Size of the market; data issues. DEA has been unable to determine the size of the market for scheduled listed chemical products. The Food and Drug Administration reported that IMS Health data estimated the market is about $500 million; FDA further reported that IRI estimated the market was $1.5 billion. The IRI Oklahoma data implied that pseudoephedrine represented about 75 percent of the cold medication market, but the value other sources provide for the cold medication market in 2005 is about $4 billion.

IRI indicated that national sales for the category had dropped by 0.5 percent between May 2004 and May 2005. A Kline & Company study indicated that sales in the cold medication category rose 12 percent in 2005. Part of the problem is that different groups appear to define the market segment differently, including a different mix of products. DEA seeks information on the actual value of the market for scheduled listed chemical products and the number of transactions. Even with the total value of the market, DEA would need to understand the value of the average transactions. The products are available in a wide variety of strengths and number of dosage units; the sales limits allow purchases of multiple packages of most products. DEA also seeks comments on the effect of the restrictions on product prices. At present, the substitutes are selling for prices that are equivalent to those for scheduled listed chemical products (based on maximum daily dosage units). The additional costs of handling scheduled listed chemical products could, however, increase their prices if sellers pass on the costs to consumers.

Diversion. The limits and restrictions that CMEA imposes are intended to reduce the diversion of scheduled listed chemical products. Manufacturers and regulated sellers will see some reduction in sales as a result of retail purchases for diversion declining. DEA has no reliable information on the percentage of the market in these products that was diverted. DEA expects that as it implements other CMEA requirements it will have a better understanding of the size of the diversion market. Nonetheless, because sales of these products represent less than one percent of most retailer's total sales, the loss of sales for diversion is unlikely to impose a substantial cost on retailers selling to legitimate purchasers.

Implementation Costs. For most regulated sellers that continue to carry scheduled listed chemical products, the largest cost will be the added time to collect and record logbook information regarding the purchaser at each transaction. DEA estimates that it will take one to two minutes for the seller and purchaser to enter into the logbook the information required by CMEA—name and address of purchaser, name and quantity of product sold, date and time of transaction, and purchaser's signature—and seeks comment on this estimate.

Assuming market changes may reflect the Oklahoma experience to a degree, a 16 percent drop in sales of regulated products would change the number of transactions that would require recordkeeping to 56,490,000. Assuming the recordkeeping requirements add 2 minutes to each transaction, they would impose an annual cost between $73,000,000 and $80,000,000 in terms of time burden. These estimates assume, for the low end, the average hourly wage of retail sales clerks ($11.86 with fringe benefits) plus public time ($27/hour); for the high end, it assumes the average hourly wage of a pharmacy technician ($15.26 with fringe benefits) plus public time ($27/hour).

Assuming market changes reflect data reported by The Slone Epidemiology Center, a 2.2 percent drop in sales of regulated products would change the number of transactions that would require recordkeeping by 2,193,000. Using the same assumptions regarding increased transaction times, this would imply an annual cost in terms of time

burden between $85,000,000 and $93,000,000.

Another cost will be the costs of recordkeeping systems. CMEA allows either a logbook or an electronic record. DEA is seeking comments on whether regulated sellers will be able to use electronic signature capture systems to collect names and addresses as well as signatures, the cost of adapting systems to perform this function, and likelihood that sellers will do this versus using a bound logbook. DEA is seeking information from regulated sellers on whether they plan to limit sales to pharmacy or special counters or whether they will handle sales at regular checkout lines. Finally, DEA is seeking comments on how much behind-the-counter space regulated sellers will need to devote to these products, the cost of doing so, and the extent to which costs may be passed on to the consumer.

Blister Packs. For reasons of product safety and the previous blister-pack exemption, almost all scheduled listed chemical products are already sold in blister packs. DEA seeks comments on whether this requirement imposes a burden on any manufacturers.

Benefits. Congress passed CMEA to make it more difficult for individuals to purchase scheduled listed chemical products and use them to make methamphetamine. The retail restrictions are part of a series of steps that Congress adopted to address the sources of methamphetamine abuse; other steps include import and production quotas and tracking of international transactions.

Methamphetamine remains the primary drug produced in illicit laboratories within the United States. Data from the El Paso Intelligence Center's (EPIC) Clandestine Laboratory Database indicates that more than 17,170 methamphetamine laboratory incidents in calendar year 2004 and 12,139 incidents in calendar year 2005 (as reported to EPIC through June 29, 2006). According to EPIC, from January 2000 through June 2006, there were 7,125 laboratories reportedly using ephedrine and 44,380 reportedly using pseudoephedrine as precursor material for methamphetamine production. Additionally EPIC reports the seizure of 51 amphetamine laboratories (using phenylpropanolamine) during the same period. The vast majority of these laboratories used pharmaceutical products containing pseudoephedrine, ephedrine, and phenylpropanolamine as the source of precursor material.

According to the Substance Abuse and Mental Health Services Administration (SAMHSA), Drug Abuse Warning Network (DAWN), in 2004, the latest year for which data are available, amphetamine and methamphetamine was mentioned in almost 103,000 emergency department (ED) visits; methamphetamine accounted for 73,400 of these visits. These numbers represent a rapid increase in recent years. SAMHSA reported that drug abuse-related ED visits involving amphetamine/methamphetamine rose from 25,200 in 1995 to 38,960 in 2002 and 42,500 in 2003. If the cost of the visit is $500, which is probably low in many areas, the total cost would have been $50 million. The DAWN mortality data for 33 metropolitan areas in 2003, the most recent year available, report amphetamine or methamphetamine was involved in 524 deaths and was the only drug present in 93 of those deaths. A University of Arkansas Study on the economic impact of methamphetamine use in Benton County, Arkansas, estimated that the average methamphetamine user cost his or her employer $47,500 a year, with 50 percent of cost due to increased absenteeism and 32 percent due to lost productivity.

The surge in methamphetamine abuse and the manufacture of the drug in clandestine laboratories has caused serious law enforcement and environmental problems, particularly in rural communities. Rural areas are frequently the site of clandestine laboratories because the manufacturing process produces distinctive odors and can be identified if there are close neighbors. Besides causing crime as people steal ingredients to make methamphetamine and steal to support their addiction, the clandestine laboratories often leave serious pollution behind. A laboratory can produce 6 to 10 pounds of hazardous waste for every pound of methamphetamine produced. Table 5 shows the hazardous waste cleanup costs incurred by States and DEA by Fiscal Year (October 1 through September 30) for several previous fiscal years.

TABLE 5.—STATE AND FEDERAL CLANDESTINE LABORATORY CLEANUP COSTS

Fiscal year	DEA cost	State/local meth cost	Total cost
1998	$4,030,000	$1,420,000	$5,450,000
1999	3,020,000	8,420,000	11,440,000
2000	4,120,000	11,800,000	15,920,000
2001	2,800,000	19,240,000	22,040,000
2002	2,190,000	21,490,000	23,680,000
2003	1,150,000	15,040,000	16,190,000
2004	810,000	17,680,000	18,490,000
2005	650,000	17,020,000	17,670,000
2006*	470,000	12,180,000	12,650,000

* Data for fiscal year 2006 is through the third quarter (June 30, 2006).

The Federal and State cleanups are generally limited to removing chemicals that could be reused; they do not address water and soil pollution that remain. Owners of the property are responsible for completing the cleanup of contaminated water and soil, but if the owner cannot pay the cost, local governments bear the burden or the contamination remains.

The effectiveness of the control of retail sales can be seen in the decline in clandestine laboratory incidents in States such as Oklahoma. In 2003, before Oklahoma implemented retail sales controls, there were 1,068 clandestine laboratory incidents in the State. In 2005, the first full year of the sales controls, there were only 217 incidents. The CMEA provisions on retail sales will continue the trend of reducing the number of clandestine laboratories. This trend will reduce the cost to State and local governments as well as the hazard to law enforcement officers and others from exposure to the hazardous chemicals left behind.

Conclusion. Because of the many unknowns, DEA is unable to determine with any certainty whether the CMEA

requirements will impose an annual cost on the economy of $100 million or more, the standard for an economically significant rule under Executive Order 12866. If the value of the existing market is on the low end of the range ($500 million), the additional costs, including transaction costs, would be considerably lower than $100 million even if there is no reduction in sales. If the value of the market is $1.5 billion and there is no reduction in sales, the cost could exceed $100 million. DEA considers it likely that product switching and reduced sales will result in annual costs below $100 million, but until the statutory requirements are implemented and both retailers and consumers respond, DEA cannot estimate total costs with any certainty.

Public Comment

To assist DEA in finalizing its Regulatory Impact Analysis, DEA is seeking public comment on the following questions:

- What is the size of the market for products regulated under this rule? What proportion of the cold and allergy product market are pseudoephedrine-based products?
- Using a pre-CMEA baseline, will this regulation have any effect on the prices of regulated products? If so, what is the magnitude of the change?
- How many retailers may choose not to carry the regulated products rather than incur the regulatory costs? What is their annual sales volume with regard to regulated products? What is the cost associated with that effect?
- If stores choose not to carry the regulated products, what are consumers' travel costs associated with the decreased quantity of stores selling the product?
- Placing products behind the counter may increase competition for space behind the counter. Will it increase the cost of storage space behind the counter? What is the cost imposed on the consumption of other goods? What, if any, effect will this have on the prices of other goods?
- Among stores that opt to direct regulated transactions to their pharmacies, will this additional traffic have an effect on pharmacy wait times? Will the increase in pharmacy transactions require additional staffing?
- What equipment is required for retailers who wish to handle regulated sales at the regular checkout line? What is its cost?
- What are wait times for regulated transactions when two or more consumers arrive to purchase regulated products?
- What is the cost to manufacturers, given expected demand reductions for regulated products?
- To what extent, and under what circumstances, can substitutes for the regulated products reduce the expected cost of this regulation?
- What are the results of any recent studies on the effective doses of substitute products and their safety at different levels?
- To what extent are training and recordkeeping costs fixed versus variable?

Paperwork Reduction Act of 1995

CMEA mandates a number of new information collections and recordkeeping requirements. Regulated sellers are required to train any employee who will be involved in selling scheduled listed chemical products and to document the training. Regulated sellers must also self-certify to DEA that all affected employees have been trained and that the seller is in compliance with all CMEA provisions. Finally, CMEA mandates that each sale at retail be documented in a written or electronic logbook and that the logbooks be retained for two years.

The Department of Justice, Drug Enforcement Administration, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the collection of information are encouraged. Your comments on the information collection-related aspects of this rule should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Self-certification, Training and Logbooks for Regulated Sellers of Scheduled Listed Chemical Products.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 597, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: CMEA mandates that retail sellers of scheduled listed chemical products maintain a written or electronic logbook of sales, retain a record of employee training, and complete a self-certification form verifying the training and compliance with CMEA provisions regarding retail sales of scheduled listed chemical products.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 89,000, 25.9 hours.

As discussed in the previous section, DEA estimates that the number of potential regulated sellers could range from 89,000 to 118,000. That number would include a substantial number of convenience stores, most of which may not find the burden of self-certification, storage, recordkeeping, and training worth the sales of items that represent a very small percentage of their overall sales. Thus, DEA expects that the number of regulated sellers that will seek to self-certify will be no higher than 89,000. Consequently, DEA has used the lower estimate for the information collection. The average annual burden hour per respondent is 25.9 hours, most of which is the additional time needed to record the statutorily mandated information on each sales transaction.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: 4,548,500 hours. The estimate includes both the burden hours for regulated sellers and the time customers would take to provide information during the transaction.

Regulated sellers will need to maintain a record of employee training, self-certify, and maintain a logbook of transactions. DEA estimates that each regulated seller will spend 0.5 hours collecting the information and completing the online self-certification form. Completing a roster of employees trained is estimated to take 3 minutes per employee, assuming that the recordkeeping takes one tenth of the time spent on training. Finally, DEA estimates that having the customer enter information and sign the log while the sales person checks the photo ID will take two minutes per transaction. DEA assumes recordkeeping requirements will not lengthen checkout lines, and will not influence the transaction times of other customers. Further, this estimate does not account for scenarios in which two or more customers arrive to purchase scheduled listed chemical products. DEA assumes that all pharmacists and pharmacy technicians will be trained (about 300,000) plus 100,000 other sales clerks. DEA used an estimate of 133 million transactions to develop total burden hours for transactions, assuming that the total value of the market is the midpoint of the estimates ($1 billion) and that the average value of a transaction is $8. (Product prices range from $4 to $14 per package depending on the number of dosage units and strength.) The number of transactions was reduced to 67.25 million to account for the states that already have requirements for logbooks; this rule imposes no additional burden for the transactions on either purchasers or sellers in those states. Based on Bureau of Census state population numbers for 2005, these states represent 49 percent of the United States population. Table 6 presents the burden hour calculations.

TABLE 6.—ESTIMATE OF TOTAL BURDEN HOURS

Activity	Unit burden hour	Number of activities	Total burden hours
Training record	0.05 hour (3 minutes)	400,000	20,000
Self-certification	0.5 hour (30 minutes)	89,000	44,500
Transaction record	0.033 hour (2 minutes)	67,250,000	2,242,000
Customer time	0.033 hour (2 minutes)	67,250,000	2,242,000
Total			4,548,500

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. The rule does preempt State laws that are less stringent than the statutory requirements. These requirements, however, are mandated under CMEA and DEA has no authority to alter them or change the preemption. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $118,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule may result in an annual effect on the economy of $100,000,000 or more; it will not cause a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. Depending heavily on the assumptions used, the economic impact of this rule could be substantially higher or lower than $100,000,000.

CMEA requires that on and after September 30, 2006, regulated sellers selling scheduled listed chemical products at retail shall self-certify with DEA in order to continue to sell these products. CMEA imposes sales limits, purchase limits, product placement requirements, mail order customer identification requirements, and other requirements, some of which must be specified by regulation, all with an effective date of September 30, 2006. Based on the effective date of this law, it is impracticable for DEA to comply with the requirements of CRA section 801 pertaining to delayed effective dates of major rules due to the limited time involved. Were DEA not to publish this Interim Rule with Request for Comment, regulated sellers selling scheduled listed chemical products at retail would not be able to self-certify by the date specified in the law. Were this not to occur, these regulated sellers would be forced to stop selling scheduled listed chemical products, or violate the law by doing so. Mail order distributors would also have difficulty, as DEA is required by regulation to establish procedures for these persons to identify their customers prior to shipping product. Without these regulations, mail order distributors would not be able to sell scheduled listed chemical products. Therefore, DEA also finds that it is contrary to the public interest not to issue these regulations as an Interim Rule, thereby allowing regulated sellers and mail order distributors to fully comply with the requirements of CMEA. While the CMEA was signed into law in March of 2006, most of the law must be in effect by September 30, 2006. The broad scope of the new law, as well as the expedited effective dates, is a clear reflection of Congress's concern about the nation's growing methamphetamine epidemic and its desire to act quickly to prevent further illicit use of these chemicals. In light of these factors, DEA finds that ''good cause'' exists to make this Interim Rule with Request for Comment

effective September 21, 2006, except that §§ 1314.20, 1314.25, and 1314.30 (with the exception of § 1314.30(a)(2)) are effective September 30, 2006. Section 1314.30(a)(2) is effective November 27, 2006.

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, Exports, Imports, Security measures.

21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

21 CFR Part 1314

Drug traffic control, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR Chapter II is amended as follows:

PART 1300—DEFINITIONS

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

■ 2. Section 1300.02 is amended by revising paragraphs (b)(28) and (29), removing paragraph (b)(31), redesignating paragraphs (b)(32) through (b)(34) as (b)(31) through (b)(33), and adding new paragraphs (b)(34) through (b)(37) to read as follows:

§ 1300.02 Definitions related to listed chemicals.

* * * * *

(b) * * *

(28) The term *regulated transaction* means:

(i) A distribution, receipt, sale, importation, or exportation of a listed chemical, or an international transaction involving shipment of a listed chemical, or if the Administrator establishes a threshold amount for a specific listed chemical, a threshold amount as determined by the Administrator, which includes a cumulative threshold amount for multiple transactions, of a listed chemical, except that such term does not include:

(A) A domestic lawful distribution in the usual course of business between agents or employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person;

(B) A delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this paragraph does not relieve a distributor, importer, or exporter from compliance with parts 1309, 1310, and 1313 of this chapter;

(C) Any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Administrator as excluded from this definition as unnecessary for enforcement of the Act;

(D) Any transaction in a listed chemical that is contained in a drug other than a scheduled listed chemical product that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, subject to paragraph (b)(28)(i)(E) of this section, unless—

(1) The Administrator has determined pursuant to the criteria in § 1310.10 of this chapter that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(2) The quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical;

(E) Any transaction in a scheduled listed chemical product that is a sale at retail by a regulated seller or a distributor required to submit reports under § 1310.03(c) of this chapter; or

(F) Any transaction in a chemical mixture designated in §§ 1310.12 and 1310.13 of this chapter that the Administrator has exempted from regulation.

(ii) A distribution, importation, or exportation of a tableting machine or encapsulating machine except that such term does not include a domestic lawful distribution in the usual course of business between agents and employees of a single regulated person; in this context, agents or employees means individuals under the direct management and control of the regulated person.

(29) The term *retail distributor* means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to drug products containing pseudoephedrine or phenylpropanolamine are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. Also for the purposes of this paragraph, a grocery store is an entity within Standard Industrial Classification (SIC) code 5411, a general merchandise store is an entity within SIC codes 5300 through 5399 and 5499, and a drug store is an entity within SIC code 5912.

* * * * *

(34)(i) The term *scheduled listed chemical product* means a product that contains ephedrine, pseudoephedrine, or phenylpropanolamine and may be marketed or distributed lawfully in the United States under the Federal, Food, Drug, and Cosmetic Act as a nonprescription drug. Ephedrine, pseudoephedrine, and phenylpropanolamine include their salts, optical isomers, and salts of optical isomers.

(ii) Scheduled listed chemical product does not include any product that is a controlled substance under part 1308 of this chapter. In the absence of such scheduling by the Attorney General, a chemical specified in paragraph (b)(34)(i) of this section may not be considered to be a controlled substance.

(35) The term *regulated seller* means a retail distributor (including a pharmacy or a mobile retail vendor), except that the term does not include an employee or agent of the distributor.

(36) The term *mobile retail vendor* means a person or entity that makes sales at retail from a stand that is intended to be temporary or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

(37) The term *at retail*, with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use, respectively.

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS, AND EXPORTERS OF LIST I CHEMICALS

■ 3. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

■ 4. Section 1309.71(a) is revised to read as follows:

§ 1309.71 General security requirements.

(a) All applicants and registrants must provide effective controls and

procedures to guard against theft and diversion of List I chemicals. Chemicals must be stored in containers sealed in such a manner as to indicate any attempts at tampering with the container. Where chemicals cannot be stored in sealed containers, access to the chemicals should be controlled through physical means or through human or electronic monitoring.

* * * * *

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

■ 5. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 6. In § 1310.04, paragraph (f)(1)(ii) is revised to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) * * *

(ii) For List I chemicals that are scheduled listed chemical products as defined in § 1300.02, the thresholds established in paragraphs (f)(1)(i) and (g) of this section apply only to non-retail distribution, import, and export. Sales of these products at retail are subject to the requirements of part 1314 of this chapter.

* * * * *

■ 7. Section 1310.05 is amended by revising paragraph (f)(2) to read as follows:

§ 1310.05 Reports.

* * * * *

(f) * * *

(2) Distributions of drug products by retail distributors that may not include face-to-face transactions to the extent that such distributions are consistent with the activities authorized for a retail distributor as specified in § 1300.02(b)(29) of this chapter, except that this paragraph does not apply to sales of scheduled listed chemical products at retail.

* * * * *

■ 8. Remove § 1310.14.

■ 9. Remove § 1310.15.

■ 10. Add § 1310.16 to read as follows:

§ 1310.16 Exemptions for certain scheduled listed chemical products.

(a) Upon the application of a manufacturer of a scheduled listed chemical product, the Administrator may by regulation provide that the product is exempt from part 1314 of this chapter if the Administrator determines that the product cannot be used in the illicit manufacture of a controlled substance.

(b) An application for an exemption under this section must contain all of the following information:

(1) The name and address of the applicant.

(2) The exact trade name of the scheduled listed chemical product for which exemption is sought.

(3) The complete quantitative and qualitative composition of the drug product.

(4) A brief statement of the facts that the applicant believes justify the granting of an exemption under this section.

(5) Certification by the applicant that the product may be lawfully marketed or distributed under the Federal, Food, Drug, and Cosmetic Act.

(6) The identification of any information on the application that is considered by the applicant to be a trade secret or confidential and entitled to protection under U.S. laws restricting the public disclosure of such information by government employees.

(c) The Administrator may require the applicant to submit additional documents or written statements of fact relevant to the application that he deems necessary for determining if the application should be granted.

(d) Within a reasonable period of time after the receipt of a completed application for an exemption under this section, the Administrator shall notify the applicant of acceptance or non-acceptance of the application. If the application is not accepted, an explanation will be provided. The Administrator is not required to accept an application if any of the information required in paragraph (b) of this section or requested under paragraph (c) of this section is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of paragraphs (b) and (c) of this section.

(e) If the application is accepted for filing, the Administrator shall issue and publish in the **Federal Register** an order on the application, which shall include a reference to the legal authority under which the order is based. This order shall specify the date on which it shall take effect.

(f) The Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend the original order as deemed appropriate.

■ 11. Part 1314 is added to 21 CFR Chapter II to read as follows:

PART 1314—RETAIL SALE OF SCHEDULED LISTED CHEMICAL PRODUCTS

Subpart A—General

1314.01 Scope.
1314.02 Applicability.
1314.03 Definitions.
1314.05 Requirements regarding packaging of nonliquid forms.
1314.10 Effect on state laws.
1314.15 Loss reporting.

Subpart B—Sales by Regulated Sellers

1314.20 Restrictions on sales quantity.
1314.25 Requirements for retail transactions.
1314.30 Recordkeeping for retail transactions.
1314.35 Training of sales personnel.
1314.40 Self-certification.
1314.45 Privacy protections.
1314.50 Employment measures.

Subpart C—Mail-Order Sales

1314.100 Sales limits for mail-order sales.
1314.105 Verification of identity for mail-order sales.
1314.110 Reports for mail-order sales.
1314.115 Distributions not subject to reporting requirements.

Subpart D—Order To Show Cause

1314.150 Order to show cause.
1314.155 Suspension pending final order.

Authority: 21 U.S.C. 802, 830, 842, 871(b), 875, 877.

Subpart A—General

§ 1314.01 Scope.

This part specifies the requirements for retail sales of scheduled listed chemical products to individuals for personal use.

§ 1314.02 Applicability.

(a) This part applies to the following regulated persons who sell scheduled listed chemical products for personal use:

(1) Regulated sellers of scheduled listed chemical products sold at retail for personal use through face-to-face sales at stores or mobile retail vendors.

(2) Regulated persons who engage in a transaction with a non-regulated person and who ship the products to the non-regulated person by the U.S. Postal Service or by private or common carriers.

(b) The requirements in subpart A apply to all regulated persons subject to this part. The requirements in subpart B apply to regulated sellers as defined in

§ 1300.02 of this chapter. The requirements in subpart C apply to regulated persons who ship the products to the customer by the U.S. Postal Service or by private or common carriers.

§ 1314.03 Definitions.

As used in this part, the term ''mail-order sale'' means a retail sale of scheduled listed chemical products for personal use where a regulated person uses or attempts to use the U.S. Postal Service or any private or commercial carrier to deliver the product to the customer. Mail-order sale includes purchase orders submitted by phone, mail, fax, Internet, or any method other than face-to-face transaction.

§ 1314.05 Requirements regarding packaging of nonliquid forms.

A regulated seller or mail order distributor may not sell a scheduled listed chemical product in nonliquid form (including gel caps) unless the product is packaged either in blister packs, with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

§ 1314.10 Effect on State laws.

Nothing in this part preempts State law on the same subject matter unless there is a positive conflict between this part and a State law so that the two cannot consistently stand together.

§ 1314.15 Loss reporting.

(a) Each regulated person must report to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located, any unusual or excessive loss or disappearance of a scheduled listed chemical product under the control of the regulated person. The regulated person responsible for reporting a loss in-transit is the supplier.

(b) Each report submitted under paragraph (a) of this section must, whenever possible, be made orally to the DEA Divisional Office for the area in which the regulated person making the report is located at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved.

(c) Written reports of losses must be filed within 15 days after the regulated person becomes aware of the circumstances of the event.

(d) A report submitted under this section must include a description of the circumstances of the loss (in-transit, theft from premises, *etc.*).

(e) A suggested format for the report is provided below:

Regulated Person

Registration number (if applicable) _____
Name _____
Business address _____
City _____
State _____
Zip _____
Business phone _____
Date of loss _____
Type of loss _____
Description of circumstances _____

Subpart B—Sales by Regulated Sellers

§ 1314.20 Restrictions on sales quantity.

(a) Without regard to the number of transactions, a regulated seller (including a mobile retail vendor) may not in a single calendar day sell any purchaser more than 3.6 grams of ephedrine base, 3.6 grams of pseudoephedrine base, or 3.6 grams of phenylpropanolamine base in scheduled listed chemical products.

(b) A mobile retail vendor may not in any 30-day period sell an individual purchaser more than 7.5 grams of ephedrine base, 7.5 grams of pseudoephedrine base, or 7.5 grams of phenylpropanolamine base in scheduled listed chemical products.

§ 1314.25 Requirements for retail transactions.

(a) Each regulated seller must ensure that sales of a scheduled listed chemical product at retail are made in accordance with this section and § 1314.20.

(b) The regulated seller must place the product so that customers do not have direct access to the product before the sale is made (in this paragraph referred to as ''behind-the-counter'' placement). For purposes of this paragraph, a behind-the-counter placement of a product includes circumstances in which the product is stored in a locked cabinet that is located in an area of the facility where customers do have direct access. Mobile retail vendors must place the product in a locked cabinet.

(c) The regulated seller must deliver the product directly into the custody of the purchaser.

§ 1314.30 Recordkeeping for retail transactions.

(a)(1) Except for purchase by an individual of a single sales package containing not more than 60 milligrams of pseudoephedrine, the regulated seller must maintain, in accordance with criteria issued by the Administrator, a written or electronic list of each scheduled listed chemical product sale that identifies the products by name, the quantity sold, the names and addresses of the purchasers, and the dates and times of the sales (referred to as the ''logbook''). The logbook may be maintained on paper or in electronic form.

(2) Effective November 27, 2006, if a logbook is maintained on paper, it must be created and maintained in a bound record book.

(b) The regulated seller must not sell a scheduled listed chemical product at retail unless the purchaser does the following:

(1) Presents an identification card that provides a photograph and is issued by a State or the Federal Government, or a document that, with respect to identification, is considered acceptable for purposes of 8 CFR 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B).

(2) Signs the logbook and enters in the logbook his or her name, address, and the date and time of the sale.

(c) For records created electronically, the regulated seller may use an electronic signature system to capture the signature and may have the computer automatically enter the date and time of the sale. The regulated seller may ask the purchaser for their name and address and enter information if it is not feasible for the purchaser to enter the information electronically.

(d) The regulated seller must determine that the name entered in the logbook corresponds to the name provided on identification presented and that the date and time entered are correct.

(e) The regulated seller must enter in the logbook the name of the product and the quantity sold. Examples of methods of recording the quantity sold include the weight of the product per package and number of packages of each chemical, the cumulative weight of the product for each chemical, or quantity of product by Universal Product Code. These examples do not exclude other methods of displaying the quantity sold. For electronic records, the regulated seller may use a point-of-sale and bar code reader. Such electronic records must be provided pursuant to paragraph (i) of this section in a human readable form such that the requirements of paragraph (a)(1) of this section are satisfied.

(f) The regulated seller must include in the logbook or display by the logbook, the following notice:

Warning: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an

individual or $500,000 if an organization, imprisoned not more than five years, or both.

(g) The regulated seller must maintain each entry in the logbook for not fewer than 2 years after the date on which the entry is made.

(h) A record under this section must be kept at the regulated seller's place of business where the transaction occurred, except that records may be kept at a single, central location of the regulated seller if the regulated seller has notified the Administration of the intention to do so. Written notification must be submitted by registered or certified mail, return receipt requested, to the Special Agent in Charge of the DEA Divisional Office for the area in which the records are required to be kept.

(i) The records required to be kept under this section must be readily retrievable and available for inspection and copying by authorized employees of the Administration under the provisions of 21 U.S.C. 880.

(j) A record developed and maintained to comply with a State law may be used to meet the requirements of this section if the record includes the information specified in this section.

§ 1314.35 Training of sales personnel.

Each regulated seller must ensure that its sales of a scheduled listed chemical product at retail are made in accordance with the following:

(a) In the case of individuals who are responsible for delivering the products into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products, the regulated seller has submitted to the Administration a self-certification that all such individuals have, in accordance with criteria issued by the Administration, undergone training provided by the regulated seller to ensure that the individuals understand the requirements that apply under this part.

(b) The regulated seller maintains a copy of each self-certification and all records demonstrating that individuals referred to in paragraph (a) of this section have undergone the training.

§ 1314.40 Self-certification.

(a) A regulated seller must submit to the Administration the self-certification referred to in § 1314.35(a) in order to sell any scheduled listed chemical product. The certification is not effective for purposes of this section unless, in addition to provisions regarding the training of individuals referred to in § 1314.35(a), the certification includes a statement that the regulated seller understands each of the requirements that apply under this part and agrees to comply with the requirements.

(b) When a regulated seller files the initial self-certification, the Administration will assign the regulated seller to one of twelve groups. The expiration date of the self-certification for all regulated sellers in any group will be the last day of the month designated for that group. In assigning a regulated seller to a group, the Administration may select a group with an expiration date that is not less than 12 months or more than 23 months from the date of the self-certification. After the initial certification period, the regulated seller must update the self-certifications annually.

(c) The regulated seller must provide a separate certification for each place of business at which the regulated seller sells scheduled listed chemical products at retail.

§ 1314.45 Privacy protections.

To protect the privacy of individuals who purchase scheduled listed chemical products, the disclosure of information in logbooks under § 1314.15 is restricted as follows:

(a) The information shall be disclosed as appropriate to the Administration and to State and local law enforcement agencies.

(b) The information in the logbooks shall not be accessed, used, or shared for any purpose other than to ensure compliance with this title or to facilitate a product recall to protect public health and safety.

(c) A regulated seller who in good faith releases information in a logbook to Federal, State, or local law enforcement authorities is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

§ 1314.50 Employment measures.

A regulated seller may take reasonable measures to guard against employing individuals who may present a risk with respect to the theft and diversion of scheduled listed chemical products, which may include, notwithstanding State law, asking applicants for employment whether they have been convicted of any crime involving or related to such products or controlled substances.

Subpart C—Mail-Order Sales

§ 1314.100 Sales limits for mail-order sales.

(a) Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under § 1310.03(c) of this chapter to submit a report of the sales transaction to the Administration may not in a single calendar day sell to any purchaser more than 3.6 grams of ephedrine base, 3.6 grams of pseudoephedrine base, or 3.6 grams of phenylpropanolamine base in scheduled listed chemical products.

(b) Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under § 1310.03(c) of this chapter to submit a report of the sales transaction to the Administration may not in any 30-day period sell to an individual purchaser more than 7.5 grams of ephedrine base, 7.5 grams of pseudoephedrine base, or 7.5 grams of phenylpropanolamine base in scheduled listed chemical products.

§ 1314.105 Verification of identity for mail-order sales.

(a) Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under § 1310.03(c) of this chapter to submit a report of the sales transaction to the Administration must, prior to shipping the product, receive from the purchaser a copy of an identification card that provides a photograph and is issued by a State or the Federal Government, or a document that, with respect to identification, is considered acceptable for purposes of 8 CFR 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B). Prior to shipping the product, the regulated person must determine that the name and address on the identification correspond to the name and address provided by the purchaser as part of the sales transaction. If the regulated person cannot verify the identities of both the purchaser and the recipient, the person may not ship the scheduled listed chemical product.

(b) If the product is being shipped to a third party, the regulated person must comply with the requirements of paragraph (a) to verify that both the purchaser and the person to whom the product is being shipped live at the addresses provided. If the regulated person cannot verify the identities of both the purchaser and the recipient, the person may not ship the scheduled listed chemical product.

§ 1314.110 Reports for mail-order sales.

(a) Each regulated person required to report under § 1310.03(c) of this chapter must either:

(1) Submit a written report, containing the information set forth in paragraph (b) of this section, on or before the 15th day of each month following the month in which the distributions took place. The report must be submitted under company

letterhead, signed by the person authorized to sign on behalf of the regulated seller, to the Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; or

(2) Upon request to and approval by the Administration, submit the report in electronic form, either via computer disk or direct electronic data transmission, in such form as the Administration shall direct. Requests to submit reports in electronic form should be submitted to the Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, ATTN: Electronic Reporting.

(b) Each monthly report must provide the following information for each distribution:

(1) Supplier name and registration number;

(2) Purchaser's name and address;

(3) Name/address shipped to (if different from purchaser's name/address);

(4) Method used to verify the identity of the purchaser and, where applicable, person to whom product is shipped;

(5) Name of the chemical contained in the scheduled listed chemical product and total quantity shipped (*e.g.* pseudoephedrine, 3 grams);

(6) Date of shipment;

(7) Product name;

(8) Dosage form (*e.g.*, tablet, liquid);

(9) Dosage strength (*e.g.*, 30mg, 60mg, per dose etc.);

(10) Number of dosage units (*e.g.*, 100 doses per package);

(11) Package type (blister pack, etc.);

(12) Number of packages;

(13) Lot number.

§ 1314.115 Distributions not subject to reporting requirements.

(a) The following distributions to nonregulated persons are not subject to the reporting requirements in § 1314.110:

(1) Distributions of sample packages when those packages contain not more than two solid dosage units or the equivalent of two dosage units in liquid form, not to exceed 10 milliliters of liquid per package, and not more than one package is distributed to an individual or residential address in any 30-day period.

(2) Distributions by retail distributors that may not include face-to-face transactions to the extent that such distributions are consistent with the activities authorized for a retail distributor as specified in § 1300.02(b)(29) of this chapter, except that this paragraph (a)(2) does not apply to sales of scheduled listed chemical products at retail.

(3) Distributions to a resident of a long term care facility or distributions to a long term care facility for dispensing to or for use by a resident of that facility.

(4) Distributions in accordance with a valid prescription.

(b) The Administrator may revoke any or all of the exemptions listed in paragraph (a) of this section for an individual regulated person if the Administrator finds that drug products distributed by the regulated person are being used in violation of the regulations in this chapter or the Controlled Substances Act.

Subpart D—Order to Show Cause

§ 1314.150 Order To show cause.

(a) If, upon information gathered by the Administration regarding any regulated seller or a distributor required to submit reports under § 1310.03(c) of this chapter, the Administrator determines that a regulated seller or distributor required to submit reports under § 1310.03(c) of this chapter has sold a scheduled listed chemical product in violation of Section 402 of the Act (21 U.S.C. 842(a)(12) or (13)), the Administrator will serve upon the regulated seller or distributor an order to show cause why the regulated seller or distributor should not be prohibited from selling scheduled listed chemical products.

(b) The order to show cause shall call upon the regulated seller or distributor to appear before the Administrator at a time and place stated in the order, which shall not be less than 30 days after the date of receipt of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the prohibition and a summary of the matters of fact and law asserted.

(c) Upon receipt of an order to show cause, the regulated seller or distributor must, if he desires a hearing, file a request for a hearing as specified in subpart D of part 1316 of this chapter. If a hearing is requested, the Administrator shall hold a hearing at the time and place stated in the order, as provided in part 1316 of this chapter.

(d) When authorized by the Administrator, any agent of the Administration may serve the order to show cause.

§ 1314.155 Suspension pending final order.

(a) The Administrator may suspend the right to sell scheduled listed chemical products simultaneously with, or at any time subsequent to, the service upon the seller or distributor required to file reports under § 1310.03(c) of this chapter of an order to show cause why the regulated seller or distributor should not be prohibited from selling scheduled listed chemical products, in any case where he finds that there is an imminent danger to the public health or safety. If the Administrator so suspends, he shall serve with the order to show cause under § 1314.150 an order of immediate suspension that shall contain a statement of his findings regarding the danger to public health or safety.

(b) Upon service of the order of immediate suspension, the regulated seller or distributor shall, as instructed by the Administrator:

(1) Deliver to the nearest office of the Administration or to authorized agents of the Administration all of the scheduled listed chemical products in his or her possession; or

(2) Place all of the scheduled listed chemical products under seal as described in Section 304 of the Act (21 U.S.C. 824(f)).

(c) Any suspension shall continue in effect until the conclusion of all proceedings upon the prohibition, including any judicial review, unless sooner withdrawn by the Administrator or dissolved by a court of competent jurisdiction. Any regulated seller or distributor whose right to sell scheduled listed chemical products is suspended under this section may request a hearing on the suspension at a time earlier than specified in the order to show cause under § 1314.150, which request shall be granted by the Administrator, who shall fix a date for such hearing as early as reasonably possible.

Dated: September 20, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 06–8194 Filed 9–21–06; 10:25 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2006–25686]

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle

safety standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is contained in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2005, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notice of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR Part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). Ibid.

Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The 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 obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements but to provide a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. The agency believes that this impact is minimal and does not warrant the preparation of a regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' 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 E.O. 13132, NHTSA 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 NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no 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 as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires

agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained. DOT previously submitted to OMB and OMB approved the collection of information associated with the vehicle importation program in OMB Clearance No. 2127–0002, which expires on July 31, 2007.

G. Civil Justice Reform

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology and Transfer and Advancement Act of 1995 (Public Law 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This rule does not require the use of any technical standards.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to E.O. 13045 because it is not ''economically significant'' as defined under E.O. 12866, and does not concern an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

L. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements. This rule merely revises the list of vehicles not originally manufactured to conform to the FMVSS that NHTSA has decided to be eligible for importation into the United States since the last list was prepared in September, 2005.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR parts 400 to 599, which is due for revision on October 1, 2006, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, Part 593 of Title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation*, is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for Part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50

■ 2. Appendix A to Part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined To Be Eligible for Importation

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) ''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under § 593.8.

(2) ''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) ''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under § 593.7(f), based on a petition from a manufacturer or registered importer submitted under § 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically by make. Eligible models within each make are listed numerically by ''VSA,'' ''VSP,'' or ''VCP'' number.

(c) All hyphens used in the Model Year column mean ''through'' (for example, ''1981–1989'' means ''1981 through 1989'').

(d) The initials ''MC'' used in the Manufacturer column mean ''motorcycle.''

(e) The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

(f) The initials ''LWB'' used in the Model Type column mean ''Long Wheel Base.''

(g) For vehicles with a European country of origin, the term ''Model Year'' ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive (LHD) vehicles unless noted as RHD. The initials ''RHD'' used in the Model Type column mean ''Right-Hand-Drive.''

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; (c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214; (d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401.
VSA–81	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208. (c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216; (e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225.
VSA–82	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Acura	305			Legend		1990–1992
Acura	77			Legend		1989
Acura	51			Legend		1988
Alfa Romeo	156			164		1994
Alfa Romeo	76			164		1991
Alfa Romeo	196			164		1989
Alfa Romeo	124			GTV		1985
Alfa Romeo	70			Spider		1987
Aston Martin	430			Vanquish		2002–2004
Audi	223			80		1988–1989
Audi	244			100		1993
Audi	317			100		1990–1992
Audi	93			100		1989
Audi	160			200 Quattro		1985
Audi	352			A4		1996–2000
Audi	400			A4, RS4, S4	8D	2000–2001
Audi	332			A6		1998–1999
Audi	424			A8		2000
Audi	337			A8		1997–2000
Audi	238			Avant Quattro		1996
Audi	443			RS6 & RS Avant		2003
Audi	428			S6		1996
Audi	424			S8		2000
Audi	364			TT		2000–2001
Bentley	473			Arnage (manufactured 1/1/01–12/31/01)		2001
Bentley	485			Azure (LHD & RHD)		1998
Bimota (MC)	397			DB4		2000
Bimota (MC)	397			SB8		1999–2000
BMW	25			316		1986
BMW		66		316		1981–1982
BMW	379			3 Series		2001
BMW	356			3 Series		2000
BMW	379			3 Series		1999
BMW	462			3 Series		1998
BMW	248			3 Series		1995–1997
BMW		23		318i, 318iA		1987–1989
BMW		23		318i, 318iA		1986

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
BMW		23		318i, 318iA		1984–1985
BMW		23		318i, 318iA		1983
BMW		23		318i, 318iA		1981–1982
BMW		16		320, 320i, 320iA		1984–1985
BMW	283			320i		1990–1991
BMW		16		320i & 320iA		1981–1983
BMW		67		323i		1981–1985
BMW		30		325, 325i, 325iA, 325E		1985–1986
BMW		24		325e, 325eA		1984–1987
BMW	197			325i		1992–1996
BMW	96			325i		1991
BMW		30		325i, 325iA		1987–1989
BMW		31		325iS, 325iSA		1987–1989
BMW	205			325iX		1990
BMW		33		325iX, 325iXA		1988–1989
BMW	450			5 Series		2003–2004
BMW	414			5 Series		2000–2002
BMW	345			5 Series		2000
BMW	314			5 Series		1998–1999
BMW	249			5 Series		1995–1997
BMW	194			5 Series		1990–1995
BMW	4			518i		1986
BMW		68		520, 520i		1982–1983
BMW		68		520, 520i		1981
BMW	9			520iA		1989
BMW		26		524tdA		1985–1986
BMW		69		525, 525i		1982
BMW		69		525, 525i		1981
BMW	5			525i		1989
BMW		21		528e, 528eA		1982–1988
BMW		20		528i, 528iA		1982–1984
BMW		20		528i, 528iA		1981
BMW		22		533i, 533iA		1983–1984
BMW		25		535i, 535iA		1985–1989
BMW	15			625CSi		1981
BMW		18		633CSi, 630CSiA		1981–1984
BMW		27		635, 635CSi, 635CSiA		1981–1984
BMW		27		635CSi, 635CSiA		1985–1989
BMW	366			7 Series		1999–2001
BMW	313			7 Series		1995–1999
BMW	299			7 Series		1993–1994
BMW	232			7 Series		1992
BMW	299			7 Series		1990–1991
BMW		70		728, 728i		1981–1985
BMW	14			728i		1986
BMW	6			730iA		1988
BMW		72		732i		1981–1984
BMW		19		733i, 733iA		1981–1984
BMW		28		735, 735i, 735iA		1981–1984
BMW		28		735i, 735iA		1985–1989
BMW		73		745i		1981–1986
BMW	361			8 Series		1991–1995
BMW	396			850 Series		1997
BMW	10			850i		1990
BMW		78		All other passenger car models except those in the M1 and Z1 series.		1981–1989
BMW		29		L7		1986–1987
BMW		35		M3		1988–1989
BMW		34		M5		1988
BMW		32		M6		1987–1988
BMW	459			X5 (manufactured 1/1/03–12/31/04)		2003–2004
BMW	260			Z3		1996–1998
BMW	483			Z3 (European market)		1999
BMW	406			Z8		2002
BMW	350			Z8		2000–2001
BMW (MC)	228			K1		1990–1993
BMW (MC)	285			K100		1984–1992
BMW (MC)	303			K1100, K1200		1993–1998
BMW (MC)	229			K75S		1987–1995
BMW (MC)	465			R100		1981
BMW (MC)	368			R1100		1998–2001
BMW (MC)	231			R1100		1994–1997

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
BMW (MC)	177			R1100RS		1994
BMW (MC)	453			R1150GS		2000
BMW (MC)	359			R1200C		1998–2001
BMW (MC)	295			R80, R100		1986–1995
Bristol Bus			2	VRT Bus—Double Decker		1981
Buell (MC)	399			All Models		1995–2002
Cadillac	300			DeVille		1994–1999
Cadillac	448			DeVille (manufactured 8/1/99–12/31/00)		2000
Cadillac	375			Seville		1991
Cagiva	444			Gran Canyon 900 motorcycle		1999
Chevrolet	150			400SS		1995
Chevrolet	298			Astro Van		1997
Chevrolet	405			Blazer		1986
Chevrolet	461			Blazer (plant code of "K" or "2" in the 11th position of the VIN).		2001
Chevrolet	349			Blazer (plant code of "K" or "2" in the 11th position of the VIN).		1997
Chevrolet	435			Camaro		1999
Chevrolet	369			Cavalier		1997
Chevrolet	365			Corvette		1992
Chevrolet	419			Corvette Coupe		1999
Chevrolet	242			Suburban		1989–1991
Chrysler	344			Daytona		1992
Chrysler	373			Grand Voyager		1998
Chrysler	276			LHS (Mexican market)		1996
Chrysler	216			Shadow (Middle Eastern market)		1989
Chrysler	273			Town and Country		1993
Citroen			1	XM		1990–1992
Daimler	12			Limousine		1985
Dodge	135			Ram		1994–1995
Ducati (MC)	241			600SS		1992–1996
Ducati (MC)	421			748		1999–2003
Ducati (MC)	220			748 Biposto		1996–1997
Ducati (MC)	452			900		2001
Ducati (MC)	201			900SS		1991–1996
Ducati (MC)	421			916		1999–2003
Ducati (MC)	475			996 Biposto		1999–2001
Ducati (MC)	398			996R		2001–2002
Ducati (MC)	407			Monster 600		2001
Ducati (MC)	474			ST4S		1999–2005
Eagle	323			Vision		1994
Ferrari		76		208, 208 Turbo (all models)		1981–1988
Ferrari		36		308 (all models)		1981–1985
Ferrari		37		328 (all models)		1988–1989
Ferrari		37		328 (all models)		1985
Ferrari		37		328 GTS		1986–1987
Ferrari	86			348 TB		1992
Ferrari	161			348 TS		1992
Ferrari	376			360		2001
Ferrari	433			360 (manufactured after 8/31/02)		2002
Ferrari	402			360 (manufactured before 9/1/02)		2002
Ferrari	327			360 Modena		1999–2000
Ferrari	446			360 Series		2004
Ferrari	410			360 Spider & Coupe		2003
Ferrari	256			456		1995
Ferrari	445			456 GT & GTA		1999
Ferrari	408			456 GT & GTA		1997–1998
Ferrari	173			512 TR		1993
Ferrari	377			550		2001
Ferrari	292			550 Marinello		1997–1999
Ferrari	415			575		2002–2003
Ferrari	436			Enzo		2003–2004
Ferrari	391			F355		1999
Ferrari	355			F355		1996–1998
Ferrari	259			F355		1995
Ferrari	479			F430 (manufactured prior to 9/1/06)		2005–2006
Ferrari	226			F50		1995
Ferrari		38		GTO		1985
Ferrari		74		Mondial (all models)		1981–1989
Ferrari		39		Testarossa		1989
Ferrari		39		Testarossa		1987–1988
Ford	265			Bronco (manufactured in Venezuela)		1995–1996

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Ford	322			Escort (Nicaraguan market)		1996
Ford			9	Escort RS Cosworth		1994–1995
Ford	268			Explorer (manufactured in Venezuela)		1991–1998
Ford	425			F150		2000
Ford	471			Mustang		1997
Ford	367			Mustang		1993
Ford	250			Windstar		1995–1998
Freightliner	179			FLD12064ST		1991–1996
Freightliner	178			FTLD112064SD		1991–1996
GMC	134			Suburban		1992–1994
Harley Davidson (MC)	472			FX, FL, XL Series		2005
Harley Davidson (MC)	422			FX, FL, XL Series		2004
Harley Davidson (MC)	393			FX, FL, XL Series		2003
Harley Davidson (MC)	372			FX, FL, XL Series		2002
Harley Davidson (MC)	362			FX, FL, XL Series		2001
Harley Davidson (MC)	321			FX, FL, XL Series		2000
Harley Davidson (MC)	281			FX, FL, XL Series		1999
Harley Davidson (MC)	253			FX, FL, XL Series		1998
Harley Davidson (MC)	202			FX, FL, XL Series		1981–1997
Harley Davidson (MC)	422			VRSCA		2004
Harley Davidson (MC)	394			VRSCA		2003
Harley Davidson (MC)	374			VRSCA		2002
Heku			33	750 KG Boat Trailer		2005
Hobby			29	Exclusive 650 KMFE Trailer		2002–2003
Hobson			8	Horse Trailer		1985
Honda	319			Accord		1992–1999
Honda	280			Accord		1991
Honda	451			Accord (sedan & wagon (RHD))		1994–1997
Honda	128			Civic DX Hatchback		1989
Honda	447			CRV		2002
Honda	309			Prelude		1994–1997
Honda	191			Prelude		1989
Honda (MC)	440			CB 750 (CB750F2T)		1996
Honda (MC)	106			CB1000F		1988
Honda (MC)			22	CBR 250		1989–1994
Honda (MC)	348			CMX250C		1981–1987
Honda (MC)	174			CP450SC		1986
Honda (MC)	358			RVF 400		1994–2000
Honda (MC)	290			VF750		1994–1998
Honda (MC)	358			VFR 400		1994–2000
Honda (MC)			24	VFR 400, RVF 400		1989–1993
Honda (MC)	315			VFR750		1991–1997
Honda (MC)	34			VFR750		1990
Honda (MC)	315			VFR800		1998–1999
Honda (MC)	294			VT600		1991–1998
Hyundai	269			Elantra		1992–1995
Jaguar	78			Sovereign		1993
Jaguar	411			S–Type		2000–2002
Jaguar	47			XJ6		1987
Jaguar		41		XJ6		1985–1986
Jaguar		41		XJ6		1984
Jaguar		41		XJ6		1981–1983
Jaguar	215			XJ6 Sovereign		1988
Jaguar	195			XJS		1994–1996
Jaguar	129			XJS		1992
Jaguar	175			XJS		1991
Jaguar		40		XJS		1986–1987
Jaguar		40		XJS		1981–1985
Jaguar	336			XJS, XJ6		1988–1990
Jaguar	330			XK–8		1998
Jeep	180			Cherokee		1995
Jeep	254			Cherokee		1993
Jeep	211			Cherokee (European market)		1991
Jeep	164			Cherokee (Venezuelan market)		1992
Jeep	382			Grand Cherokee		2001
Jeep	431			Grand Cherokee		1997
Jeep	404			Grand Cherokee		1994
Jeep	389			Grand Cherokee (LHD—Japanese market)		1997
Jeep	466			Liberty		2002
Jeep	457			Liberty (Mexican market)		2004
Jeep	341			Wrangler		1998
Jeep	255			Wrangler		1995

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Jeep	217			Wrangler		1993
Kawasaki (MC)	233			EL250		1992–1994
Kawasaki (MC)	190			KZ550B		1982
Kawasaki (MC)	182			ZX1000–B1		1988
Kawasaki (MC)	222			ZX400		1987–1997
Kawasaki (MC)	312			ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999
Kawasaki (MC)	288			ZX600		1985–1998
Kawasaki (MC)	247			ZZR1100		1993–1998
Ken-Mex	187			T800		1990–1996
Kenworth	115			T800		1992
Komet	477			Standard, Classic & Eurolite trailer		2000–2005
KTM (MC)	363			Duke II		1995–2000
Lamborghini	416			Diablo (except 1997 Coupe)		1996–1997
Lamborghini			26	Diablo Coupe		1997
Lamborghini	458			Gallardo (manufactured 1/1/04–12/31/04)		2004
Lamborghini	476			Murcielago	Roadster	2005
Land Rover	212			Defender 110		1993
Land Rover	432			Defender 90 (manufactured before 9/1/97) VIN "SALDV224*VA" or "SALDV324*VA".		1997
Land Rover	338			Discovery		1994–1998
Land Rover	437			Discovery (II)		2000
Lexus	460			GS300		1998
Lexus	293			GS300		1993–1996
Lexus	307			RX300		1998–1999
Lexus	225			SC300		1991–1996
Lexus	225			SC400		1991–1996
Lincoln	144			Mark VII		1992
Magni (MC)	264			Australia, Sfida		1996–1999
Maserati	155			Bi-Turbo		1985
Mazda	413			MPV		2000
Mazda	184			MX–5 Miata		1990–1993
Mazda	279			RX–7		1987–1995
Mazda	199			RX–7		1986
Mazda		42		RX–7		1981
Mazda	351			Xedos 9		1995–2000
Mercedes Benz		54		190	201.022	1984
Mercedes Benz		54		190 D	201.126	1984–1989
Mercedes Benz		54		190 D (2.2)	201.122	1984–1989
Mercedes Benz	454			190 E		1993
Mercedes Benz	71			190 E	201.028	1992
Mercedes Benz	126			190 E	201.018	1992
Mercedes Benz	45			190 E	201.024	1991
Mercedes Benz	22			190 E	201.024	1990
Mercedes Benz		54		190 E	201.028	1986–1989
Mercedes Benz		54		190 E	201.029	1986
Mercedes Benz		54		190 E	201.034	1984–1985
Mercedes Benz		54		190 E	201.024	1983
Mercedes Benz		54		190 E (2.3)	201.024	1984–1989
Mercedes Benz		54		190 E (2.6)	201.029	1987–1989
Mercedes Benz		54		190 E (2.6) 16	201.034	1986–1989
Mercedes Benz		55		200	124.020	1985
Mercedes Benz		52		200	123.220	1981–1985
Mercedes Benz	17			200 D	124.120	1986
Mercedes Benz		52		200 D	123.120	1981–1982
Mercedes Benz	75			200 E	124.019	1993
Mercedes Benz	109			200 E	124.012	1991
Mercedes Benz	11			200 E	124.021	1989
Mercedes Benz	3			200 TE	124.081	1989
Mercedes Benz	168			220 E		1993
Mercedes Benz	167			220 TE Station Wagon		1993–1996
Mercedes Benz		52		230	123.023	1981–1985
Mercedes Benz	203			230 CE	123.043	1992
Mercedes Benz	84			230 CE	124.043	1991
Mercedes Benz		52		230 CE	123.243	1981–1984
Mercedes Benz	127			230 E	124.023	1993
Mercedes Benz	74			230 E	124.023	1991
Mercedes Benz	19			230 E	124.023	1990
Mercedes Benz	20			230 E	124.023	1989
Mercedes Benz	1			230 E	124.023	1988
Mercedes Benz		55		230 E	124.023	1985–1987
Mercedes Benz		52		230 E	123.223	1981–1985
Mercedes Benz		52		230 T	123.083	1981–1985

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz	2			230 TE	124.083	1989
Mercedes Benz		55		230 TE	124.083	1985
Mercedes Benz		52		230 TE	123.283	1981–1985
Mercedes Benz		52		240 D	123.123	1981–1985
Mercedes Benz		52		240 TD	123.183	1981–1985
Mercedes Benz		52		250	123.026	1984–1985
Mercedes Benz		52		250	123.026	1981–1983
Mercedes Benz	172			250 D		1992
Mercedes Benz	245			250 E		1990–1993
Mercedes Benz	105			260 E	124.026	1992
Mercedes Benz		55		260 E	124.026	1987–1989
Mercedes Benz		55		260 E	124.026	1986
Mercedes Benz		55		260 E	124.026	1985
Mercedes Benz	28			260 SE	126.020	1989
Mercedes Benz	18			260 SE	126.020	1986
Mercedes Benz		52		280	123.030	1981–1985
Mercedes Benz		52		280 CE	123.053	1981–1985
Mercedes Benz	166			280 E		1993
Mercedes Benz		52		280 E	123.033	1981–1985
Mercedes Benz		53		280 S	126.021	1981–1983
Mercedes Benz		51		280 SE	116.024	1981–1988
Mercedes Benz		53		280 SE	126.022	1981–1985
Mercedes Benz		53		280 SEL	126.023	1981–1985
Mercedes Benz		44		280 SL	107.042	1981–1985
Mercedes Benz		44		280 SLC	107.022	1981
Mercedes Benz		52		280 TE	123.093	1981–1985
Mercedes Benz		52		300 CD	123.150	1981–1985
Mercedes Benz		52		300 CD	123.153	1981–1985
Mercedes Benz	94			300 CE	124.061	1993
Mercedes Benz	117			300 CE	124.050	1992
Mercedes Benz	83			300 CE	124.051	1991
Mercedes Benz	64			300 CE	124.051	1990
Mercedes Benz		55		300 CE	124.050	1988–1989
Mercedes Benz		55		300 D	124.130	1985–1986
Mercedes Benz		52		300 D	123.133	1981–1985
Mercedes Benz		52		300 D	123.130	1981–1985
Mercedes Benz		55		300 D Turbo	124.193	1987–1989
Mercedes Benz		55		300 D Turbo	124.193	1986
Mercedes Benz		55		300 D Turbo	124.133	1985
Mercedes Benz		55		300 DT	124.133	1986–1989
Mercedes Benz	114			300 E	124.031	1992
Mercedes Benz		55		300 E	124.030	1986–1989
Mercedes Benz		55		300 E	124.030	1985
Mercedes Benz	192			300 E 4-Matic		1990–1993
Mercedes Benz		53		300 SD	126.120	1981–1989
Mercedes Benz	68			300 SE	126.024	1990
Mercedes Benz		53		300 SE	126.024	1988–1989
Mercedes Benz		53		300 SE	126.024	1986–1987
Mercedes Benz		53		300 SE	126.024	1985
Mercedes Benz	21			300 SEL	126.025	1990
Mercedes Benz		53		300 SEL	126.025	1988–1989
Mercedes Benz		53		300 SEL	126.025	1987
Mercedes Benz		53		300 SEL	126.025	1986
Mercedes Benz	54			300 SL	129.006	1992
Mercedes Benz	7			300 SL	107.041	1989
Mercedes Benz		44		300 SL	107.041	1986–1988
Mercedes Benz		52		300 TD	123.190	1981–1985
Mercedes Benz		52		300 TD	123.193	1981–1985
Mercedes Benz	193			300 TE		1992
Mercedes Benz	40			300 TE	124.090	1990
Mercedes Benz		55		300 TE	124.090	1986–1989
Mercedes Benz	310			320 CE		1993
Mercedes Benz	142			320 SL		1992–1993
Mercedes Benz		53		380 SE	126.032	1984–1989
Mercedes Benz		53		380 SE	126.043	1982–1989
Mercedes Benz		53		380 SE	126.032	1981–1983
Mercedes Benz		53		380 SEL	126.033	1981–1989
Mercedes Benz		44		380 SL	107.045	1981–1989
Mercedes Benz		44		380 SLC	107.025	1981–1989
Mercedes Benz	296			400 SE		1992–1994
Mercedes Benz	169			420 E		1993
Mercedes Benz	230			420 SE		1990–1991

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz		53		420 SE	126.034	1987–1989
Mercedes Benz		53		420 SE	126.034	1986
Mercedes Benz		53		420 SE	126.034	1985
Mercedes Benz	209			420 SEC		1990
Mercedes Benz	48			420 SEL	126.035	1990
Mercedes Benz		53		420 SEL	126.035	1986–1989
Mercedes Benz		44		420 SL	107.047	1986
Mercedes Benz		51		450 SEL	116.033	1981–1988
Mercedes Benz		51		450 SEL (6.9)	116.036	1981–1988
Mercedes Benz		44		450 SL	107.044	1981–1989
Mercedes Benz		44		450 SLC	107.024	1981–1989
Mercedes Benz	56			500 E	124.036	1991
Mercedes Benz	26			500 SE	140.050	1991
Mercedes Benz	154			500 SE		1990
Mercedes Benz	35			500 SE	126.036	1988
Mercedes Benz		53		500 SE	126.036	1981–1986
Mercedes Benz	66			500 SEC	126.044	1990
Mercedes Benz		53		500 SEC	126.044	1984–1989
Mercedes Benz		53		500 SEC	126.044	1982–1983
Mercedes Benz		53		500 SEC	126.044	1981
Mercedes Benz	63			500 SEL	126.037	1991
Mercedes Benz	153			500 SEL		1990
Mercedes Benz		53		500 SEL	126.037	1984–1989
Mercedes Benz		53		500 SEL	126.037	1981–1983
Mercedes Benz	60			500 SL	129.006	1992
Mercedes Benz	33			500 SL	126.066	1991
Mercedes Benz	23			500 SL	129.066	1989
Mercedes Benz		44		500 SL	107.046	1986–1989
Mercedes Benz		44		500 SL	107.046	1984–1985
Mercedes Benz		44		500 SL	107.046	1983
Mercedes Benz		44		500 SL	107.046	1982
Mercedes Benz		44		500 SL	107.046	1981
Mercedes Benz		44		500 SLC	107.026	1981
Mercedes Benz	333			560 SEC		1991
Mercedes Benz	141			560 SEC	126.045	1990
Mercedes Benz		53		560 SEC	126.045	1986–1989
Mercedes Benz	469			560 SEL	140	1991
Mercedes Benz	89			560 SEL	126.039	1990
Mercedes Benz		53		560 SEL	126.039	1986–1989
Mercedes Benz		44		560 SL	107.048	1986–1989
Mercedes Benz		43		600	100.012	1981
Mercedes Benz		43		600 Landaulet	100.015	1981
Mercedes Benz		43		600 Long 4dr	100.014	1981
Mercedes Benz		43		600 Long 6dr	100.016	1981
Mercedes Benz	185			600 SEC Coupe		1993
Mercedes Benz	271			600 SEL	140.057	1993–1998
Mercedes Benz	121			600 SL	129.076	1992
Mercedes Benz		77		All other passenger car models except Model ID 114 and 115 with sales designations "long," "station wagon," or "ambulance".		1981–1989
Mercedes Benz	441			C 320	203	2001–2002
Mercedes Benz	456			C Class	203	2000–2001
Mercedes Benz	331			C Class		1994–1999
Mercedes Benz	370			CL 500		1999–2001
Mercedes Benz	277			CL 500		1998
Mercedes Benz	370			CL 600		1999–2001
Mercedes Benz	357			CLK 320		1998
Mercedes Benz	380			CLK Class		1999–2001
Mercedes Benz	478			CLK-Class	209	2002–2005
Mercedes Benz	278			E 200		1995–1998
Mercedes Benz	207			E 200		1994
Mercedes Benz	168			E 220		1994–1996
Mercedes Benz	245			E 250		1994–1995
Mercedes Benz	166			E 280		1994–1996
Mercedes Benz	418			E 320	211	2002–2003
Mercedes Benz	240			E 320		1994–1998
Mercedes Benz	318			E 320 Station Wagon		1994–1999
Mercedes Benz	169			E 420		1994–1996
Mercedes Benz	304			E 500		1995–1997
Mercedes Benz	163			E 500		1994
Mercedes Benz	429			E Class	211	2003–2004
Mercedes Benz	401			E Class	W210	1996–2002

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Mercedes Benz	354			E Series		1991–1995
Mercedes Benz			18	G-Wagon	463	1999–2000
Mercedes Benz			16	G-Wagon	463	1998
Mercedes Benz			15	G-Wagon	463	1997
Mercedes Benz			11	G-Wagon	463	1996
Mercedes Benz			5	G-Wagon 300	463.228	1994
Mercedes Benz			3	G-Wagon 300	463.228	1993
Mercedes Benz			5	G-Wagon 300	463.228	1990–1992
Mercedes Benz			6	G-Wagon 320 LWB	463	1995
Mercedes Benz	392			G-Wagon 5 DR LWB	463	2002
Mercedes Benz			21	G-Wagon 5 DR LWB	463	2001
Mercedes Benz			13	G-Wagon LWB V–8	463	1992–1996
Mercedes Benz			31	G-Wagon SWB	463	2005
Mercedes Benz			28	G-Wagon SWB	463	2004
Mercedes Benz			14	G-Wagon SWB	463	1990–1996
Mercedes Benz			25	G-Wagon SWB Cabriolet & 3DR	463	2001–2003
Mercedes Benz	486			Maybach	240	2004
Mercedes Benz	85			S 280	140.028	1994
Mercedes Benz	236			S 320		1994–1998
Mercedes Benz	267			S 420		1994–1997
Mercedes Benz	371			S 500		2000–2001
Mercedes Benz	235			S 500		1994–1997
Mercedes Benz	371			S 600		2000–2001
Mercedes Benz	297			S 600		1995–1999
Mercedes Benz	185			S 600 Coupe		1994
Mercedes Benz	214			S 600L		1994
Mercedes Benz	442			S Class	220	2002–2004
Mercedes Benz	387			S Class	W220	1999–2002
Mercedes Benz	325			S Class		1998–1999
Mercedes Benz	342			S Class		1995–1998
Mercedes Benz	395			S Class		1993
Mercedes Benz	423			S Class	140	1991–1994
Mercedes Benz	343			SE Class		1992–1994
Mercedes Benz	343			SEL Class	140	1992–1994
Mercedes Benz			19	SL Class	R230	2001–2002
Mercedes Benz	386			SL Class	W129	1997–2000
Mercedes Benz	329			SL Class		1993–1996
Mercedes Benz	470			SL-Class (European Market)	230	2003–2005
Mercedes Benz	381			SLK		2000–2001
Mercedes Benz	257			SLK		1997–1998
Mercedes Benz (truck)	468			Sprinter		2001–2005
Mini	482			Cooper (European market)	Convertible	2005
Mitsubishi	13			Galant Super Salon		1989
Mitsubishi	8			Galant VX		1988
Mitsubishi	170			Pajero		1984
Moto Guzzi (MC)	403			California EV		2002
Moto Guzzi (MC)	118			Daytona		1993
Moto Guzzi (MC)	264			Daytona RS		1996–1999
MV Agusta (MC)	420			F4		2000
Nissan	162			240SX		1988
Nissan	198			300ZX		1984
Nissan			32	GTS & GTR (manufactured 1/96–6/98)	R33	1996–1998
Nissan	138			Maxima		1989
Nissan	412			Pathfinder		2002
Nissan	316			Pathfinder		1987–1995
Nissan	139			Stanza		1987
Nissan		75		Z, 280Z		1981
Peugeot	65			405		1989
Plymouth	353			Voyager		1996
Pontiac	481			Firebird Trans Am		1995
Pontiac (MPV)	189			Trans Sport		1993
Porsche	346			911		1997–2000
Porsche	439			911 (996) Carrera		2002–2004
Porsche	438			911 (996) GT3		2004
Porsche	29			911 C4		1990
Porsche		56		911 Cabriolet		1984–1989
Porsche	165			911 Carrera		1995–1996
Porsche	103			911 Carrera		1994
Porsche	165			911 Carrera		1993
Porsche		56		911 Carrera		1981–1989
Porsche	52			911 Carrera 2 & Carrera 4		1992
Porsche		56		911 Coupe		1981–1989

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Porsche		56		911 Targa		1981–1989
Porsche	347			911 Turbo		2001
Porsche	125			911 Turbo		1992
Porsche		56		911 Turbo		1981–1989
Porsche		59		924 Coupe		1981–1989
Porsche		59		924 S		1987–1989
Porsche		59		924 Turbo Coupe		1981–1989
Porsche	272			928		1993–1998
Porsche	266			928		1991–1996
Porsche		60		928 Coupe		1981–1989
Porsche		60		928 GT		1981–1989
Porsche		60		928 S Coupe		1983–1989
Porsche	210			928 S4		1990
Porsche		60		928 S4		1981–1989
Porsche		61		944		1982–1983
Porsche		61		944 Coupe		1984–1989
Porsche	97			944 S Cabriolet		1990
Porsche		61		944 S Coupe		1987–1989
Porsche	152			944 S2 (2-door Hatchback)		1990
Porsche		61		944 Turbo Coupe		1985–1989
Porsche	116			946 Turbo		1994
Porsche		79		All other passenger car models except Model 959		1981–1989
Porsche	390			Boxster		1997–2001
Porsche	390			Boxster (manufactured before 9/1/02)		2002
Porsche	463			Carrera GT		2004–2005
Porsche	464			Cayenne		2003–2004
Porsche	388			GT2		2002
Porsche			20	GT2		2001
Rolls Royce	340			Bentley		1987–1989
Rolls Royce	186			Bentley Brooklands		1993
Rolls Royce	258			Bentley Continental R		1990–1993
Rolls Royce	53			Bentley Turbo		1986
Rolls Royce	243			Bentley Turbo R		1995
Rolls Royce	291			Bentley Turbo R		1992–1993
Rolls Royce	122			Camargue		1984–1985
Rolls Royce	339			Corniche		1981–1985
Rolls Royce	455			Phantom		2004
Rolls Royce	188			Silver Spur		1984
Saab	426			9.3		2003
Saab	158			900		1983
Saab	270			900 S		1987–1989
Saab	219			900 SE		1996–1997
Saab	213			900 SE		1995
Saab	219			900 SE		1990–1994
Saab	334			9000		1994
Saab	59			9000		1988
Smart Car			27	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2002–2004
Smart Car			30	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2005
Smart Car			34	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) Manufactured before 9/1/06.		2006
Suzuki (MC)	111			GS 850		1985
Suzuki (MC)	287			GSF 750		1996–1998
Suzuki (MC)	208			GSX 750		1983
Suzuki (MC)	227			GSX–R 1100		1986–1997
Suzuki (MC)	417			GSX–R 750		1999–2003
Suzuki (MC)	275			GSX–R 750		1986–1998
Suzuki (MC)	484			GSX1300R Hayabusa		1999–2006
Toyota	449			4–Runner		1998
Toyota	308			Avalon		1995–1998
Toyota	39			Camry		1989
Toyota		63		Camry		1987–1988
Toyota		64		Celica		1987–1988
Toyota		65		Corolla		1987–1988
Toyota	218			Land Cruiser		1990–1996
Toyota	101			Land Cruiser		1989
Toyota	252			Land Cruiser		1981–1988
Toyota	324			MR2		1990–1991
Toyota	302			Previa		1993–1997
Toyota	326			Previa		1991–1992
Toyota	480			RAV4		2005

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	VSP	VSA	VCP	Model type(s)	Body	Model year(s)
Toyota	328			RAV4		1996
Toyota	200			Van		1987–1988
Triumph (MC)	311			Thunderbird		1995–1999
Triumph (MC)	409			TSS		1982
Vespa (MC)	378			ET2, ET4		2001–2002
Volkswagen	306			Eurovan		1993–1994
Volkswagen	80			Golf		1988
Volkswagen	159			Golf		1987
Volkswagen	92			Golf III		1993
Volkswagen	467			Golf Rallye		1989
Volkswagen	73			Golf Rallye		1988
Volkswagen	149			GTI (Canadian market)		1991
Volkswagen	274			Jetta		1994–1996
Volkswagen	148			Passat 4-door Sedan		1992
Volkswagen	42			Scirocco		1986
Volkswagen	251			Transporter		1990
Volkswagen	284			Transporter		1988–1989
Volvo	43			262C		1981
Volvo	137			740 GL		1992
Volvo	87			740 Sedan		1988
Volvo	286			850 Turbo		1995–1998
Volvo	95			940 GL		1993
Volvo	137			940 GL		1992
Volvo	132			945 GL		1994
Volvo	176			960 Sedan & Wagon		1994
Volvo	434			C70		2000
Volvo	335			S70		1998–2000
Yamaha (MC)	113			FJ1200 (4 CR)		1991
Yamaha (MC)			23	FJR 1300		2002
Yamaha (MC)	360			R1		2000
Yamaha (MC)	171			RD–350		1983
Yamaha (MC)	301			Virago		1990–1998

Issued on: September 15, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. 06–8260 Filed 9–25–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 051128312–6192–02; I.D. 111605A]

RIN 0648–AS15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 13

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 13 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 13), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes a 10-year moratorium on issuance of Federal Gulf shrimp vessel permits; requires owners of vessels fishing for or possessing royal red shrimp from the Gulf of Mexico exclusive economic zone (EEZ) to have a royal red shrimp endorsement; requires owners or operators of all federally permitted Gulf shrimp vessels to report information on landings and vessel and gear characteristics; and requires vessels selected by NMFS to carry observers and/or install an electronic logbook provided by NMFS. In addition, Amendment 13 establishes biological reference points for penaeid shrimp and status determination criteria for royal red shrimp. The intended effects of this final rule are to provide essential fisheries data, including bycatch data, needed to improve management of the fishery and to control access to the fishery. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

DATES: This final rule is effective October 26, 2006.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *Steve.Branstetter@noaa.gov*.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–551–5796; fax: 727–824–5308; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The shrimp fishery in the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On November 23, 2005, NMFS published a notice of availability of

Amendment 13 and requested public comment (70 FR 70780). On April 5, 2006, NMFS published the proposed rule to implement Amendment 13 and requested public comment on the proposed rule (71 FR 17062). NMFS approved Amendment 13 on February 21, 2006. The rationale for the measures in Amendment 13 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

Following is a summary of the comments NMFS received on Amendment 13 and the proposed rule and the respective NMFS' responses.

Comment 1: Penaeid shrimp stocks are not overfished or undergoing overfishing, thus, there is no biological reason for a moratorium on the issuance of new vessel permits in the Gulf penaeid shrimp fishery. The only rationale for such action is based on economics, in violation of national standard 5.

Response: NMFS disagrees there is no biological reason to establish a moratorium in the Gulf shrimp fishery. Although shrimp stocks are not overfished or undergoing overfishing, shrimp effort directly impacts bycatch species, such as the overfished red snapper stock. The intent of the moratorium is to cap the fishery at its recent level of participants and reduce the possibility of future entry into the fishery should the currently poor economic situation change. Capping participation in the fishery reduces the potential for future increases in red snapper bycatch and improves the probability of rebuilding this overfished stock.

Comment 2: The Council violated the National Environmental Policy Act and the Administrative Procedures Act by taking final action on an incomplete document. As requested by the Council, NMFS presented new information to the Council as a hand-out at the meeting. The Council members had little time to review the new information before taking final action on the amendment. The completed analyses were not incorporated into the document when the Council voted to submit the amendment to the Secretary of Commerce.

Response: At its March 2005 meeting, the Council added new alternatives to the document to consider a more recent control date for the fishery. One possible date was May 2, 2005. Analyses of the impacts of this potential control date could not be entirely completed prior to the Council's review of the document during its May 11–12, 2005, meeting. NMFS' preliminary results presented to the Council at the May 2005 meeting did provide comparative information among the various alternatives, and the results did not change with subsequent post-meeting completion of the analytical report. Therefore, the information before the Council at its May 2005 meeting was accurate, and provided the Council with a sound basis for making an informed decision. The verbatim minutes of the May 2005 Council meeting illustrate the extensive and informed discussions among Council members regarding the comparative impacts and benefits attributable to the various control date alternatives.

Comment 3: The Council considered more current control date alternatives based on public input at the March 2005 meeting from Asian American shrimp fishermen who were not aware permits had been required since December 5, 2002. By adding the new alternatives for a control date, including the May 2, 2005, date, the Council led the public to believe a change to a May 2, 2005, control date was likely. In previous actions to establish permit moratoria in the reef fish fishery, the Council revised control dates to more current dates to better ensure inclusion of active participants. Had the Council chosen the May 2, 2005, control date, an additional 285 vessels would have qualified for a moratorium permit. Maintaining the December 6, 2003, control date specifically affects small isolated fishing communities in violation of national standard 8.

Response: Between December 5, 2002, and May 2, 2005, 2,951 vessels had been issued Federal shrimp permits. Of those, 285 would not meet the December 6, 2003, control date; therefore, the number of permitted vessels under the moratorium would be 2,666. Of the 285 ineligible vessels, NMFS determined 126 were not active in the fishery during 2002 (the last year of data available during the time the Council deliberated on this issue), and may no longer be in the fishery. In addition, 87 of the remaining 159 active vessels only operated in state waters. Therefore, NMFS estimated 72 vessels active in the EEZ fishery would be excluded under the moratorium. Of these vessels, 45 are large and 27 are small, and NMFS estimated most of the impacts would be imposed on the 45 large vessels; the small vessels were more likely to continue fishing in state waters. Nevertheless, vessels can continue to fish in the EEZ by obtaining a moratorium permit through transfer. Given the number of inactive permits identified in the analysis, NMFS believes many latent permits currently exist. Although at the present time it is not possible to assess the impacts of the very active 2005 hurricane season on the shrimp fleet, many vessels were damaged or stranded on land. These vessels may or may not become active in the fishery again. It is unknown how many were already inactive. Nevertheless, under the moratorium, owners of vessels permitted prior to the December 6, 2003, control date will be eligible for a moratorium permit. Therefore, there is expected to be a surplus of moratorium permits available for those owners of vessels who did not qualify but wish to continue participating in the fishery. Thus, NMFS disagrees that the moratorium is in violation of national standard 8. The moratorium is intended to reduce speculation in the fishery, cap capacity, and provide for the sustained participation of dependent fishing communities. With the availability of moratorium permits through transfer from inactive vessels, the moratorium should not prohibit continued participation by those wishing to do so.

Comment 4: There has been a decline in the number of participating shrimp vessels for the past 3 years due to economic conditions in the fishery. NMFS estimates this trend is expected to continue through 2012. Many permitted vessels are not currently active in the fishery because they cannot do so profitably. Consequently, there is no justification for a moratorium in the foreseeable future.

Response: Although the number of vessels has declined, until the last 2 or 3 years, effort had remained high because of increased efficiency of the vessels in the fishery, including new and larger vessels that have replaced older smaller vessels. Even so, based on the number of permits issued in the fishery, NMFS estimates there is still excess capacity in the fishery, and fewer vessels could harvest the available crop in a more profitable manner. As noted in the previous responses, the intent of the moratorium is to cap the current participation and to prevent future expansion of the fishery should economic conditions improve.

Comment 5: There was insufficient notice to the industry in regard to the permit requirement, the subsequent control date, and the establishment of a moratorium.

Response: Until the shrimp vessel permit system was implemented, NMFS did not have a specific mechanism to contact shrimp vessel owners who fished in the EEZ. However, NMFS made numerous efforts to communicate information regarding the shrimp vessel permit requirements to the industry. In

late 2002, NMFS distributed Gulf shrimp vessel permit applications to various fishermen's associations and unions, including Asian-American groups, throughout the Gulf of Mexico and South Atlantic. Outreach efforts continued through 2003 to these various communities regarding permit requirements. NMFS additionally notified the public of the final rule establishing a requirement for a shrimp vessel permit by publishing the final rule in the **Federal Register** and distributing news bulletins of this new requirement throughout the southeast region. A news bulletin was mailed in August 2002 to all existing commercial permit holders, all state agencies, enforcement groups, other Federal agencies, Sea Grant, the Gulf and Atlantic state commissions, non-governmental organizations, and the media. Another news bulletin was issued in September 2002 announcing the December 5, 2002, effective date of the permit requirement. This bulletin was distributed to all Federal, state and local government groups within NMFS' mail lists, commercial fishing associations, fishing clubs, recreational fishing associations, marinas, fishing centers, and tackle manufacturers. NMFS additionally acquired a list of all Gulf states shrimp license holders from the Gulf States Marine Fisheries Commission, and mailed a bulletin announcing the shrimp vessel permit requirement to each person within that database. In addition to NMFS' efforts during the fall of 2002, the Council distributed a news bulletin to its constituent mail list as well.

When the Council voted to establish the December 6, 2003, control date, NMFS notified the public of this action by publishing a notice in the **Federal Register** in April 2003, and distributed a news bulletin to Federal, state, and local government agencies; commercial, recreational, and non-government organizations and individuals; the media; and to the existing Federal shrimp vessel permit holders. In August 2003, NMFS issued another news bulletin to the public as a reminder to obtain a commercial shrimp vessel permit before the control date. This bulletin was distributed to the following constituent lists: all governments; commercial, recreational, and non-governmental organizations and individuals; rock shrimp permit vessel owners and dealers; and all Gulf shrimp permit vessel owners. The Council distributed a news bulletin to its constituent mail list as well.

The Council added alternatives to establish the shrimp vessel permit moratorium to Amendment 13 at its May 2004 meeting. This action was announced in its June 2004 news bulletin. Public hearings were held on Amendment 13 throughout the Gulf of Mexico in February 2005. The dates and locations of these public hearings were published in the **Federal Register** as well as in the Council's news bulletin. The Council heard public testimony at its March 2005 meeting.

When the Council voted at its March 2005 meeting to add an alternative to Amendment 13 to consider a new 2005 control date, NMFS again sent a news bulletin to the public reminding them of the permit requirement. In addition to the normal distribution, including all shrimp vessel permit holders, this bulletin was sent to a specially created list of more than 600 known shrimp dealers in the Gulf of Mexico.

Comment 6: If a qualified vessel owned by a corporation is sold, and the corporation is then dissolved, but the officers or individual(s) behind that corporation bought a new vessel and form a new corporation, is the new corporation eligible for a moratorium permit?

Response: Under the moratorium, a person who lost ownership or use of a qualified vessel after the control date, but who obtained and permitted a replacement vessel prior to the publication of this final rule would be eligible for a moratorium permit if they can successfully demonstrate continuity of ownership. NMFS' permit records are the sole basis for determining eligibility based on permit history.

Comment 7: A person who owns a qualified vessel and is issued a moratorium permit will be limited in his/her ability to sell that vessel and upgrade to a newer vessel. Shrimp vessels are rather specialized, with limited other uses. The owner would need to retain the moratorium permit for any new vessel he/she wishes to purchase. Without transferring the shrimp vessel permit with the sale of the original vessel, the value of the original vessel will be less on the open market, if a potential buyer wants to use the vessel in the Gulf of Mexico shrimp fishery. This lower value would restrict the funds available to the owner to purchase or make a down payment on a newer, or larger, or more well-equipped vessel. This could lead to an obsolescence of the fleet.

Response: As noted in the response to Comment #3, NMFS believes there will be a surplus of moratorium permits available for transfer. An owner in such a situation as proposed by the comment has the opportunity to acquire an additional moratorium permit which will allow both his original and replacement vessel to be permitted to continue operations in the shrimp fishery. In addition, anecdotal evidence indicates many of the vessels being sold, where a different vessel is being purchased as a replacement, are being sold to interests outside the Gulf of Mexico shrimp fishery.

Comment 8: There needs to be a mechanism to allow new entrants into the fishery if the number of moratorium permits issued is not sufficient to allow the fishery to harvest at maximum sustainable yield.

Response: Should only a limited number of moratorium permits be issued, the Council could remove the moratorium in a future amendment to the FMP. However, NMFS estimates that 2,666 shrimp vessels qualify for a moratorium permit, and this number may represent a fleet size that is still larger than the number of vessels required to harvest the available annual production of shrimp in the Gulf of Mexico. NMFS and the Council recognized that numerous vessels are not currently active in the fishery due to economic conditions, and several of these vessels may have left the fishery. In addition, a portion of the shrimp fleet was damaged and perhaps lost during the hurricanes of 2005. However, the inactive vessels would still qualify for a moratorium permit, and these permits could be transferred to a new vessel and owner should someone wish to enter the fishery.

Royal Red Shrimp Permit Endorsement

Comment 9: There is an insignificant number of vessels harvesting royal red shrimp in the Gulf of Mexico. There is no need to impose an additional cost on these vessels by requiring an endorsement to the commercial shrimp vessel permit to harvest royal red shrimp.

Response: NMFS recognizes there are only 10–20 vessels participating in this fishery. However, there is limited information in regard to the catch, effort, and costs associated with this specialized fishery. The requirement for a royal red shrimp endorsement to the shrimp vessel permit will specifically identify the universe of active or potential royal red shrimp fishermen and vessels, facilitating data collection efforts applicable to this fishery.

Reporting Requirements

Comment 10: The requirement to place electronic logbooks (ELBs) on a sample of shrimp vessels will be too big a burden on the industry and small business owners, in general. There are concerns about the reliability of the equipment under shrimping conditions,

and hired captains may not be able to maintain the logbooks in a manner to provide accurate data on bycatch. Observers would be less of a burden for small businesses and would provide unbiased data.

Response: ELBs are used as a measure of effort, not bycatch. Observers will be placed on a second random sample of shrimp vessels to document both effort and bycatch. There is no burden to the industry, or to the vessel crew, in having an ELB onboard. The ELB is designed to use Global Positioning System (GPS) information to automatically track the speed of the vessel. A pilot program using ELBs started in 1999, with increasing coverage each year. The reliability of the units, and the data product retrieved has provided substantial new information regarding the effort of the offshore shrimp fishery. The basis of the ELB program is to monitor vessel activity/movement via the GPS. Subsequent analyses of the data assume three things: (1) if the vessel is not moving, it is not fishing; (2) if the vessel is moving slowly, it is trawling; and (3) if the vessel is moving at a high rate of speed, it is in transit. There is no burden or involvement by the vessel crew in maintaining the electronic logbook onboard. The unit would be installed by an industry partner working cooperatively with NMFS, and at the end of a trip or other time frame, would be removed by the industry partner. The cost of the electronic logbooks is to be borne by NMFS, thus there is no economic cost to the industry or small business owner.

Comment 11: The various data reporting requirements (ELBs, observers, gear characterization, landings) should be voluntary, and not a condition for renewal of a vessel permit.

Response: The Magnuson-Stevens Act requires the Council to establish a standardized bycatch reporting methodology. To ensure standardization, any such methodology must incorporate a random sampling procedure that will accurately capture the various components of the fishery. Depending on the type of information needed (i.e., biological, economic, or social), a particular analysis may need to be stratified in a specific manner. For example, a study could be based on gear types, areas fished, geographic location of the participants, or size of the vessels. The existing voluntary observer program in the Gulf shrimp fishery illustrates the potential for non-representative data. Although this program has produced a large robust data base, it repeatedly used a small sample of vessels, primarily with home ports located in only two of the five Gulf states. These vessels may not represent a random sample of the fleet. Therefore, to ensure the ability to create a random sample of the existing population of shrimp fishermen and shrimp vessels, detailed information is needed for the entire universe of participants. Providing the reporting forms as part of the permit application provides an efficient mechanism to distribute the reporting forms to the fishermen and for them to return the forms when they submit their application to renew their federal vessel permit.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 13 is necessary for the conservation and management of the Gulf shrimp fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an FRFA for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A summary of the analyses follows.

This final rule will: (1) require participants in the royal red shrimp fishery to obtain a royal red shrimp endorsement to the existing commercial shrimp vessel permit; (2) define biological reference points and status determination criteria definitions for the royal red and penaeid shrimp stocks; (3) establish a standardized bycatch reporting methodology by requiring a sample of permitted vessels to carry electronic logbooks (ELBs) and/or observers upon request; (4) require all permitted vessels to submit a vessel and gear characterization form on an annual basis; (5) establish a moratorium on the issuance of new Federal Gulf shrimp vessel permits based on the December 6, 2003 control date; and (6) require all permitted vessels to report and certify their landings.

The purpose of the final rule is to establish status determination criteria for penaeid (brown, white, and pink) and royal red shrimp stocks; enhance the collection of information; improve estimates of effort and bycatch in the fishery; and promote economic stability by reducing permit speculation and increasing vessel owners' flexibility to enter and exit the Gulf shrimp fishery.

Eleven comments were made by the public in response to the proposed rule. No changes were made in the final rule as a result of these comments. Of the eleven comments, four raised issues regarding the economic impacts of the proposed actions. First, one comment indicated that the requirement to place ELBs on a sample of shrimp vessels will place an excessive burden on the industry and small business owners. Since the cost of the ELBs is to be borne by NMFS, there is no direct economic cost to the industry or small business owners. The only burden to the industry from this requirement is the time necessary to coordinate the installation and removal of the unit by the agency or its contractor. Second, one comment indicated that, since there is an insignificant number of vessels harvesting royal red shrimp in the Gulf of Mexico, there is no need to impose an additional cost on these vessels by requiring an endorsement to the commercial shrimp vessel permit in order to harvest royal red shrimp. The endorsement is necessary to identify the universe of active or potential royal red shrimp fishermen and vessels, and the additional cost of $20 to obtain the endorsement is not expected to significantly reduce profit for these vessels.

Finally, two comments raised concerns with the economic impacts of the permit moratorium. The first comment stated that these impacts would specifically affect small isolated fishing communities. NMFS identified approximately 72 active vessels in the Gulf shrimp EEZ fishery that will not qualify for moratorium permits and acknowledges that certain small, isolated fishing communities could be impacted by the permit moratorium, particularly if these non-qualifying vessels are forced to cease operations in the EEZ. However, it is estimated that 27 of these vessels are small and could shift activity from the EEZ into state waters, thereby avoiding any impacts to the communities that serve these particular vessels. Furthermore, NMFS estimates that, of the qualifying 2,666 vessels, 438 were not active in the Gulf shrimp fishery in 2002. The moratorium permits issued to these inactive, qualifying vessels should be available for purchase by non-qualifying vessel owners. The expected purchase price was estimated to be approximately $5,000. However, due to the impacts of hurricanes Rita and Katrina, the number of qualifying inactive vessels is expected to be even higher, thereby increasing the number of moratorium permits available for purchase by non-qualifying vessels, which would in turn reduce the expected purchase price and

further reduce any impacts on small, isolated communities.

The second comment asserted that the moratorium would reduce the value of a qualifying vessel, since a portion of the value would shift to the permit, which would reduce the financial capital available to the owner of the qualifying vessel who wished to sell their original vessel to acquire a newer, larger, or more well-equipped vessel. NMFS agrees that the comment is accurate if the buyer intends to use the vessel in the Federal Gulf shrimp fishery and does not already possess a moratorium permit to place on the vessel. The seller does not have to transfer the permit with the vessel; therefore, the buyer would have to purchase a moratorium permit from another seller. However, if the buyer of the vessel does not intend to use it in the Federal Gulf shrimp fishery, the seller could retain the permit and place it on their new vessel, and the sales price of the original vessel would be reflective of its value in the fishery where it is expected to be used. Considerable anecdotal information suggests that many repossessed Gulf shrimp vessels are being bought for use in other non-shrimp fisheries in the U.S. and abroad.

No duplicative, overlapping or conflicting Federal rules have been identified.

It is estimated that 2,951 small entities will be affected by the final rule. This estimate represents the number of vessels that obtained a Gulf shrimp permit with an effective date on or before May 2, 2005. Certain actions would apply to all permitted vessels, while others would only apply to a subset of those permitted vessels. The actions specific to the royal red shrimp fishery would affect 15 small entities at most, though all but one of these entities is included in the larger group of 2,951.

The average annual gross revenue per permitted vessel is estimated to be $100,477, with a range of $0 to $473,564. This wide range illustrates a high degree of heterogeneity between permitted vessels with respect to their gross revenues. Further, gross revenue earned from the various fisheries these entities operate in differs considerably between vessels. On average, permitted vessels rely on the Gulf food shrimp fishery for nearly 79 percent of their gross revenues. Therefore, most permitted vessels have a relatively high degree of dependency on the Gulf food shrimp fishery. However, some permitted vessels are inactive or ''latent'' and appear to have no reliance on the Gulf food shrimp fishery. ''Small'' vessels (vessels less than 60 ft (18.3 m) in length) generate lower gross revenues on average ($30,568) relative to ''large'' vessels (vessels of 60 ft (18.3 m) or more in length) ($132,890). The range of gross revenues for large vessels is $0 and $473,564 while that of small vessels is $0 and $246,391. All royal red shrimp vessels fall into the ''large'' vessel category.

The fleet of permitted vessels is much more homogeneous with respect to its physical characteristics, though some differences do exist. On average, small vessels are smaller in regards to almost all of their physical attributes (e.g., they use smaller crews, fewer and smaller nets, have less engine horsepower and fuel capacity, etc.). Small vessels are also older on average. Large vessels also tend to be steel-hulled. Conversely, fiberglass hulls are most prominent among small vessels, though steel and wood hulls are also common. Nearly two-thirds of the large vessels have freezing capabilities while few small vessels have such equipment. Small vessels rely on ice for refrigeration and storage, though more than one-third of large vessels also rely on ice. Some vessels are so small that they rely on live wells for storage.

An important difference between large and small vessels is with respect to their dependency on the food shrimp fishery. The percentage of gross revenues from food shrimp landings is nearly 87 percent for large vessels, but only slightly more than 61 percent for small vessels. Thus, on average, large vessels are more dependent than their smaller counterparts on the food shrimp fishery. However, dependency on food shrimp is much more variable within the small vessel sector than the large vessel sector. That is, many small vessels are quite dependent on food shrimp landings, while others show little if any dependency.

When examining the distribution of gross revenues across vessels, of the 2,951 permitted vessels, 554 vessels did not have any verifiable Gulf food shrimp landings in 2002. Large and small vessels comprised approximately 75 percent and 25 percent of the active group, respectively. Small vessels represented a majority (53 percent) of the inactive group. If inactive or ''latent'' vessels are removed from consideration, for the permitted group as a whole, dependency on Gulf shrimp revenues increases to more than 97 percent. For large vessels, dependency on Gulf shrimp revenues increased to nearly 98 percent. Consistent with the statistics above, when the inactive vessels are removed from consideration, the change in dependency on Gulf shrimp revenues is most dramatic for the small vessels, with nearly 94 percent of their gross revenues coming from Gulf shrimp landings.

According to the most recent projections, on average, both small and large vessels are experiencing significant economic losses, ranging from a -27 percent rate of return in the small vessel sector to a -36 percent rate of return in the large vessel sector, or -33 percent on average for the fishery as a whole. Therefore, almost any but the most minor additional financial burden would be expected to generate a significant adverse impact on directly affected vessels and potentially hasten additional exit from the fishery.

The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to $3.5 million per year. There are insufficient data regarding potential ownership affiliation between vessels to identify whether an individual entity controlled sufficient numbers of vessels to achieve large entity status. Therefore, it is assumed that each vessel represents a separate business entity and, based on the revenue profiles provided above, all entities in the Gulf of Mexico shrimp fishery are assumed to be small entities. Since all permitted vessels would be directly affected by one or more of the actions in this final rule and all vessels are considered to be small entities, the final rule will affect a substantial number of small entities. However, as explained below, the vast majority of these vessels will not be impacted under the most significant actions.

The determination of significant economic impact can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: will the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Even though there is considerable diversity among the permitted vessels with respect to physical and operational characteristics, all entities are considered to be small entities and so disproportionality of impacts between large and small entities is not an issue.

The profitability question is: will the regulations significantly reduce profit for a substantial number of small entities? According to the most recent projections, on average, both small and large vessels are experiencing significant economic losses, ranging anywhere from a -27 percent rate of return in the small vessel sector to a -36 percent rate of return in the large vessel

sector, or -33 percent on average for the fishery as a whole. Therefore, almost any but the most minor additional financial burden would be expected to significantly reduce profit since profits are negative, on average, throughout the fishery.

The royal red shrimp endorsement requirement would result in an additional cost of $20 to the vessels operating in this fishery. This is a minimal cost and would not significantly reduce profit for the vessels operating in this fishery.

The actions which define biological reference points and establish status determination criteria definitions for the royal red and penaeid shrimp stocks, require a sample of permitted vessels to carry ELBs and/or observers upon request, require all permitted vessels to submit a vessel and gear characterization form on an annual basis, and require all permitted vessels to report and certify their landings would not affect vessel profitability since they impose no direct financial costs. NMFS expects to cover all direct financial costs associated with the ELB and observer programs.

However, it should be noted that the reporting requirements will likely impose a minimal opportunity cost by imposing time burdens. Specifically, the requirement for all permitted vessel owners to submit a vessel and gear characterization form will generate a time burden of approximately 30 minutes per permitted vessel. According to the Bureau of Labor Statistics, the average wage of first line supervisors/managers in the fishing, forestry, and farming industries was $18.14 per hour as of May 2003, which is the most currently available information. Therefore, the form would create an annual opportunity cost of approximately $9 per vessel. Additionally, all permitted vessels will be required to submit their landings information to NMFS. This information could be included on either the vessel and gear characterization form or the existing permit application form without any significant increase in the estimated time burdens associated with either form.

The single action that could impose significant costs and thereby significantly reduce the profitability of the affected small entities is the permit moratorium. The final rule limits participation to those vessels meeting the December 6, 2003 control date. Of the 2,951 permitted vessels, 285 vessels did not obtain their permits by the control date and, therefore, will not be issued a moratorium permit. However, according to the best available data, of those 285 vessels, 126 were not active in the Gulf shrimp fishery (EEZ or state waters) and an additional 87 vessels were determined to operate exclusively in state waters. It is therefore concluded that these 213 vessels will not experience direct and adverse financial impacts as a result of losing their permits. The remaining 72 vessels, of which 45 are large and 27 are small, were active in the EEZ and therefore would experience direct and adverse financial impacts.

Assuming these 72 vessels would only lose their shrimp landings and gross revenues from the EEZ (i.e. they continue their shrimping operations in state waters), they would face revenue losses ranging between 0.8 percent and 100 percent of their gross revenues, with an average loss of 49.3 percent per vessel. The large vessels will face a larger revenue loss on average (54.3 percent) than the small vessels (29.6 percent). However, if the small vessels shift their effort entirely into state waters and the large vessels exit the Gulf shrimp fishery instead, then only the 45 large vessels would experience a loss in landings and gross revenues, though that loss would be 100 percent of their gross revenues. On the other hand, since the permits would be fully transferrable under the final rule, these 72 vessels may be able and willing to purchase a permit from a permitted vessel in order to continue current operations. Given an estimated permit purchase price of $5,000, this cost would represent 5.7 percent of these vessels' average gross revenues. Thus, in the current, adverse economic climate in the Gulf shrimp fishery, regardless of which behavioral assumptions are made, profits would be significantly reduced for the 45 to 72 directly affected vessels that would not qualify for a moratorium permit under the final rule.

Two alternatives, including the no action alternative, were considered to the requirement for a royal red shrimp endorsement to the Gulf shrimp permit. One alternative would have created a separate royal red shrimp permit. Although the direct cost of a separate royal red shrimp permit would be the same as for a royal red shrimp endorsement to the Gulf shrimp permit, at least for participants that also possess a Gulf shrimp permit ($20), this alternative would have eliminated the relationship between participation in the royal red shrimp fishery and possession of a Gulf shrimp permit. As a result, vessels that did not qualify under the permit moratorium action and vessels from other fisheries would be able to obtain royal red shrimp permits, though at a higher cost of $50 per permit, and thereby potentially introduce greater instability in the royal red shrimp fishery. Stable participation is particularly important in the royal red shrimp fishery since it is managed under a hard quota of 392,000 lb (177,808 kg). The no action alternative would not have met the Council's objective of creating a readily available means to identify participants and operations in the royal red shrimp fishery.

A total of nine alternatives, including three no action alternatives, were considered for the establishment of a standardized bycatch reporting methodology portion of the final rule. In general, the alternatives not included in the final rule would have either not met required mandates, imposed greater reporting and record keeping burdens, or not met the Council's objectives.

Two alternatives to the final rule would have required paper logbooks. Paper logbooks can impose significant impacts on small entities. Assuming a time burden of 10 minutes per daily form, and an average of 182 days at sea per vessel per year, the average annual time burden per vessel would be approximately 30.33 hours. From an economic perspective, even though there is no direct cash expense from a paper logbook program, there is an opportunity cost associated with any time burden created by additional reporting requirements. As previously noted, opportunity cost is approximated using the average wage or salary of the affected persons, who in this case would be the vessel owners and captains as they would be responsible for submitting the logbook forms. Using the average wage of first line supervisors/managers in the fishing, forestry, and farming industries, which was $18.14 as of May 2003 according to the BLS, the average annual opportunity cost per vessel of a paper logbook reporting requirement would be approximately $550.19 ($18.14/hour * 30.33 hours). If only a sample of vessels were selected to report, which was also considered but not proposed, then the opportunity cost would be proportionally less and dependent on the chosen sampling rate for the fishery as a whole, but still $550.19 annually per vessel.

An alternative to the ELB requirement would have required all permitted vessels, rather than a statistically valid sample of vessels, to use ELBs. Requiring all vessels to use ELBs would have increased the costs and burden of the program relative to the final rule. Given that the final rule does not require paper logbooks, also selecting the no action alternative for ELBs would have resulted in the Council's objective

of improving estimates of effort and bycatch in the Gulf shrimp fishery to not be met.

An alternative to the observer program would have utilized the existing voluntary observer program. However, such a system does not provide for authority to ensure adequate and random representation of the fleet. Thus, this alternative would not meet the Council's objective of improving estimates of effort and bycatch in the Gulf shrimp fishery. Given that Section 303(a)(11) of the Magnuson-Stevens Act requires the establishment of a standardized bycatch reporting methodology, and bycatch data can only be practically collected by observers in this fishery, the no action alternative would cause the Council to not be in compliance and, thus, was not chosen.

Two alternatives, including the no action alternative, were considered to the vessel and gear characterization form requirement. The no action alternative and the alternative to require only a sample of permitted vessels to submit the vessel/gear characterization form would have reduced the minimal opportunity cost associated with the form. However, since ELBs do not collect gear information and the ELB and observer programs require certain census level information to ensure that statistically valid samples are selected, both alternatives would not have met the Council's objective of improving estimates of effort and bycatch in the Gulf shrimp fishery.

One alternative was considered to the requirement for all vessels to report and certify their landings to NMFS. This alternative would have continued NMFS' current practice of only having selected vessels, as opposed to all vessels, individually report their landings information. Maintaining this current practice would severely limit the Council's ability to determine whether or not permitted vessels are active in the fishery and the extent of that participation. In turn, this lack of information would significantly hamper the Council's ability to potentially develop alternatives for long-term effort management in the fishery in the future, which is inconsistent with the Council's objectives.

Including the no action alternative, three alternatives were considered to the permit moratorium. The no action alternative would not achieve the Council's objective of promoting economic stability by reducing permit speculation and increasing vessel owners' flexibility to enter and exit the Gulf shrimp fishery.

Another alternative would have used a qualification date of May 18, 2004 rather than December 6, 2003 control date. Under this alternative, the number of non-qualifying vessels would be 161, which is 124 fewer vessels than under the final rule. Of those 161 vessels, 68 vessels were not active in the Gulf shrimp fishery and 46 operated in state waters only according to the best available data. Thus, it is concluded that these 114 vessels' profits would not have been affected under this alternative. Assuming that the remaining 47 vessels would lose all their landings and gross revenues from the EEZ, losses per vessel would range between 0.9 percent and 100 percent of their gross revenues, with an average loss in gross revenues of 48.4 percent. Conversely, if it is assumed that small vessels shift their operations into state waters and large vessels exit the fishery, then only the 26 large vessels would be directly impacted. For these vessels, they would lose 100 percent of their gross revenues. However, since the permits would be fully transferrable under this alternative, the 47 vessels that have been active in the EEZ may be able and willing to purchase a permit from a qualifying vessel in order to continue current operations. Given an estimated permit purchase price of $5,000, this cost would represent 5.2 percent of these vessels' average gross revenues. Although this alternative would generate somewhat less adverse economic impacts relative to the action, it would also allow for a higher number of latent or speculative permit holders, which is contrary to the Council's objectives.

Another alternative would have allowed all vessels that possessed a valid permit within 1 year of the publication date of the final rule implementing these actions to qualify for a moratorium permit. Since the date of the final rule's publication is presently unknown, it was assumed that all vessels that possessed a permit on at least one day during the current calendar year would qualify under this alternative. Thus, using this assumption, 347 vessels would be denied a moratorium permit under this alternative according to currently available information. Of those 347 vessels, 88 were not active in the Gulf shrimp fishery and 72 only operated in state waters. Thus, it is concluded that these 160 vessels' profits would not have been affected under this alternative. The other 187 vessels were active in the EEZ and, thus, would have been directly impacted. Specifically, assuming these vessels would lose all their landings and gross revenues from the EEZ, the percentage losses in gross revenues would range from 0.2 percent to 100 percent, with an average loss of 71.8 percent. If it is assumed that small vessels shift their operations into state waters and large vessels exit the fishery, then only the 168 large vessels would be directly impacted. These 168 large vessels would lose 100 percent of their gross revenues. However, since the permits would be fully transferrable under this alternative, the 187 vessels active in the EEZ may be able and willing to purchase a permit from a qualifying vessel in order to continue current operations. Given an estimated permit purchase price of $5,000, this cost would represent 4.3 percent of these vessels' average gross revenues. However, if all the owners of these 187 vessels were to renew their permits prior to the publication of the final rule, then none of these vessels would be impacted under this alternative. Although this alternative could potentially generate less adverse economic impacts than the final rule, based on currently available information, it is more likely that it would generate greater adverse economic impacts. Furthermore, since this alternative would continue to allow individuals to apply for and receive valid permits until the publication of the final rule, it could also lead to a considerably higher number of latent or speculative permit holders, which is contrary to the Council's objectives.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the Gulf shrimp fishery.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. Following are the OMB control numbers and the estimated average public reporting burdens, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information: (1) Application for a royal red shrimp endorsement—0648–0205,

20 minutes; (2) electronic logbook installation and data downloads—0648–0543, 31 minutes; (3) notification for observer placement prior to a trip—0648–0205, 4 minutes; (4) vessel and gear characterization form—0648–0542, 20 minutes; (5) submission of landings data—0648–0205, 5 minutes; and (6) basis for Gulf shrimp moratorium permit—0648–0205, 1 minute. Send comments regarding these burden estimates or any other aspect of the collection-of-information requirements, including suggestions for reducing the burden, to NMFS and by e-mail to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 20, 2006.

Samuel D. Rauch III

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.4, paragraphs (a)(2)(xi) and (g)(1) are revised, and paragraph (s) is added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(xi) *Gulf shrimp fisheries*—(A) *Gulf shrimp permit.* For a person aboard a vessel to fish for shrimp in the Gulf EEZ or possess shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp must have been issued to the vessel and must be on board. See paragraph (s) of this section regarding a moratorium on commercial vessel permits for Gulf shrimp and the associated provisions. See the following paragraph, (a)(2)(xi)(B) of this section, regarding an additional endorsement requirement related to royal red shrimp.

(B) *Gulf royal red shrimp endorsement.* Effective March 26, 2007, for a person aboard a vessel to fish for royal red shrimp in the Gulf EEZ or possess royal red shrimp in or from the Gulf EEZ, a commercial vessel permit for Gulf shrimp with a Gulf royal red shrimp endorsement must be issued to the vessel and must be on board.

* * * * *

(g) * * *

(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers. In those cases where a permit, license, or endorsement is transferable, the seller must sign the back of the permit, license, or endorsement and have the signed transfer document notarized.

* * * * *

(s) *Moratorium on commercial vessel permits for Gulf shrimp.* The provisions of this paragraph (s) are applicable through October 26, 2016.

(1) *Date moratorium permits are required.* Beginning March 26, 2007, the only valid commercial vessel permits for Gulf shrimp are those issued under the moratorium criteria in this paragraph (s).

(2) *Initial eligibility for a moratorium permit.* Initial eligibility for a commercial vessel moratorium permit for Gulf shrimp is limited to a person who

(i) Owns a vessel that was issued a Federal commercial vessel permit for Gulf shrimp on or before December 6, 2003; or

(ii) On or before December 6, 2003, owned a vessel that was issued a Federal commercial vessel permit for Gulf shrimp and, prior to September 26, 2006, owns a vessel with a Federal commercial permit for Gulf shrimp that is equipped for offshore shrimp fishing, is at least 5 net tons (4.54 metric tons), is documented by the Coast Guard, and is the vessel for which the commercial vessel moratorium permit is being applied.

(3) *Application deadline and procedures.* An applicant who desires a commercial vessel moratorium permit for Gulf shrimp must submit an application to the RA postmarked or hand delivered not later than October 26, 2007. After that date, no applications for additional commercial vessel moratorium permits for Gulf shrimp will be accepted. Application forms are available from the RA. Failure to apply in a timely manner will preclude permit issuance even when the applicant otherwise meets the permit eligibility criteria.

(4) *Determination of eligibility.* NMFS' permit records are the sole basis for determining eligibility based on permit history. An applicant who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(5) *Incomplete applications.* If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's notification, the application will be considered abandoned.

(6) *Notification of ineligibility.* If the applicant does not meet the applicable eligibility requirements of paragraph (s)(2) of this section, the RA will notify the applicant, in writing, of such determination and the reasons for it.

(7) *Permit transferability.* Commercial vessel moratorium permits for Gulf shrimp are fully transferable, with or without the sale of the vessel. To request that the RA transfer a commercial vessel moratorium permit for Gulf shrimp, the owner of a vessel that is to receive the transferred permit must complete the transfer information on the reverse of the permit and return the permit and a completed application for transfer to the RA. Transfer

documents must be notarized as specified in paragraph (g)(1) of this section.

(8) *Renewal.* (i) Renewal of a commercial vessel moratorium permit for Gulf shrimp is contingent upon compliance with the recordkeeping and reporting requirements for Gulf shrimp specified in § 622.5(a)(1)(iii).

(ii) A commercial vessel moratorium permit for Gulf shrimp that is not renewed will be terminated and will not be reissued during the moratorium. A permit is considered to be not renewed when an application for renewal, as required, is not received by the RA within 1 year of the expiration date of the permit.

■ 3. In § 622.5, paragraph (a)(1)(iii) is revised to read as follows:

§ 622.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) * * *

(iii) *Gulf shrimp*—(A) *General reporting requirement.* The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(B) *Electronic logbook reporting.* The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued and who is selected by the SRD must participate in the NMFS-sponsored electronic logbook reporting program as directed by the SRD. In addition, such owner or operator must provide information regarding the size and number of shrimp trawls deployed and the type of BRD and turtle excluder device used, as directed by the SRD. Compliance with the reporting requirements of this paragraph (a)(1)(iii)(B) is required for permit renewal.

(C) *Vessel and Gear Characterization Form.* All owners or operators of vessels applying for or renewing a commercial vessel moratorium permit for Gulf shrimp must complete an annual Gulf Shrimp Vessel and Gear Characterization Form. The form will be provided by NMFS at the time of permit application and renewal. Compliance with this reporting requirement is required for permit issuance and renewal.

(D) *Landings report.* The owner or operator of a vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must annually report the permitted vessel's total annual landings of shrimp and value, by species, on a form provided by the SRD. Compliance with this reporting requirement is required for permit renewal.

* * * * *

■ 4. In § 622.8, paragraph (a)(5) is added to read as follows:

§ 622.8 At-sea observer coverage.

(a) * * *

(5) *Gulf shrimp.* A vessel for which a Federal commercial vessel permit for Gulf shrimp has been issued must carry a NMFS-approved observer, if the vessel's trip is selected by the SRD for observer coverage. Vessel permit renewal is contingent upon compliance with this paragraph (a)(5).

* * * * *

[FR Doc. 06–8257 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060418103–6181–02 ; I.D. 091806D]

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Period 1 Quota Harvested

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

ACTION: Closure of spiny dogfish fishery.

SUMMARY: NMFS announces that the spiny dogfish commercial quota available to the coastal states from Maine through Florida for the semi-annual quota period, May 1, 2006 – October 31, 2006, has been harvested. Therefore, effective 0001 hours, September 25, 2006, federally permitted commercial vessels may not fish for, possess, transfer, or land spiny dogfish until November 1, 2006, when the Period 2 quota becomes available. Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing spiny dogfish in these states. This action is necessary to prevent the fishery from exceeding its Period 1 quota and to allow for effective management of this stock.

DATES: Quota Period 1 for the spiny dogfish fishery is closed effective at 0001 hr local time, September 25, 2006, through 2400 hr local time October 31, 2006. Effective September 25, 2006, federally permitted dealers are also advised that they may not purchase spiny dogfish from federally permitted spiny dogfish vessels.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, at (978) 281–9221, or *Don.Frei@Noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages specified in the fishery management plan. The commercial quota is distributed to the coastal states from Maine through Florida, as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2006 fishing year is 4 million lb (1.81 million kg) (71 FR 40436, July 17, 2006). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30). Vessel possession limits are intended to preclude directed fishing, and they are set at 600 lb (272 kg) for both quota Periods 1 and 2. Quota period 1 is allocated 2.3 million lb (1.05 million kg)), and quota Period 2 is allocated 1.7 million lb (763,849 kg) of the commercial quota. The total quota cannot be exceeded, so landings in excess of the amount allocated to quota Period 1 have the effect of reducing the quota available to the fishery during quota Period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data, and other available information, determines when the total commercial quota will be harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the Federal spiny dogfish commercial quota has been harvested and no Federal commercial quota is available for landing spiny dogfish for the remainder of that quota period.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the

Federal Register that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. Therefore, effective 0001 hr local time, September 25, 2006, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits are prohibited through October 31, 2006, 2400 hr local time. The 2006 Period 2 quota will be available for commercial spiny dogfish harvest on November 1, 2006. Effective September 25, 2006, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2006.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 06–8262 Filed 9–21–06; 3:24 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 186
Tuesday, September 26, 2006

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB96

Common Crop Insurance Regulations, Basic Provisions; and Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is reopening and extending the comment period for the proposed rule published in the **Federal Register** on Friday, July 14, 2006 (71 FR 40194–40252). The proposed rule contains certain provisions to combine and provide revenue protection and yield protection within one standard crop insurance policy, and to improve prevented planting and other provisions to better meet the needs of insured producers. During the comment period, FCIC received comments that due to the complexity of the proposed changes, sixty days was not adequate to properly address all the issues. FCIC agrees that additional time is appropriate to ensure that all interested persons have time to fully review the proposed rule and provide meaningful comments.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business October 26, 2006 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled ''Combination Basic and Crop Provisions'', by any of the following methods:

- *By mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.
- *E-mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information contact Louise Narber, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

On Friday, July 14, 2006, FCIC published a proposed rule in the **Federal Register**. The rule proposed changes to the Common Crop Insurance Regulations; Basic Provisions, Small Grains Crop Insurance Provisions, Cotton Crop Insurance Provisions, Coarse Grains Crop Insurance Provisions, Malting Barley Crop Insurance Provisions, Rice Crop Insurance Provisions, and Canola and Rapeseed Crop Insurance Provisions. The proposed rule contains certain provisions to combine and provide revenue protection and yield protection within one standard crop insurance policy, and to make other changes to existing policy provisions to better meet the needs of the insured.

The proposed rule public comment period of 60 days ended on September 12, 2006. Based on several requests received during the comment period, FCIC is reopening and extending the comment period until October 26, 2006. This action will allow interested persons additional time to prepare and submit comments regarding the proposed rule.

* * * * *

Signed in Washington, DC, on September 19, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 06–8216 Filed 9–25–06; 8:45 am]

BILLING CODE 3410–08–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245–AF39

Surety Bond Guarantee Program—Preferred Surety Bond Surety Qualification, Increased Guarantee for Veteran and Service-Disabled Veteran-Owned Business, Deadline for Payment of Guarantee Fees, Denial of Liability, and Technical Amendments

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: This proposal encompasses six objectives. It would give effect to the statutory reduction in the frequency of audits required of Preferred Surety Bond (PSB) Sureties. It would obligate SBA to guarantee 90 percent of the Loss incurred by a Prior Approval Surety on bonds issued on behalf of small businesses owned and controlled by veterans, including service-disabled veterans. It would impose a 45-day deadline on Sureties for the remission of surety fees to SBA in lieu of the present requirement of payment in the ordinary course of business, and would allow SBA to deny liability if payment is not timely made. It would allow PSB Sureties to charge premiums in accordance with applicable state ceilings, as presently permitted under the Prior Approval Program. It would delete the existing reference to the expiration of the PSB Program and, finally, it would allow Affiliates of a PSB Surety to participate in the Prior Approval Program.

DATES: Comments must be received on or before October 26, 2006.

ADDRESSES: You may submit comments, identified by RIN number 3245-AF39, by any of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments; (2) Fax: 202–205–7600; (3) Mail: Barbara Brannan, Special Assistant, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or (4) Hand Delivery/Courier to Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Frank Lalumiere, Associate

Administrator, Office of Surety Guarantees, (202) 205–6540 or *frank.lalumiere@sba.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Small Business Administration (SBA) can guarantee bonds for contracts up to $2 million, covering bid, performance and payment bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee gives sureties an incentive to provide bonding for small businesses and thereby strengthens their ability to obtain bonding and greater access to contracting opportunities. SBA's guarantee is an agreement between a surety and the SBA that provides that SBA will assume a predetermined percentage of loss in the event the contractor should breach the terms of the contract.

Several changes to the regulations governing SBA's Surety Bond Guarantee (SBG) Program are proposed in this rulemaking. The purpose of these amendments is to improve the operation of the SBG Program and to make it easier for sureties and small business concerns to participate.

Section 411(g)(3) of the Small Business Investment Act of 1958 (the Act) formerly required PSB Sureties to be audited every year. 15 U.S.C. 694b(g)(3). As amended by Public Law 108–447, Div. K, section 203, the Small Business Reauthorization and Manufacturing Assistance Act of 2004, the Act now requires audits to be made at least once every three years. The proposed rule would contain the regulations to this statutory change.

In relevant part, Section 4(b)(1) of the Small Business Act provides that SBA ''shall give special consideration to veterans of the Armed Forces of the United States and their survivors and dependents.'' 15 U.S.C. 633(b)(1). Accordingly, the proposed rule would encourage the issuance of bonds on behalf of small business concerns owned and controlled by veterans, and small business concerns owned and controlled by service-disabled veterans, by SBA's guaranty to pay 90 percent of a Prior Approval Program Surety's Loss, thus affording such concerns more opportunity to obtain contracts generally.

Section 411(h) of the Small Business Investment Act mandates the operation of the program ''on a prudent and economically justifiable basis'' and authorizes SBA to impose fees on both small business concerns and sureties, ''to be payable at such time'as may be determined by [SBA].'' In accordance with its statutory obligation, SBA proposes to establish a clearer deadline for a Prior Approval Surety's payment of the guarantee fees owed to SBA. Under the present regulation, such fees are payable in the ordinary course of the Prior Approval Surety's business. The proposed regulation, if adopted, would require the payment of such fees within 45 calendar days of SBA's approval of the Prior Approval Agreement, and the failure to make timely payment would allow SBA to deny liability under its guarantee. No changes are contemplated in the comparable regulations covering a PSB Surety's payment of guarantee fees, since such fees are forwarded with the PSB's monthly bordereau.

The proposed rule would change one of the standards by which SBA admits Sureties to the PSB Program. PSB Program Sureties are currently required to charge no more than the Surety Association of America's advisory premium rates in effect August 1, 1987. The proposed rule would allow PSB Program Sureties to charge no more than the premium rates permitted under applicable state law, as Prior Approval Sureties are now allowed to do.

Public Law 100–590 established the Preferred Surety Bond (PSB) program on a pilot basis in 1988, meaning that its continued existence depended upon affirmative Congressional action. The initial regulations for the program specified that the premium rates charged by PSB Sureties could not exceed the Surety Association of America's advisory premium rates in effect on August 1, 1987. The Surety Association of America (SAA) is the trade association to which most, if not all, the prospective PSB Sureties belonged, and the 1987 rates were the latest rates. SAA discontinued its rate setting function shortly after promulgating the 1987 rates, and participating surety companies have been obligated to use the 1987 SAA rates for the past eighteen years despite economic and market place changes.

Now that Public Law 108–447 has put the PSB program on a permanent legal basis, SBA considers it necessary to allow PSB Sureties to charge rates that reflect present economic conditions and thereby encourage those Sureties now in the PSB program to continue their participation, and to encourage others to participate. Under the Prior Approval Program, SBA's other surety bond program, surety companies are permitted to use rates approved by the individual States. This proposed change will put the Preferred and Prior Approval Programs on the same footing by relying on the individual State oversight bodies.

As previously mentioned, from its creation in 1988 until 2004, the PSB program was a pilot program, subject to automatic termination in the absence of affirmative Congressional action. Indeed, for several months in 2004 the PSB program ceased to exist. Now that the PSB program has been made permanent, the present regulation that speaks of the termination of the program will be removed and reserved.

Finally, this proposed rule would allow Affiliates, as defined in 13 CFR Part 121, of PSB Sureties to participate in the Prior Approval program, from which they are presently barred. The term ''Affiliate'' is defined at length in 13 CFR Part 121, but in the context of the present discussion it means a relationship in which one Surety owns or otherwise controls another Surety, or in which two or more Sureties are commonly owned by, or under common control with, a third party. A series of mergers and acquisitions in the surety industry in recent years has caused Sureties previously eligible to participate in the Prior Approval Program to become Affiliates of PSB Sureties and, under the present regulations, to lose their eligibility. To encourage and increase participation in the Prior Approval Program by otherwise qualified Sureties that are Affiliates of PSB Sureties, SBA proposes to abolish the present prohibition on their participation.

Section-by-Section Analysis:

In connection with its proposed amendment of § 115.31(a)(2), SBA proposes to amend § 115.10 by adding definitions of ''Service-Disabled Veteran'', ''Small Business Owned and Controlled by Service-Disabled Veterans'', ''Small Business Owned and Controlled by Veterans'', and ''Veteran''.

In connection with its proposed establishment of a clear deadline for payment of a Prior Approval Surety's guaranty fee to SBA, SBA proposes to amend § 115.19(g) to make the lack of timely payment of this fee a ground for denial of liability on the same terms as the regulation now allows such denials by reason of the Surety's failure to make timely remittance of the Principal's fee.

Current § 115.21(a)(2) subjects PSB Sureties to annual audits. As revised, the paragraph would require audits at least once every three years, as the Act now requires.

Current § 115.31 limits SBA's liability on bonds issued by a Prior Approval Surety to 80 percent of the Surety's loss, unless the total amount of the contract in question does not exceed $100,000 or the small business concern falls within one of the classes enumerated in § 115.31(a)(2). SBA is proposing to

expand the enumerated classes to include small businesses owned and controlled by veterans or by service-disabled veterans. SBA believes this action is consistent with the special consideration of veterans expressed in Section 4(b)(1) of the Small Business Act, as amended. Accordingly, this rule would amend § 115.31(a)(2) to add such small business concerns to the list of small business concerns for which SBA will obligate itself to pay 90 percent of the Prior Approval Surety's Loss in the event of a contract default. This proposed amendment would not apply to bonds issued by PSB Sureties because the Act does not allow SBA's guarantee on such bonds to exceed 70 percent.

Current § 115.32 (c) requires the Surety to pay a guarantee fee to SBA ''in the ordinary course of business.'' The effect of subsequent increases in the Contract amount or the bond amount on the fees payable to SBA ''in the ordinary course of business'' is covered in § 115.32(d)(2) and (3), respectively. SBA proposes to revise these paragraphs to impose a 45-day deadline upon the Surety for payment of the initial guarantee fee and for subsequent payments when increases in the Contract or bond amounts require payment to SBA.

SBA proposes to revise § 115.60(a) to permit PSB Sureties to charge premiums no higher than those approved by the applicable state regulatory body, as is the practice with the Prior Approval Surety Bond Program. Sureties applying to participate as PSB Sureties are now required to agree to charge Principals premiums no higher than those recommended by the Surety Association of America and in effect August 1, 1987. 13 CFR 115.60(a)(2). These premiums differ from the premiums approved by the various States today in response to inflation, and changes in the economy and in the nature of the surety business. The proposed change will encourage PSB Sureties to remain in the PSB program and will make the PSB program attractive to prospective new participants. SBA will allow PSB Sureties that have previously agreed to adhere to the Surety Association's recommended 1987 rates to impose premium charges approved by the applicable state regulatory body if they wish.

SBA proposes to remove and reserve present § 115.61, in conformity with the language of Public Law 108–447 making the PSB program permanent and to revise § 115.62 to allow Affiliates of PSB Sureties to participate in the Prior Approval Program. A series of mergers and acquisitions in the surety industry in recent years has caused Sureties previously eligible to participate in the Prior Approval Program to become Affiliates of PSB Sureties and, under the present regulations, to lose their eligibility. To encourage and increase participation in the Prior Approval Program by otherwise qualified Sureties that are Affiliates of PSB Sureties, SBA proposes to abolish the present prohibition on their participation.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action for purposes of Executive Order 12866. A general discussion of the need for this regulatory action and its potential costs and benefits follows.

Regulatory Impact Analysis

A. Regulatory Objective of Proposed Rule

Program Objectives

The objectives of the Surety Bond Guarantee (SBG) Program are: (1) To strengthen the competitive free enterprise system by assisting qualified small and disadvantaged contractors obtain bid, performance, payment and ancillary bonds who would otherwise be unable to obtain them without the SBA guarantee; (2) to enable surety companies to reach more small businesses; and (3) to manage the tax payers' dollars at risk. The purpose of the program is to assist small, disadvantaged, and competitive opportunity gap contractors obtain bonding for public and private contracts. SBA's guarantee provides incentives for sureties (companies that guarantee the performance of a contractor) to bond contractors that are skilled, but lack the financial strength or bonded track record to obtain bonding on reasonable terms in the standard market. Federal contracts valued at $100,000 or more and many State, local and private contracts require bonds. Many small and emerging contractors are unable to secure necessary bonding because surety companies are unwilling to take 100% of the risk in writing their bonds. Emerging small businesses lack the track record or financial strength to meet standard surety bonding requirements. SBA's guarantee provides the incentive necessary for sureties to issue bonds for these contractors, who could not otherwise compete in the contracting industry. As a result, small businesses can establish and grow their businesses.

The amendments proposed in this rulemaking would provide fee structure parity between Prior Approval Surety (Prior Approval) and Preferred Surety Bond (PSB) sureties, thus encouraging PSB sureties to remain in the program and promote the SBA-guaranteed bonds. Similarly, an amendment allowing affiliates of a PSB to participate in the Prior Approval Program provides needed flexibility to surety bond participants in the SBG Program to remain in the Program and promote its products. The amendments also obligate SBA to reimburse a higher percentage of loss incurred by a Prior Approval on bonds issued on behalf of a veteran-owned small business, including service-disabled veterans. The rulemaking also deletes an obsolete reference to the pilot nature of the PSB Program, which became permanent in 2004 legislation.

The Program

The SBG Program evolved from a pilot project created in 1971. Since its inception, the SBG Program has enabled thousands of small businesses to obtain Federal, State and private contracts that they would not otherwise have been able to obtain. These small business contracts have resulted in the creation of thousands of jobs. The Office of Surety Guarantees administers the SBG program through a private-public partnership between the Federal Government and the surety industry. SBA guarantees bonds issued by surety companies for construction, service and supply contracts and reimburses the sureties a percentage of the losses sustained if the contractor defaults. SBA's guarantee provides the incentive necessary for sureties to issue bonds to qualified small businesses.

The SBG program consists of the Prior Approval Program and the PSB Program. The Prior Approval program guarantees up to 90% of a surety's loss. Participants must obtain SBA's approval for each bond guarantee issued. Under the PSB program, sureties receive a 70% guarantee and are empowered to issue, service and monitor bonds without SBA's prior approval. The surety bond guarantee programs are acknowledged as a major factor in the surety reinsurance and construction industries and are recognized as a primary stabilizing influence by those industries.

Cost of an SBA Guaranteed Bond

The SBA charges fees to both the contractor and the surety company, as described in the most recent edition of

13 CFR Part 115 . SBA does not charge an application or bid bond guarantee fee. If SBA guarantees a final bond, the contractor and the surety each must pay a guarantee fee equal to a certain percentage of the contract amount. The percentages are determined by SBA and are published in notices in the **Federal Register** from time to time. The fees were most recently changed in the **Federal Register**, effective April 3, 2006. 71 FR 9632 (February 24, 2006). When the bond is issued, the small business also pays the surety company's bond premium. Currently, this charge cannot exceed the level approved by the appropriate state regulatory body for a Prior Approval Surety or the 1987 SAA rates for a PSB Surety.

The rates assessed small businesses will generally increase, as surety companies will adopt the rates that are currently filed and approved by the individual States, and utilized on their accounts. Because different surety companies have different rate structures, it is difficult to estimate precisely the cost impact to small businesses. Other program costs will decrease, as there will be one not two rate structures to track by surety companies and the Government. Additionally, this change will have a positive impact on the program through increased bond activity for the small business community and increased participation in the program by surety companies.

B. Baseline Costs of Existing Regulatory Framework

In FY2002, the Office of Management and Budget (OMB) developed the Program Assessment Rating Tool (PART) to establish a systematic, consistent process for rating the performance of programs across the Federal government. The SBG Program was evaluated under the PART criteria in FY2005. The PART review revealed that program enhancements are needed to maximize the effectiveness of the SBG Program and achieve performance goals. In particular, it was recommended that the SBG Program develop an internet-based electronic application and claims processing system, and restructure program outreach. The proposed rule is an important component of implementing the PART recommendations. These measures will contribute to the sustainability and growth of existing and competitive opportunity gaps confronting small businesses by increasing their contract revenue and job creation rates. Both of these actions are well underway.

The SBG program routinely tracks the number of surety bond guarantees approved, contract revenue, and the number of jobs created to measure its progress toward achieving program long-term outcomes. In FY 2003, SBA guaranteed a total of 8,974 bonds, which represented $594 million in final bond contract revenue and 5,123 jobs created. Although a temporary expiration of the PSB program in Fiscal Years (FY) 2004 and 2005 impacted goal accomplishment, SBA guaranteed a total of 7,803 bonds in FY 2004, which represented $598 million in final bond contract revenue and 5,154 jobs created. In FY 2005, SBA guaranteed a total of 5,678 bonds, which represented $488 million in final bond contract revenue and 4,203 jobs.

The SBG program has specific values assigned for annual program targets. The SBG program is included in the Cost Allocation Model that SBA has implemented. A cost per bond is calculated using information from that model, and is included in the annual Performance and Accountability Report (PAR). The increased contract revenue and jobs created will contribute to the survivability and growth of the small contractors that received SBG assistance. The program's cost per bond decreased from $570 in 2002 to $408 in 2003. In FY 2004, the program's cost per bond increased slightly to $489 since the program activity significantly decreased with the expiration of the PSB program. In FY 2005, the program's cost per bond increased to $860. The shutdown of the PSB Program during the first quarter of FY2005 and the proposed surety bond fee increase adversely affected program activity. The total cost of the SBG Program to the Federal Government is as follows: FY2002—$4.2 million; FY2003—$3.6 million; FY2004—$3.8 million; FY2005—$4.8 million.

The only other Federal bond guarantee program is the Department of Transportation's (DOT) Bonding Assistance program authorized under 49 U.S.C. 332 (Pub. L. 97–449). Under that program, the bonds must be issued for transportation related contracts and on behalf of certified minority, women-owned, and disadvantaged businesses. SBA guarantees bonds for construction, service, and supply contracts not exceeding $2 million. SBA assistance is not limited to minority, women-owned, and disadvantaged contractors. Few states have bonding assistance programs. There are no similar programs in the private sector.

SBA's FY2007 Budget discusses the SBG Program's goals of 7,725 bond guarantees in both FY2006 and FY2007, resulting in $447 million in final bond contract revenue and creating 3,852 jobs each year. To achieve these goals, the FY2007 Budget states that SBA will continue to seek increased nationwide program visibility, making the SBG Program accessible to more small contractors.

C. Potential Benefits and Costs of the Proposed Rule

The amendments proposed all offer significant benefits. The rule offers incentives to PSB and Prior Approval Sureties to expand participation in the SBG Program. Most importantly, the proposed rule would allow PSB Sureties to charge the premium rates permitted by applicable state law rather than the Surety Association of America's advisory premium rates as of August 1, 1987. This provides parity of compensation for the PSB Sureties with the Prior Approval Sureties. Currently, the PSB Sureties are not able to charge current rates for the SBG bonds, as they are limited to rates that are nineteen years old. If this proposed rule is adopted without change and PSB Sureties take advantage of it, Small Concerns bonded by PSB Sureties will be paying the same premium rates as the Small Concerns that receive bonding from Prior Approval Sureties. Rate parity means that Prior Approval and PSB Sureties will be charging similar rates for the same SBG bond. In addition, the other amendments offer a greater SBG bonding guarantee to veteran-owned contractors and allow PSB and Prior Approval Suretires to be held together in a holding company structure as affiliates. These regulatory flexibilities should ensure continued surety bond participation in the SBG Program to allow small contractors to continue to receive the SBG Program guarantees in the future.

D. Proposed Rule Alternatives

SBA has analyzed several alternatives to this proposed rule. First, SBA could do nothing. SBA believes, however, that this would not further the objective of the SBG Program as it could lead to surety departures from the SBG Program, directly leading to fewer small businesses able to receive a SBG bond. Second, SBA could completely overhaul the SBG Program. SBA believes that most of the regulatory framework of the SBG Program is working and that drastic changes are not needed. As stated in the PART review and FY2007 Budget, the SBG Program and the small businesses it serves would most benefit from an internet-based application system and more program outreach, not regulatory overhaul. Third, SBA could act as it has,

by proposing amendments conforming the rules to our commitments in the PART review and our FY2007 Budget. These amendments will allow SBA to retain the surety bond participation it needs in order to operate the program and continue providing bonding benefits to small contractors in need of bid, payment, performance or ancillary bonds necessary to obtain Federal and State contracts.

E. Request for Comments

SBA requests comment on this Regulatory Impact Analysis (RIA), in particular the assumptions made and the projections of costs and benefits of this proposed regulatory action. SBA also requests comments on all aspects of the RIA.

Compliance With Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Compliance With Executive Order 13132

For purposes of E.O. 13132, the SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, SBA determines that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Compliance With Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this proposed rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, this rule does not meet the substantial number of small businesses criterion anticipated by the Regulatory Flexibility Act. There are about a dozen Sureties that participate in the SBA program, and no part of this proposed rule would impose any additional cost or any significant burden on them. The proposal to allow PSB Sureties to charge the highest premium rates permitted by applicable state law raises the possibility of an economic impact on those contractors that now receive their bonding from PSB Sureties, but out of 843 contractors participating in the SBA program in FY2005, about 143 were bonded by PSB Sureties. Prior Approval Sureties are already allowed to charge the premium rates permitted by the individual State law, so the economic effect, if any, of this proposed rule would be to subject approximately 17 percent of the contractors in the SBA program to the risk that they might have to pay the same premium rates that their fellow participating contractors must pay.

List of Subjects in 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR part 115 as follows:

PART 115—SURETY BOND GUARANTEE

1. The authority citation for Part 115 is revised to read as follows:

Authority: 5 U.S.C. app. 3; 15 U.S.C. 687b, 687c, 694a, 694b note, Pub. L. 106–554; Pub. L. 108–447, Div. K, § 203.

2. Amend § 115.10 by adding the following definitions at the appropriate places:

§ 115.10 Definitions.

* * * * *

Service-Disabled Veteran means a veteran with a disability that is service-connected, as defined in Section 101(16) of Title 38, United States Code.

Small Business Owned and Controlled by Service-Disabled Veterans means:

(1) A Small Concern of which not less than 51 percent is owned by one or more Service-Disabled Veterans; or a publicly-owned Small Concern of which not less than 51 percent of the stock is owned by one or more Service-Disabled Veterans; and

(2) The management and daily business operations of which are controlled by one or more Service-Disabled Veterans, or in the case of a Service-Disabled Veteran with permanent and severe disability, the spouse or permanent caregiver of such Veteran.

Small Business Owned and Controlled by Veterans means:

(1) A Small Concern of which not less than 51 percent is owned by one or more Veterans; or a publicly-owned Small Concern of which not less than 51 percent of the stock is owned by one or more Veterans; and

(2) The management and daily business operations of which are controlled by one or more Veterans.

* * * * *

Veteran has the meaning given the term in Section 101(2) of Title 38, United States Code.

3. Revise § 115.19(g) to read as follows:

§ 115.19 Denial of Liability.

* * * * *

(g) *Delinquent fees.* The Surety has not remitted to SBA the Principal's payment for the full amount of the guarantee fee within the time period required under § 115.30(d) for Prior Approval Sureties or § 115.66 for PSB Sureties, or has not made timely payment of the Surety's fee within the time period required by § 115.32(c). SBA may reinstate the guarantee upon a showing that the contract is not in default and that a valid reason exists why a timely remittance or payment was not made.

* * * * *

4. Revise § 115.21(a)(2) to read as follows:

§ 115.21 Audits and investigations.

(a) * * *

(1) * * *

(2) *Frequency of PSB Audits.* Each PSB Surety is subject to audit at least once every three years by examiners selected and approved by SBA.

* * * * *

5. Revise § 115.31(a)(2) to read as follows:

§ 115.31 Guarantee percentage.

(a) * * *

(1) * * *

(2) The bond was issued on behalf of a small business owned and controlled by socially and economically disadvantaged individuals or on behalf of a qualified HUBZone small business concern, or on behalf of a small business

owned and controlled by veterans or a small business owned and controlled by service-disabled veterans.

* * * * *

6. Revise § 115.32(c) and (d)(2) to read as follows:

§ 115.32 Fees and Premiums.

* * * * *

(c) *SBA charge to Surety.* SBA does not charge Sureties application or Bid Bond guarantee fees. Subject to § 115.18(a)(4) the Surety must pay SBA a guarantee fee on each guaranteed bond (other than a Bid Bond) within 45 calendar days after SBA's approval of the Prior Approval Agreement. The fee is a certain percentage of the bond premium determined by SBA and published in Notices in the **Federal Register** from time to time. The fee is rounded to the nearest dollar. SBA does not receive any portion of a Surety's non-Premium charges. See paragraph (d) of this section for additional requirements when the Contract or bond amount changes.

(d) * * *

(1) * * *

(2) *Increases; fees.* Notification of increases in the Contract or bond amount under this paragraph (d) must be accompanied by the Principal's check for the increase in the Principal's guarantee fee computed on the increase in the Contract amount. If the increase in the Principal's fee is less than $40 no payment is due until the total amount of increases in the Principal's fee equals or exceeds $40. The Surety's check for payment of the increase in the Surety's guarantee fee, computed on the increase in the bond Premium, must be submitted to SBA within 45 calendar days of SBA's approval of the supplemental Prior Approval Agreement, unless the amount of such increased guarantee fee is less than $40. When the total amount of increases in the guarantee fee equals or exceeds $40, the Surety's check must be submitted to SBA within 45 calendar days.

* * * * *

7. Revise § 115.60(a)(2) to read as follows:

§ 115.60 Selection and admission of PSB Sureties.

(a) * * *

(1) * * *

(2) An agreement that the Surety will neither charge a bond premium in excess of that authorized by the appropriate state insurance department, nor impose any non-premium fee unless such fee is permitted by applicable state law and approved by SBA.

* * * * *

§ 115.61 [Removed & Reserved]

8. Remove and reserve § 115.61.

9. Revise § 115.62 to read as follows:

§ 115.62 Prohibition on participation in Prior Approval program.

A PSB Surety is not eligible to submit applications under subpart B of this part. This prohibition does not extend to an Affiliate, as defined in 13 CFR § 121.103, of a PSB Surety that is not itself a PSB Surety provided that the relationship between the PSB Surety and the Affiliate has been fully disclosed to SBA and that such Affiliate has been approved by SBA to participate as a Prior Approval Surety pursuant to section 115.11.

Dated: August 29, 2006.

Steve C. Preston,

Administrator.

[FR Doc. 06–8205 Filed 9–25–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25891; Directorate Identifier 2006–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A310 Airplanes; and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series 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 Airbus Model A300 and A310 airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). This proposed AD would require replacing the pressure limiter of the parking brake system with a new or modified pressure limiter. This proposed AD results from a report indicating that failure of the parking brake system occurred on a Model A300–600 airplane. We are proposing this AD to prevent failure of the parking braking system and interference with emergency use of the brake pedals, which could lead to airplane collision with surrounding objects or departure from the runway.

DATES: We must receive comments on this proposed AD by October 26, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; 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–2006–25891; Directorate Identifier 2006–NM–186–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, notified us that an unsafe condition may exist on certain Airbus Model A300 and A310 airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). The EASA advises it has received a report indicating that a failure of the parking brake system occurred on a Model A300–600 airplane. After the airplane had been braked to a halt with both engines running and the parking brake applied, the airplane began to move again. As engaging the parking brake inhibits all other braking modes by design, the flightcrew was unable to stop the airplane using the brake pedals. Investigation revealed that a wire intended to reduce the area of one internal port of the parking brake pressure limiter had broken and caused excess restriction of the port, which delayed the buildup of parking brake pressure. This condition, if not corrected, could cause failure of the parking braking system and interference with emergency use of the brake pedals, which could lead to airplane collision with surrounding objects or departure from the runway.

Relevant Service Information

We have reviewed the Airbus service bulletins described in the following table. The service bulletins describe procedures for replacing the pressure limiter of the parking brake system with a new or modified pressure limiter—modification includes removing a certain wire and installing a new pressure restrictor. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

AIRBUS SERVICE INFORMATION

For all model	Use service bulletin	Dated
A300 airplanes	A300–32–0448	February 22, 2006.
A300 B4–600, B4–600R, and F4–600R series airplanes	A300–32–6094	February 22, 2006.
A310 airplanes	A310–32–2133	February 22, 2006.

The EASA mandated the service information and issued airworthiness directive 2006–0178, dated June 26, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

The service bulletins refer to Messier—Bugatti Service Bulletin C24264–32–848, dated February 15, 2006, as an additional source of service information for modifying the parking brake pressure limiter.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA'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.

Costs of Compliance

This proposed AD would affect about 229 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. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $36,640, 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):

Airbus: Docket No. FAA–2006–25891; Directorate Identifier 2006–NM–186–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 and A310 airplanes; and Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; certificated in any category; except for airplanes on which Airbus Modification 12994 has been embodied in production.

Unsafe Condition

(d) This AD results from a report indicating that failure of the parking brake system occurred on a Model A300–600 airplane. We are issuing this AD to prevent failure of the parking braking system and interference with emergency use of the brake pedals, which could lead to airplane collision with surrounding objects or departure from the runway.

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.

Pressure Limiter Replacement

(f) Within 18 months after the effective date of this AD, replace the pressure limiter of the parking brake system with a new or modified pressure limiter having part number (P/N) C24264–303 or C24264004–1, as applicable, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD.

TABLE 1.—AIRBUS SERVICE INFORMATION

For all model	Use Airbus Service Bulletin	Dated
A300 airplanes	A300–32–0448	February 22, 2006.
A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.	A300–32–6094	February 22, 2006.
A310 airplanes	A310–32–2133	February 22, 2006.

Note 1: The Airbus service bulletins refer to Messier-Bugatti Service Bulletin C24264–32–848, dated February 15, 2006, as an additional source of service information for modifying the parking brake pressure limiter.

Parts Installation

(g) As of the effective date of this AD, no person may install, on the parking brake system of any airplane, a pressure limiter having P/N C24264–302 or C24264004.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, International Branch, ANM–116, 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

(i) European Aviation Safety Agency (EASA) airworthiness directive 2006–0178, dated June 26, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on September 14, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8222 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25892; Directorate Identifier 2006–NM–120–AD]

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: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER airplanes as described previously. This proposed AD would require inspecting to determine the part number of the left- and right-hand windshield temperature controllers. For airplanes equipped with certain windshield temperature controllers, this proposed AD would also require replacing the attaching hardware of the power cable terminals of the windshield temperature controllers with new, improved attaching hardware; inspecting the power cable terminals for signs of melting or damage to the terminals, cable insulation, or plastic crimping ring; and performing corrective actions if necessary. This proposed AD results from reports of smoke on the flight deck caused by damage from poor electrical contact due to loosening of the attaching hardware of the power cables of certain windshield temperature controllers. We are proposing this AD to prevent overheating of the power cable terminals of the windshield temperature controllers, which could result in smoke and fire on the flight deck.

DATES: We must receive comments on this proposed AD by October 26, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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–2006–25892; Directorate Identifier 2006–NM–120–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 Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The ANAC has received reports of smoke on the flight deck caused by damage from poor electrical contact due to loosening of the attaching hardware of the power cable terminals of certain windshield temperature controllers. This condition, if not corrected, could lead to overheating of the power cable terminals of the windshield temperature controllers, which could result in smoke and fire on the flight deck.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–30–0043, Revision 02, dated May 25, 2006; and Service Bulletin 145LEG–30–0013, dated June 28, 2005. The service information describes procedures for replacing the attaching hardware of the power cable terminals of certain windshield temperature controllers, part number (P/N) 3801D2( ), with new, improved attaching hardware; inspecting the power cable terminals for signs of melting or damage to the terminals, cable insulation, or plastic crimping ring; and performing corrective actions if necessary. Corrective actions include replacing any melted or damaged crimping ring, cable terminal, or cable. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The ANAC mandated the service information and issued Brazilian airworthiness directive 2006–05–01, effective May 23, 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 § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined the ANAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

The service bulletins specify to inspect for evidence of damage or melting. However, to eliminate any confusion about the proper type of inspection, we would require a ''detailed inspection,'' which is consistent with the type of inspection specified in Brazilian airworthiness directive 2006–05–01.

Clarification of Part Number (P/N) References

The service bulletins specify that certain windshield temperature controllers, having P/N 3801D2( ), are affected. The parentheses indicate that the P/N might or might not contain a suffix letter. Although the service bulletins identified in the following table make it clear that the INU part numbers, as identified in Table 1 of the AD, are the primary identifiers of all affected INUs, we have determined that these various suffix references could cause confusion. Therefore, to address all references to suffix letters in the service bulletins, we have revised the AD to read ''–850( )/–851( )'' where applicable.

Costs of Compliance

This proposed AD would affect about 689 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts would be supplied from operator stock. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $55,120, or $80 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):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): FAA–2006–25892; Directorate Identifier 2006–NM–120–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of smoke on the flight deck caused by damage from poor electrical contact due to loosening of the attaching hardware of the power cables of certain windshield temperature controllers. We are issuing this AD to prevent overheating of the power cable terminals of the windshield temperature controllers, which could result in smoke and fire on the flight deck.

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.

Inspecting for Part Number (P/N) of Controller

(f) Within 5,000 flight hours after the effective date of this AD, inspect to determine the P/N of the left- and right-hand windshield temperature controllers. If any windshield temperature controller is found to have a P/N other than Goodrich P/N 3801D2( ), no further action is required by this AD for that controller.

Replacement of Attaching Hardware, Further Inspection, and Corrective Actions

(g) Before further flight after performing the inspection required by paragraph (f) of this AD, for all windshield temperature controllers having Goodrich P/N 3801D2( ) or any controller for which the P/N cannot be conclusively determined: Replace the attaching hardware of the power cable terminals of the controllers with new, improved attaching hardware having new P/Ns. Concurrently, perform a detailed inspection for signs of melting or damage of the plastic crimping ring, cable insulation, or terminals of the power cables, and, before further flight, perform applicable corrective actions. Perform all the actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–30–0043, Revision 02, dated May 25, 2006, or EMBRAER Service Bulletin 145LEG–30–0013, dated June 28, 2005; as applicable.

Credit for Actions Accomplished Using Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–30–0043, dated June 28, 2005; or Revision 01, dated April 7, 2006; are considered acceptable for compliance with corresponding actions required by this AD.

Alternative Methods of Compliance (AMOCs)

(i)(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 FR 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

(j) Brazilian airworthiness directive 2006–05–01, effective May 23, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on September 14, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8223 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25890; Directorate Identifier 2006–NM–115–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A300 B2, B4–100, and B4–200 series airplanes. The existing AD currently requires supplemental structural inspections to detect fatigue cracking, and repair of cracked structure. This proposed AD would require revising the maintenance program by incorporating new and revised supplemental structural inspections, inspection intervals, and repairs; and repair of any damaged, cracked, or corroded structure; which would end the existing supplement structural inspections. This proposed AD results from a review of service history and reports received from the current supplemental structural inspection document program. We are proposing this AD to prevent reduced structural integrity of these airplanes due to fatigue cracking.

DATES: We must receive comments on this proposed AD by October 26, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the

instructions for sending your comments electronically.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

• *Fax:* (202) 493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; 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 ''Docket No. FAA–2006–25890; Directorate Identifier 2006–NM–115–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On June 17, 1996, we issued AD 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996), for all Airbus Model A300 B2, B4–100, and B4–200 series airplanes. That AD requires supplemental structural inspections to detect fatigue cracking, and repair of cracked structure. That AD also requires revising the supplemental structural inspection document (SSID) program by changing some of the inspection techniques, changing some of the thresholds and intervals for inspections, expanding the area to be inspected for some of the inspections, and revising the Fleet Leader Program. That AD resulted from a review of service history and reports received from existing SSID inspections. We issued that AD to prevent reduced structural integrity of these airplanes due to fatigue cracking.

Actions Since Existing AD Was Issued

Since we issued AD 96–13–11, the European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, notified us that an unsafe condition may exist on all Airbus Model A300 B2 and B4 series airplanes. The EASA advises that, based on a review of service history and reports received from the current SSID program, further rulemaking is necessary in order to ensure the continued structural integrity of these airplanes.

Relevant Service Information

Airbus has issued A300 Airworthiness Limitation Items (ALI) Document SEM2/95A.1090/05, Issue 3, dated September 2005 (hereafter referred to as ''Issue 3 of the ALI''). Issue 3 of the ALI defines inspections and modifications necessary to ensure the structural integrity applicable to the specified threshold (structural modification point) arising from the evaluation of widespread fatigue damage, and fatigue-related supplemental structural inspections for a given applicability period from zero flight cycles/flight hours to the limit of validity.

Airbus also has issued Temporary Revision (TR) 3.1, dated April 2006 (hereafter referred to as ''TR 3.1''), of Issue 3 of the ALI. TR 3.1 contains changes and additions to Issue 3 of the ALI. The applicability, limit of validity, program rules, program notes, and definitions remain valid as stated in Issue 3 of the ALI.

Accomplishing the actions specified in Issue 3 of the ALI as revised by TR 3.1 ends the supplemental structural inspections required by AD 96–13–11.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006–0071, dated March 30, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA'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.

This proposed AD would supersede AD 96–13–11 and would retain all the requirements of the existing AD. This proposed AD would also require revising the FAA-approved maintenance program by incorporating new and revised supplemental structural inspections, inspection intervals, and repairs; and repair of any damaged, cracked, or corroded structure; which would end the existing supplement structural inspections.

Differences Between the Proposed AD, EASA Airworthiness Directive, Issue 3 of the ALI, and TR 3.1

The EASA airworthiness directive specifies a compliance time of within 90 days from the effective date of the airworthiness directive for doing the actions specified in Issue 3 of the ALI, which replaces the actions specified in Airbus A300 SSID, Revision 4. However, this proposed AD would require, within 12 months after the effective date of this AD, revising the

FAA-approved maintenance program by incorporating the new and revised actions specified in Issue 3 of the ALI as revised by TR 3.1. In developing an appropriate compliance time for this action, we considered the safety implications and normal maintenance schedules for the timely accomplishment of the proposed revision. We also consider the proposed revision to be more complex than that required by the EASA airworthiness directive. AD 96–13–11 did not mandate incorporation of Revision 3 or Revision 4 of the Airbus A300 SSID and thus U.S. operators would be required to incorporate more changes than those specified in the EASA airworthiness directive. In consideration of these items, we have determined that a compliance time of 12 months will ensure an acceptable level of safety and allow the revision to be done during scheduled maintenance intervals for most affected operators.

Unlike the procedures described in Issue 3 of the ALI as revised by TR 3.1, this proposed AD would not permit further flight if any cracked structure is detected. We have determined that, because of the safety implications and consequences associated with that cracking, any cracked structure must be repaired before further flight. This difference has been coordinated with the EASA.

Issue 3 of the ALI as revised by TR 3.1 specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the EASA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the EASA approve would be acceptable for compliance with this proposed AD.

Although Issue 3 of the ALI as revised by TR 3.1 specifies a ''Sampling Concept'' in section B, this proposed AD does not include that requirement. Since issuance of AD 98–16–06, we have determined that such a sampling does not provide an adequate statistical sampling size to provide confidence in the structural integrity of the fleet of airplanes. Therefore, the proposed AD would prohibit the use of such a sampling program and would require all affected airplanes of the fleet to be inspected.

Change to Existing AD

This proposed AD would retain all requirements of AD 96–13–11. Since AD 96–13–11 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 proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 96–13–11	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (d)	paragraph (i).
paragraph (e)	paragraph (j).
paragraph (f)	paragraph (k).
paragraph (g)	paragraph (l).
paragraph (h)	paragraph (m).
paragraph (i)	paragraph (n).
paragraph (j)	paragraph (o).
paragraph (k)	paragraph (p).
paragraph (l)	paragraph (q).

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
Implementation of SSID (required by AD 96–13–11)	597	$80	None	$47,760	29	$1,385,040
Revision of the FAA-approved maintenance program (new proposed action).	10	80	None	800	29	23,200

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 removing amendment 39–9679 (61 FR 35122, July 5, 1996) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2006–25890; Directorate Identifier 2006–NM–115–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 26, 2006.

Affected ADs

(b) This AD supersedes AD 96–13–11.

Applicability

(c) This AD applies to all Airbus Model A300 B2 and B4 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (x) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD results from a review of service history and reports received from the current supplemental structural inspection document program. We are issuing this AD to prevent reduced structural integrity of these airplanes due to fatigue cracking.

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.

Requirements of AD 96–13–11:

(f) Within one year after March 9, 1993 (the effective date of AD 93–01–24, amendment 39–8478), incorporate a revision into the FAA-approved maintenance inspection program that provides for supplemental maintenance inspections, modifications, repair, or replacement of the significant structural details (SSD) and significant structural items (SSI) specified in ''Airbus Industrie A300 Supplemental Structural Inspection Document'' (SSID), dated September 1989 (hereafter referred to as ''the SSID'').

(g) Within one year after August 9, 1996 (the effective date of AD 96–13–11), replace the revision of the FAA-approved maintenance program required by paragraph (f) of this AD with the inspections, inspection intervals, repairs, and replacements defined in ''Airbus Industrie A300 Supplemental Structural Inspection Document'' (SSID), Revision 2, dated June 1994 (hereafter referred to as ''Revision 2 of the SSID''). Accomplish the actions specified in the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID, at the times specified in those service bulletins. The actions are to be accomplished in accordance with those service bulletins.

(1) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID: Accomplish the actions specified in those service bulletins within the grace period specified in that service bulletin. The grace period is to be measured from August 9, 1996.

(2) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, ''SB Reference List,'' Revision 2 of the SSID, and a grace period is not specified in that service bulletin: Accomplish the actions specified in that service bulletin within 1,500 flight cycles after August 9, 1996.

(h) If any cracked structure is detected during the inspections required by either paragraph (f) or (g) of this AD, prior to further flight, permanently repair the cracked structure in accordance with either paragraph (h)(1), (h)(2), or (h)(3) of this AD.

Note 2: A permanent repair is defined as a repair that meets the certification basis of the airplane, and does not require additional modification at a later date.

(1) The service bulletins listed in Section 6, ''SB Reference List,'' of the SSID (for airplanes that are currently being inspected in accordance with paragraph (f) of this AD); or in accordance with a method approved by the Manager, International Branch, ANM–116 (formerly the Standardization Branch, ANM–113), FAA, Transport Airplane Directorate, if a permanent repair is not specified in any of these service bulletins. Or

(2) The service bulletins listed in Section 6, ''SB Reference List,'' of Revision 2 of the SSID (for airplanes that are currently being inspected in accordance with paragraph (g) of this AD); or in accordance with a method approved by the Manager, International Branch, ANM–116 (formerly the Standardization Branch, ANM–113), if a permanent repair is not specified in any of these service bulletins. Or

(3) Other permanent repair data meeting the certification basis of the airplane which is approved by the Manager, International Branch, ANM–116 (formerly the Standardization Branch, ANM–113), or by the Direction Geáneárale de l'Aviation Civile (DGAC) of France.

(i) For airplanes identified as Fleet Leader Program (FLP) in Section 5, ''Fleet Leader Program,'' of the SSID or Revision 2 of the SSID: Inspect according to the instructions and intervals specified in paragraph 4.4, ''Adjustment of Inspection Requirements and DSG,'' of Section 4, or Section 9, as applicable, of the SSID (for airplanes inspected in accordance with paragraph (f) of this AD), or Revision 2 of the SSID (for airplanes inspected in accordance with paragraph (g) of this AD), for each SSD.

(j) For the purpose of accomplishing paragraphs (i), (k), (l), and (n) of this AD, operators shall not use paragraph 6.2, ''Complete RR Method,'' of Section 9 of the SSID to calculate inspection thresholds and intervals.

(k) For Model A300–B2 and B2K–3C series airplanes: For any SSD that has exceeded the values of the threshold specified in paragraph 6, ''Inspection Threshold and Intervals,'' Section 9 of the SSID, inspect at the time specified in either paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) For airplanes inspected in accordance with paragraph (f) of this AD: Inspect within 2,000 landings after March 9, 1993, in accordance with the SSID. Or

(2) For airplanes inspected in accordance with paragraph (g) of this AD: Inspect within 2,000 landings after August 9, 1996, in accordance with Revision 2 of the SSID.

(l) For Model A300–B4 series airplanes: For any SSD that has exceeded the values of the threshold specified in paragraph 6, ''Inspection Threshold and Intervals,'' Section 9 of the SSID, inspect at the time specified in either paragraph (l)(1) or (l)(2) of this AD, as applicable.

(1) For airplanes inspected in accordance with paragraph (f) of this AD: Inspect within 1,500 landings after March 9, 1993 [the effective date of AD 93–01–24, amendment 39–8478]. Or

(2) For airplanes inspected in accordance with paragraph (g) of this AD: Inspect within 1,500 landings after August 9, 1996.

(m) For airplanes identified as FLP in Section 5, ''Fleet Leader Program,'' of the SSID or Revision 2 of the SSID: Within one year after August 9, 1996, apply the basic requirements given in Revision 2 of the SSID.

(n) For airplanes that are subject to the requirements of paragraph (g) of this AD, and have exceeded the initial inspection threshold specified in paragraph 4.4, ''Adjustment of Inspection Requirements and DSG,'' of Section 4, or paragraph 6, ''Inspection Threshold and Intervals,'' of Section 9, for each SSD: Perform the initial inspection prior to the accumulation of the number of flight cycles specified in paragraph 7, ''Additional Information,'' Section 9, of Revision 2 of the SSID.

Note 3: Fatigue ratings are not applicable to these allowances; therefore, no adjustment is required.

Note 4: Paragraph (n) of this AD provides the ''grace'' periods for those airplanes that are new to the FLP or that have newly added or revised SSID requirements in accordance with paragraph (g) of this AD.

(o) The grace period provided by paragraph (n) of this AD is also applicable to the thresholds and/or repeat intervals for each SSD for which the inspection interval or threshold was reduced in accordance with the requirements of paragraph (g) of this AD.

(p) For FLP airplanes identified in Section 5, ''Fleet Leader Program,'' of the SSID or Revision 2 of the SSID that are listed in Section 7, ''SSI Limitation List,'' of the SSID (for airplanes that are currently being inspected in accordance with paragraph (f) of this AD) , or Revision 2 of the SSID (for airplanes that are currently being inspected in accordance with paragraph (g) of this AD):

Inspect at intervals not to exceed the interval specified for each SSI, in accordance with the values given in Section 7, ''SSI Limitation List,'' of the SSID or Revision 2 of the SSID, as applicable.

(q) For all airplanes: All inspection results, positive or negative, must be reported to Airbus in accordance with either paragraph (q)(1) or (q)(2) of this AD, as applicable. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For FLP airplanes, identified in Section 5, ''Fleet Leader Program,'' of the SSID or Revision 2 of the SSID: Submit reports in accordance with the instructions in paragraph 5.2, ''SSIP Inspection Reporting,'' of Section 5, and paragraph 7.1, ''General,'' of Section 7 of the SSID (for airplanes that are currently being inspected in accordance with paragraph (f) of this AD); or Revision 2 of the SSID (for airplanes inspected in accordance with paragraph (g) of this AD).

(2) For all airplanes that are subject to Section 6, ''SB Reference List,'' of the SSID: Submit reports in accordance with the instructions in the applicable service bulletins identified in Section 6 of the SSID (for airplanes that are currently being inspected in accordance with paragraph (f) of this AD); or Revision 2 of the SSID (for airplanes that are currently being inspected in accordance with paragraph (g) of this AD).

New Requirements of This AD

Revision of the FAA-Approved Maintenance Inspection Program

(r) Within 12 months after the effective date of this AD, replace the revision of the FAA-approved maintenance program required by paragraph (g) of this AD with the supplemental structural inspections, inspection intervals, and repairs defined in Airbus A300 Airworthiness Limitation Items (ALI) Document SEM2/95A.1090/05, Issue 3, dated September 2005, as revised by Airbus Temporary Revision (TR) 3.1, dated April 2006 (hereafter referred to as ''Issue 3 of the ALI''). Accomplish the actions specified in Issue 3 of the ALI at the times specified in that ALI, except as provided by paragraph (s) of this AD. The actions must be accomplished in accordance with Issue 3 of the ALI. Accomplishing the applicable initial ALI tasks constitutes terminating action for the requirements of paragraphs (f) through (q) of this AD.

(s) For airplanes that have exceeded the threshold or intervals specified in Issue 3 of the ALI for the application tolerance on the first interval for new and revised requirements and have exceeded 50 percent of the intervals specified in sections D and E of Issue 3 of the ALI: Do the actions within 6 months after the effective date of this AD.

Corrective Actions

(t) Damaged, cracked, or corroded structure detected during any inspection done in accordance with Issue 3 of the ALI must be repaired, before further flight, in accordance with Issue 3 of the ALI, except as provided by paragraph (u) of this AD; or other data meeting the certification basis of the airplane which is approved by the Manager, International Branch, ANM–116; or by the European Aviation Safety Agency (EASA) (or its delegated agent).

(u) Where Issue 3 of the ALI specifies contacting Airbus for appropriate action: Before further flight, repair the damaged, cracked, or corroded structure using a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

No Fleet Sampling

(v) Although Issue 3 of the ALI specifies to do a ''Sampling Concept'' in section B, this AD prohibits the use of such a sampling program and requires all affected airplanes of the fleet to be inspected.

No Reporting

(w) Although Issue 3 of the ALI specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(x)(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.

(3) AMOCs approved previously in accordance with AD 96–13–11 are approved as AMOCs for the corresponding provisions of paragraphs (f) through (q) of this AD.

Related Information

(y) The EASA airworthiness directive 2006–0071, dated March 30, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on September 14, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8224 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25889; Directorate Identifier 2006–NM–168–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 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 airplanes. This proposed AD would require replacement of certain electrical bonding clamps and attaching hardware with new or serviceable parts, as applicable, and other specified action. This proposed AD results from failure of an electrical bonding clamp, used to attach the electrical bonding straps to the fuel system lines. We are proposing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas that, in combination with lightning strike, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by October 26, 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–2006–25889; Directorate Identifier 2006–NM–168–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 Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model ERJ 170 airplanes. The ANAC advises that an electrical bonding clamp, used to attach the electrical bonding straps to the fuel system lines, failed in one instance. Investigation revealed that a batch of electrical bonding clamps was manufactured with the incorrect material. These discrepant clamps were installed on several airplanes, which may lead to loss of bonding protection in the interior of the fuel tanks or adjacent areas. In combination with lightning strike, this condition, if not corrected, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–28–0009, Revision 01, dated February 23, 2006. The service bulletin describes procedures for replacing all electrical bonding clamps having part number AN735D4 or AN735D6 with new parts and accomplishing the other specified action. The other specified action is an electrical bonding test of the reconnected strap. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The ANAC mandated the service information and issued Brazilian airworthiness directive 2006–06–03, effective July 7, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined the ANAC'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.

Costs of Compliance

This proposed AD would affect about 68 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $41 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $8,228, or $121 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):

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–25889; Directorate Identifier 2006–NM–168–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes, certificated in any category; serial numbers 17000007, 17000033, 17000034, 17000036 through 17000046 inclusive, and 17000050 through 17000067 inclusive.

Unsafe Condition

(d) This AD results from failure of an electrical bonding clamp, used to attach the electrical bonding straps to the fuel system lines. We are issuing this AD to prevent loss of bonding protection in the interior of the fuel tanks or adjacent areas that, in combination with lightning strike, could result in a fuel tank explosion and consequent loss 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.

Replacement

(f) Within 5,000 flight hours after the effective date of this AD: Replace all electrical bonding clamps having part number AN735D4 or AN735D6 with new clamps and replace the attaching hardware with new or serviceable attaching hardware, and do the other specified action, by accomplishing all of the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 170–28–0009, Revision 01, dated February 23, 2006. The other specified action must be done before further flight.

Credit for Previous Service Bulletin

(g) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 170–28–0009, dated December 30, 2005, are acceptable for compliance with the requirements of paragraph (f) of this AD.

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 § 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 2006–06–03, effective July 7, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on September 14, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8225 Filed 9–25–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19755; Directorate Identifier 2004–NM–23–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 747 airplanes. The original NPRM would have required repetitive tests to detect hot air leaking from the trim air diffuser ducts or sidewall riser duct assemblies (collectively referred to in this proposed AD as ''TADDs''), related investigative actions, and corrective actions if necessary. The original NPRM also would have provided an optional terminating action for the repetitive tests. The original NPRM resulted from reports of sealant deteriorating on the outside of the center wing fuel tank and analysis that sealant may deteriorate inside the tank due to excess heat from leaking TADDs. This action revises the original NPRM by referring to improved inspection procedures and extending the repetitive interval for certain related investigative actions. We are proposing this supplemental NPRM to prevent leakage of fuel or fuel vapors into areas where ignition sources may be present, which could result in a fire or explosion.

DATES: We must receive comments on this supplemental NPRM by October 23, 2006.

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

- 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 service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Kinney, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6499; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2004–19755; Directorate Identifier 2004–NM–23–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, 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 supplemental NPRM. 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 in the Nassif Building at the DOT street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain Boeing Model 747 airplanes. The original NPRM was published in the **Federal Register** on December 1, 2004 (69 FR 69844). The original NPRM proposed to require repetitive tests to detect hot air leaking from the trim air diffuser ducts or sidewall riser duct assemblies (collectively referred to in this supplemental NPRM as ''TADDs''), related investigative actions, and corrective actions if necessary. The original NPRM also would have provided an optional terminating action for the repetitive tests.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have received reports indicating that the procedures referenced in Boeing Alert Service Bulletin 747–21A2418, Revision 2, dated March 4, 2004 (which we referenced in the original NPRM as the applicable source of service information for the proposed actions), are not sufficient to detect a damaged TADD in a timely manner.

Relevant Service Information

We have reviewed Boeing Service Bulletin 747–21A2418, Revision 4, dated November 17, 2005. Revision 4 of the service bulletin describes procedures that are similar to those in Revision 2. However, Revision 4 revises the part numbers for certain improved sidewall riser duct assemblies for installation on Boeing Model 747–400 series airplanes that are not freighters. This change is due to new environmental and flammability-resistance standards required under amendments 25–110, 91–279, 121–301, 125–43, and 135–90 of the Federal Aviation Regulations. (Refer to the final rule, docket no. FAA–2000–7909, ''Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes'' (68 FR 45046, July 31, 2003; with corrections published 68 FR 50054, August 20, 2003; and 69 FR 6532, February 11, 2004).) Revision 4 of the service bulletin also recommends increasing the initial inspection threshold from 27,000 flight hours to 32,000 flight hours, and the repetitive inspection interval from 7,000 flight hours to 12,000 flight hours, for the general visual inspection for damage or discrepancies of the TADDs.

Certain changes to the service information that were originally introduced in Boeing Service Bulletin 747–21A2418, Revision 3, dated December 21, 2004, are retained in Revision 4 of the service bulletin:

- Chapter 21–61–20 of the airplane maintenance manual (AMM) has been revised to contain more definitive pass/fail criteria for the repetitive tests and inspections of the TADDs. These revised criteria increase the chances of a defective TADD being detected in a timely manner.
- Chapter 21–61–21 of the AMM contains procedures for unwrapping insulation blankets as necessary before the general visual inspection to detect defective TADDs is done on Boeing Model 747–400 non-freighter series airplanes.

Accomplishing the actions specified in Revision 4 of the service information is intended to adequately address the unsafe condition. We have revised paragraphs (f), (g), (h), and (j) and Note 2 of this supplemental NPRM to refer to Revision 4 of the service information. We have also added a new paragraph (k) to this supplemental NPRM, and re-identified the subsequent paragraph, to give credit for actions done before the effective date of the AD in accordance with previous issues of the service bulletin.

With regard to extending compliance times for the general visual inspection, we have revised Table 1 of this supplemental NPRM to extend the repetitive interval for the general visual inspections from 7,000 flight hours to 12,000 flight hours. We have also revised Table 1 of this supplemental NPRM to extend the initial compliance threshold from 27,000 total flight hours to 32,000 total flight hours.

Comments

We have considered the following comments on the original NPRM.

Request To Relieve Testing Requirement

British Airways requests that we revise paragraph (f) of the original NPRM to relieve operators of the requirement to do a test to detect hot air leaking from the TADDs at the same time as the general visual inspection for damage or discrepancies of the TADDs. The commenter notes that, if the inspection is being accomplished, there is no need to do the test during the same maintenance check. The commenter assumes that the inspection exceeds the intent of the test in that the inspection would detect discrepancies of the TADDs that the test may not.

We concur with the commenter's request. We agree that it would be redundant to perform a hot air leak test at the same time as the general visual inspection when the repetitive intervals for these actions coincide. Therefore, we have revised paragraph (f) of this supplemental NPRM to clarify that, when the compliance times for a hot air leak test and a general visual inspection coincide, the hot air leak test is not required at that time.

Request To Allow Installation of Serviceable Improved TADDs

The Air Transport Association (ATA), on behalf of its member Northwest Airlines (NWA), and Boeing request that we revise paragraphs (h) and (j) and Note 3 of the original NPRM to allow installation of serviceable improved TADDs. Boeing states that the improved TADDs are expected to hold up well in service, and its customers are concerned about the proposed restriction on installing serviceable TADDs. In its comment submitted through ATA, NWA states that it does not believe that the failure rate of new TADDs is a significant improvement over properly repaired or serviceable used TADDs. NWA states that only a very small percentage of high-time TADDS have failed in service, and it believes that all duct leaks will be sufficiently addressed by the repetitive tests and inspections proposed in the original NPRM. NWA also disagrees that the TADDs deteriorate at a known rate in service, which was the justification stated in the original NPRM for not allowing installation of used TADDs. Similarly, Boeing comments that the deterioration rate is highly variable.

We agree with the commenters' request to allow installing serviceable improved TADDs. Our intent was to prohibit installing used ducts of the old type, not used ducts of the improved type. We have determined that installing serviceable improved parts will provide an acceptable level of safety. We have revised paragraphs (h) and (j) of this supplemental NPRM accordingly, and we have omitted Note 3 from this supplemental NPRM. However, as mentioned in the discussion of New Relevant Service Information, improved flammability standards may prohibit installing certain new, improved TADDs on non-freighter airplanes. Subsequent to the publication of the original NPRM, some of the improved TADDs failed a test of their insulation that is required by the improved flammability standards. Thus, under the requirements of that rule, certain improved TADDs that were listed in revisions of Boeing Service Bulletin 747–21A2418 prior to Revision 4, can no longer be installed (although they need not be removed if they were

installed prior to September 2, 2003, the effective date of FAA–2000–7909).

Also, we do not agree with the commenters' statements that the rate of deterioration is unknown, although we acknowledge that there are many variables that contribute to the deterioration of the TADDs. The rate of deterioration is known to the extent that we know that TADDs having accumulated more than 20,000 total flight hours are suspect. Also, we do not know of an inspection process that would be adequate to ensure the integrity of a used duct of the old material. For these reasons, we have determined that it is not appropriate to allow installation of used TADDs made of the old material.

Request To Remove References to Deteriorated Sealant

Boeing requests that we revise the original NPRM to remove references to ''reports of deteriorating sealants both inside and outside the center wing fuel tank due to heat damage from leaking TADDs.'' Boeing states that it is not aware of reports of damaged fuel tanks caused by leaking TADDs.

We agree to revise the statement of what prompted the proposed AD to remove the references to reports of deterioration of the sealant inside the center wing fuel tank. We are unable to confirm direct observation of primary seal deterioration.

However, we disagree that primary or secondary seal deterioration is unlikely. Following reports of TADD leaks, Boeing analyzed the temperatures that the primary (inside) and secondary (outside) fuel barriers could reach. Analysis revealed that the secondary barrier could reach temperatures between 300 °F and 450 °F, and that internal tank temperatures could reach 378 °F. The sealants are not effective above 325 °F and are not qualified for prolonged exposure above 160 °F. In addition, FAA personnel observed deterioration of the secondary sealant in the center wing fuel tank. Therefore, if any damage or discrepancy of a TADD is found, we find it necessary to require a general visual inspection for damage of the primary and secondary fuel barriers of the center wing tank, and adjacent areas and items, as specified in paragraph (h) of this supplemental NPRM.

Based on this information, we have revised the Summary of this supplemental NPRM to state that the original NPRM ''resulted from reports of sealant deteriorating on the outside of the center wing fuel tank and analysis that sealant may deteriorate inside the tank due to excess heat from leaking TADDs.'' We have similarly revised paragraph (d) of this supplemental NPRM.

Request To Require Inspections Only on Affected Side

ATA, on behalf of NWA, requests that we revise paragraph (h) of the original NPRM to require an inspection for damage of the fuel barriers and adjacent areas only on the side of the airplane where a TADD failed. In its comment submitted through ATA, NWA states that the original NPRM does not acknowledge that the TADDs are located on both the left and right sides of the airplane. Neither ATA nor NWA state a justification for the request.

We infer that the commenter's request is intended to reduce the amount of work that needs to be accomplished to allow a quicker return of the airplane to service. We agree that it would be acceptable to inspect the fuel barriers and adjacent areas only on the side of the airplane where a TADD failed if no damage is found on the side of the airplane where a TADD failed. However, if any damage of the fuel barriers or adjacent areas is found on the side of the airplane where a TADD failed, both sides of the airplane must be inspected. Both sides must be inspected because the barrier damage is caused by hot air and if there is damage to one side, then there may be enough leakage to damage the other side.

We have revised paragraph (h)(1) of this AD to state that, ''If no damage is found on the side of the airplane where the damaged or discrepant TADD is found, inspecting the other side of the airplane is not required.''

In addition, we have revised paragraph (j) of this AD to clarify the specific circumstances under which tests and inspections required by paragraph (f) of this AD are terminated. These changes better acknowledge that, as the commenter points out, there are TADDs on both the left and right sides of the airplane.

Request To Revise Repetitive Inspection Intervals

KLM Royal Dutch Airlines (KLM) requests that we extend the repetitive interval for the hot air leak test specified in paragraph (f)(1) of the original NPRM from 1,200 flight hours to 1,600 flight hours. The commenter states that the repetitive interval of 1,200 flight hours is not consistent with its maintenance intervals. KLM explains that its A-check is 770 flight hours, so it would have to perform this test either every A-check or in between A-checks. KLM states that either alternative would result in excessive cost. KLM notes that a repetitive interval of 1,600 flight hours would allow it to perform the test every second A-check. Boeing also commented that the interval for the hot air leak test should coincide with actual A-check intervals.

We do not agree with the request to extend the repetitive interval for the hot air leak test. The extension of the repetitive interval for the general visual inspections to 12,000 flight hours, as discussed previously, is contingent on the repetitive hot air leak tests being performed at intervals not to exceed 1,200 flight hours. We find that this repetitive interval is necessary to ensure that any discrepant TADD will be detected in a timely manner. We note that the 1,200-flight-hour repetitive interval is consistent with Boeing's recommendation in Revision 4 of the service bulletin and in its re-evaluation of compliance times. Further, since maintenance schedules vary among operators, it is not possible for us to revise the repetitive interval to meet the needs of a specific operator. In developing an appropriate repetitive interval for this action, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the test (estimated at 3 work hours). In light of all of these factors, we find that 1,200 flight hours is an appropriate interval of time for affected airplanes to continue to operate between repetitive tests without compromising safety. We have not changed the supplemental NPRM in this regard. However, paragraph (l) of the supplemental NPRM provides operators the opportunity to request an extension of the compliance time if data are presented to justify such an extension.

Request To Revise Compliance Time for Inspection of Replaced TADDs

ATA, on behalf of NWA, suggests that we revise the compliance time for the general visual inspection for damaged or replaced TADDs made of the original material. Paragraph (i) of the original NPRM specifies a compliance time of 27,000 flight hours after the TADD is replaced for this inspection. The commenter suggests that this compliance time be revised to ''the next C-check after 21,200 flight hours.''

We partially agree with this request. We do not agree with the request to state the compliance time in relation to a C-check. We find that such a non-specific compliance time would not ensure that damaged TADDs are detected in a timely manner. However, we agree to extend the compliance time for inspecting replaced TADDs from 27,000

flight hours to 32,000 flight hours after replacement. We note that affected operators may elect to do the general visual inspection of the TADDs earlier than the stated compliance time, if it is more convenient to their maintenance schedules. We have revised paragraph (i) of this supplemental NPRM accordingly.

Request To Revise Compliance Time for Initial Leak Test

ATA, on behalf of NWA, requests that we revise the compliance time for the initial test specified in paragraph (f)(1) of the original NPRM. NWA states support for the test but believes that an equivalent level of safety can be achieved by doing the initial test at the compliance time specified in the referenced service bulletin, which the commenter interprets as 180 days or 2,000 hours, whichever is first. NWA states that a failed duct is often detected when floorboards or sidewalls become hot, or when the airplane crew has difficulty controlling cabin temperatures. Thus, a failed duct is often corrected by normal maintenance practices that limit exposure to high temperatures. For this reason, NWA states that compliance time for the initial inspection recommended in the service bulletin is sufficient to detect duct leaks that are not detected during normal operations.

We do not agree with the commenter's request. We note that 180 days or 2,000 flight hours (whichever is first) is the compliance time recommended by the referenced service bulletin for airplanes with 20,000 or more total flight hours. However, as we explained in the ''Differences Between the Proposed AD and Service Information'' section of the original NPRM, the compliance threshold of 21,200 total flight hours is the equivalent of the inspection threshold of 20,000 total flight hours specified in the service bulletin, plus one repeat interval (1,200 flight hours). In addition, the manufacturer has not requested that we revise the compliance time proposed in the original NPRM. In developing an appropriate compliance time for the initial test, we considered the manufacturer's recommendation, and the degree of urgency associated with the subject unsafe condition. In light of these factors, we find that the compliance time of 21,200 total flight hours, or 1,200 flight hours after the effective date of the AD, whichever is later, represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. We have not changed the supplemental NPRM in this regard.

Request To Ensure Adequate Supply of Replacement Parts

Lufthansa requests that we ensure that an adequate supply of replacement parts will be available for operators to comply with the proposed requirements. The commenter notes that there have been delays in obtaining material for planned modifications in accordance with Boeing Service Bulletin 747–21A2418. The commenter states that it anticipates that it will find TADDs that must be replaced.

We acknowledge the commenter's concerns and the delays it experienced. Parts availability is one of the factors that we consider when establishing a compliance time for an AD. In this case, we have determined through the manufacturer that an adequate supply of replacement parts will be available for operators to accomplish the proposed requirements within the proposed compliance time. We find that no additional changes to the supplemental NPRM are needed in this regard.

Request To Clarify Requirements of Paragraph (h)

Boeing requests that we revise paragraph (h) of the original NPRM to state that the actions in that paragraph apply if any discrepancy is found during either the hot air leak test or the general visual inspection for damage in accordance with paragraph (f) of the original NPRM.

We contacted Boeing for clarification of the meaning and intent of its comment. Upon further review of paragraph (h) of the original NPRM, Boeing concluded its comment was not necessary and could be withdrawn. We have not changed the supplemental NPRM in this regard.

Request To Allow Use of Later Revisions of Service Information

Air New Zealand (ANZ) requests that we revise paragraph (j) of the original NPRM, Optional Terminating Action, to allow use of later revisions of the referenced service information. ANZ notes that, when the AD refers to a specific revision of the service bulletin, *e.g.*, Revision 2, operators may not use the later revisions without being out of compliance with the requirements of the AD when new service information is released that contains new part numbers for equivalent or better parts. ANZ suggests that we include language referring to ''any subsequent documents, which list a new or equivalent part number or better, that does not have this unsafe condition.''

We do not agree with the request to refer to later revisions of the service information that have not yet been released. (As explained previously, we have revised this supplemental NPRM to refer to Boeing Service Bulletin 747–21A2418, Revision 4.) When we refer to a specific service bulletin in an AD, using a phrase such as that suggested by the commenter, or a phrase like ''or later FAA-approved revisions,'' violates Office of the Federal Register regulations for approving materials that are incorporated by reference. However, affected operators may request approval to use a later revision of the referenced service bulletin as an alternative method of compliance, under the provisions of paragraph (l) of this supplemental NPRM. We have not changed the supplemental NPRM further in this regard.

Request To Revise Cost Impact

Qantas Airways (QANTAS) requests that we revise the cost impact stated in the original NPRM. The commenter believes that the original NPRM underestimates the number of work hours necessary to do the general visual inspection for damage or discrepancies of the TADDs. QANTAS notes that significant time is necessary to gain access to the TADDs to perform the inspection and to close up after the inspection, in addition to testing the in-seat entertainment equipment. The commenter notes that the estimate of 43 work hours in Boeing Service Bulletin 747–21A2418 is more realistic.

We do not agree. The cost analysis in AD rulemaking actions typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. We have not changed the supplemental NPRM in this regard.

Requests for Editorial Changes

Boeing requests that we revise the Relevant Service Information section of the original NPRM as follows:

- Revise the statement, ''The related investigative actions are repetitive general visual inspections for discrepancies or damage of the TADDs* * *'' to also refer to the hot air leak tests as related investigative actions.
- Revise the statement, ''After a TADD is replaced with a new, improved TADD, the repetitive inspections are no longer needed for that TADD,'' to note that neither the repetitive leak tests nor the repetitive inspections are needed after a new, improved TADD is installed.

Boeing's rationale for the first change is that the statement in the original NPRM implies that only the visual inspections constitute valid investigative actions. Boeing's rationale for the second change is to avoid questions (from operators) and misinterpretation.

We acknowledge the commenter's requests. However, we do not agree that any change is necessary. The Relevant Service Information section of the original NPRM states that the referenced service bulletin ''describes procedures for repetitive tests to detect hot air leaking from the TADDs, related investigative actions, and corrective actions if necessary.'' The statement to which the commenter refers defines what we mean by ''related investigative actions.'' We find that the contents of the Relevant Service Information section are sufficiently clear as written in the original NPRM. With regard to the commenter's second item, we agree with the statement as revised by the commenter. However, the Relevant Service Information section of the original NPRM is not restated in this supplemental NPRM. Thus, no change is possible in this regard.

Explanation of Additional Changes

We have reduced the estimated number of airplanes that would be affected by this supplemental NPRM to be consistent with the number of airplanes identified in the service bulletin.

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 1,081 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Hot air leak test	3	$80	$240, per test cycle	216	$51,840, per test cycle.
General visual inspection	5	80	400, per inspection cycle	216	86,400, 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 supplemental NPRM 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–2004–19755; Directorate Identifier 2004–NM–23–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 23, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B,

747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category; line numbers 1 through 1316 inclusive.

Unsafe Condition

(d) This AD results from reports of sealant deteriorating on the outside of the center wing fuel tank and analysis that sealant may deteriorate inside the tank due to excess heat from leaking trim air diffuser ducts or sidewall riser duct assemblies (collectively referred to in this AD as ''TADDs''). We are issuing this AD to prevent leakage of fuel or fuel vapors into areas where ignition sources may be present, which could result in a fire or explosion.

Compliance

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

Repetitive Tests and Inspections

(f) Do the actions in Table 1 of this AD at the times specified in Table 1 of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–21A2418, Revision 4, dated November 17, 2005. When the compliance times for a hot air leak test and a general visual inspection coincide, the hot air leak test is not required at that time, but is required within 1,200 flight hours (i.e., one repeat interval) after the general visual inspection.

TABLE 1.—COMPLIANCE TIMES

Do this action—	Initially at the later of—	Then repeat within this interval until paragraph (j) is done—
(1) Repetitive test to detect hot air leaking from TADDs	Prior to the accumulation of 21,200 total flight hours, or within 1,200 flight hours after the effective date of this AD.	1,200 flight hours.
(2) General visual inspection for damage or discrepancies of the TADDs.	Prior to the accumulation of 32,000 total flight hours, or within 12,000 flight hours after the effective date of this AD, except as provided by paragraph (g) of this AD.	12,000 flight hours.

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

Note 2: Boeing Service Bulletin 747–21A2418, Revision 4, refers to Chapters 21–61–20 and 21–61–21 of the 747 Airplane Maintenance Manual as an additional source for service information for the test and inspections of the TADDs.

(g) If any hot air leak is found during any test required by paragraph (f) of this AD: Before further flight, do the general visual inspection for damage or discrepancies of the TADDs, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–21A2418, Revision 4, dated November 17, 2005.

Corrective Actions

(h) If any damage or discrepancy is found during any general visual inspection for damage required by paragraph (f) or (g) of this AD: Do the actions in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, as applicable. Do all of these actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–21A2418, Revision 4, dated November 17, 2005.

(1) Before further flight: Perform a general visual inspection for damage of the primary and secondary fuel barriers of the center wing tank; structure adjacent to the discrepant TADD; and cables, cable pulleys, and raised cable seals in the over-wing area. If no damage is found on the side of the airplane where the damaged or discrepant TADD is found, inspecting the other side of the airplane is not required.

(2) Before further flight: Repair all damage or discrepancies found.

(3) Before further flight: Replace any damaged TADD with a new TADD having the same part number or a new or serviceable, improved TADD having a part number listed in the ''New TADD Part Number'' or ''New Sidewall Riser Duct Assy Part Number'' column, as applicable, of the tables in Section 2.C.2. of the service bulletin.

(4) Repeat the test and inspection required by paragraph (f) of this AD at the times specified in Table 1 of this AD, except as provided by paragraphs (i) and (j) of this AD.

(i) For any original-material TADD that is replaced with a new TADD having the same part number as the TADD being replaced: Within 21,200 flight hours after the TADD is replaced, do the test to detect hot air leaking from the replaced TADD, and within 32,000 flight hours after the TADD is replaced, do the general visual inspection for damage, as specified in paragraph (f) of this AD. Thereafter, repeat the test and inspection at the repetitive intervals specified in Table 1 of this AD, except when the times for a hot air leak test and a general visual inspection coincide, the leak test is not required.

Optional Terminating Action

(j) Replacing existing TADDs with new or serviceable, improved TADDs terminates repetitive test and inspection requirements as specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD. New or serviceable, improved TADDs are those having a part number listed in the ''New TADD Part Number'' or ''New Sidewall Riser Duct Assy Part Number'' column, as applicable, of the tables in Section 2.C.2. of Boeing Service Bulletin 747–21A2418, Revision 3, dated December 21, 2004; or Revision 4, dated November 17, 2005.

(1) The repetitive general visual inspections required by paragraph (f)(2) of this AD are terminated for each TADD that is replaced with a new or serviceable, improved TADD.

(2) Replacing all TADDs on one side of the airplane with new or serviceable, improved TADDs terminates all repetitive tests required by paragraph (f)(1) of this AD and all repetitive inspections required by paragraph (f)(2) of this AD only for the side of the airplane on which the improved TADDs are installed.

(3) Replacing all TADDs on both sides of the airplane with new or serviceable, improved TADDs terminates all repetitive tests required by paragraph (f)(1) of this AD and all repetitive inspections required by paragraph (f)(2) of this AD.

Previously Accomplished Actions

(k) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–21A2418, dated November 14, 2002; Revision 1, dated October 16, 2003; Revision 2, dated March 4, 2004; or Revision 3, dated December 21, 2004; are acceptable for compliance with the corresponding actions required by this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office, 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 September 14, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8232 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25904; Directorate Identifier 2006–NM–077–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. The existing AD currently requires modification of the flight compartment door; repetitive inspections for wear of the flight compartment door hinges following modification; and repair or replacement of the hinges with new hinges if necessary. This proposed AD would require using revised procedures for modifying and inspecting the flight compartment door and would reduce the applicability of the existing AD. This proposed AD results from a determination that certain cockpit doors are no longer subject to the existing requirements. We are proposing this AD to prevent failure of the alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. This failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

DATES: We must receive comments on this proposed AD by October 26, 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., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7320; 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 ''Docket No. FAA–2006–25904; Directorate Identifier 2006–NM–077–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

On March 30, 1999, we issued AD 99–08–04, amendment 39–11109 (64 FR 16803, April 7, 1999), for certain Bombardier Model DHC–8–100, –200, and –300 series airplanes. That AD requires modification of the flight compartment door; repetitive inspections for wear of the flight compartment door hinges following modification; and repair or replacement of the hinges with new hinges, if necessary. That AD resulted from a report that the door lock mechanism of the flight compartment door jammed and could not be opened using the alternate release mechanism. We issued that AD to prevent failure of the alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. This failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

Actions Since Existing AD Was Issued

Since we issued AD 99–08–04, various civil aviation authorities have mandated the installation of reinforced flight compartment doors, which negates the need for the modification required by paragraph (a) of the existing AD (Modification 8/2337) for airplanes on which the doors were installed in production. Modifications 8/2228, 8/2229, 8/2231, 8/2232, 8Q100859, 8Q900267, 8Q420101, 8Q420143, 8Q200131, or 8Q420440 are equivalent to Modification 8/2337 (specified in paragraph (a) of the existing AD) for the flight compartment door alternate release mechanism. In addition, Bombardier has issued revised procedures for modifying and inspecting the flight compartment door.

Relevant Service Information

Bombardier has issued Service Bulletin 8–52–39, Revision ''H,'' dated September 9, 2004. Revision ''H'' is similar to Revision ''D,'' dated February 27, 1998, which was cited in the existing AD as the appropriate source of service information for accomplishing the required actions. Among other things, Revision ''H'' revises the procedures used for modifying and inspecting the flight compartment door,

as specified in the original issue of Bombardier Service Bulletin 8–52–39, dated October 31, 1996, and Revision ''A,'' of the service bulletin. In addition, the effectivity specified in Revision ''H'' excludes airplanes on which new, improved flight compartment doors have been installed in production.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, mandated the service information and issued Canadian airworthiness directive CF–1996–20R4, dated August 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 AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 99–08–04 and would retain the requirements of the existing AD, but would require using revised procedures. This proposed AD would also reduce the applicability of the existing AD.

Operators should note that Note 2 of AD 99–08–04 provides credit for modification of the flight compartment door in accordance with Bombardier Service Bulletin S.B. 8–52–39, dated August 30, 1996; Revision ''A,'' dated October 31, 1996; Revision ''B,'' dated July 4, 1997; or Revision ''C,'' dated September 1, 1997; if the modification is done before the effective date of AD 99–08–04. However, we have determined that the modification and inspection procedures specified in the original issue and Revision ''A,'' of the service bulletin are not adequate due to a design deficiency detected after issuance of those service bulletins. TCCA agrees with this finding.

Accordingly, we have re-identified Note 2 of the existing AD as paragraph (i) of this proposed AD for formatting reasons. In addition, we have revised the content of the new paragraph (i) to remove references to the original issue and Revision ''A'' of the service bulletin, and to provide credit for accomplishing the actions in Revision ''E,'' dated May 10, 1999; Revision ''F,'' dated February 4, 2000; or Revision G, dated May 17, 2001.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Change to Existing AD

This proposed AD would retain the requirements of AD 99–08–04. Since AD 99–08–04 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 proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 99–08–04	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (h).
paragraph (c)	paragraph (j).

Costs of Compliance

This proposed AD would affect about 167 airplanes of U.S. registry. The new actions of this proposed AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

The modification takes about 4 work hours per airplane, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the modification is $53,440, or $320 per airplane.

The inspection takes 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 inspection is $26,720, or $160 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 removing amendment 39–11109 (64 FR 16803, April 7, 1999) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2006–25904; Directorate Identifier 2006–NM–077–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 26, 2006.

Affected ADs

(b) This AD supersedes AD 99–08–04.

Applicability

(c) This AD applies to Bombardier Model DHC–8–100, –200 and –300 series airplanes, certificated in any category; equipped with a flight compartment door installation having part number (P/N) 82510074–(*), 82510294–(*), 82510310–001, 8Z4597–001, H85250010–(*), 82510700–(*), or 82510704–(*); except P/Ns 82510704–502 and 82510704–503.

Note 1: (*) denotes all dash numbers.

Unsafe Condition

(d) This AD results from a determination that certain cockpit doors are no longer subject to the existing requirements. We are issuing this AD to prevent failure of the alternate release mechanism of the flight compartment door, which could delay or impede the evacuation of the flightcrew during an emergency. This failure also could result in the flightcrew not being able to assist passengers in the event of an emergency.

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.

Modification

(f) Except as required by paragraph (g) of this AD: Within 90 days after May 12, 1999 (the effective date of AD 99–08–04), modify the lower hinge assembly and main door latch (Modification 8/2337) of the flight compartment door, in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision ''D,'' dated February 27, 1998; or Revision ''H,'' dated September 9, 2004. After the effective date of this AD, only Revision ''H'' may be used for accomplishing the modification.

(g) For airplanes on which the modification required by paragraph (f) of this AD was done before the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8–52–39, dated August 30, 1996; or Revision ''A,'' dated October 31, 1996: Within 90 days after the effective date of this AD, do the modification required by paragraph (f) of this AD in accordance with Bombardier Service Bulletin 8–52–39, Revision ''H,'' dated September 9, 2004.

Inspection

(h) Within 800 flight hours after doing the modification required by paragraph (g) of this AD: Inspect the hinge areas around the hinge pin holes of the flight compartment door for wear in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision ''D,'' dated February 27, 1998; or Revision ''H,'' dated September 9, 2004. After the effective date of this AD, only Revision ''H'' may be used for accomplishing the inspection.

(1) If no wear is detected, or if the wear is less than or equal to 0.020 inch in depth, repeat the inspection thereafter at intervals not to exceed 800 flight hours.

(2) If any wear is detected and its dimension around the hinge pin holes is less than 0.050 inch and greater than 0.020 inch in depth, prior to further flight, perform the applicable corrective actions specified in the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

(3) If any wear is detected and its dimension around the hinge pin holes is greater than or equal to 0.050 inch in depth, prior to further flight, replace the worn hinges with new hinges in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours.

Credit for Actions Accomplished Previously

(i) Modifications and inspections done before the effective date of this AD in accordance with Bombardier Service Bulletin S.B. 8–52–39, Revision ''B,'' dated July 4, 1997; Revision ''C,'' dated September 1, 1997; Revision ''E,'' dated May 10, 1999; Revision ''F,'' dated February 4, 2000; or Revision G, dated May 17, 2001; are considered acceptable for compliance with the modification and inspections required by this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs approved previously in accordance with AD 99–08–04 are approved as AMOCs for the corresponding provisions of paragraphs (f), (g), (h), and (i) of this AD.

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

Related Information

(k) Canadian airworthiness directive CF–1996–20R4, dated August 10, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 15, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–8233 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140379–02; REG–142599–02]

RIN 1545–BC07; 1545–BB23

General Allocation and Accounting Regulations Under Section 141

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the allocation of, and accounting for, tax-exempt bond proceeds for purposes of the private activity bond restrictions that apply under section 141 of the Internal Revenue Code (Code) and that apply in modified form to qualified 501(c)(3) bonds under section 145 of the Code. The proposed regulations provide State and local governmental issuers of tax-exempt bonds with guidance for applying the private activity bond restrictions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 26, 2006. Requests to speak with outlines of topics to be discussed at the public hearing scheduled for January 11, 2007, must be received by December 26, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–140379–02; REG–142599–02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. to 4:30 p.m. to CC:PA:LPD:PR (REG–140379–02; REG–142599–02), Internal Revenue Service, Crystal Mall 4, 1941 Jefferson Davis Hwy., 1901 S. Bell St., room 108, Arlington, Virginia 22202. Alternatively, submissions may be made electronically to the IRS Internet Site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–140379–02). The public hearing will be held in the auditorium of the New Carrollton Federal Building, 5000 Ellin Rd., Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Johanna Som de Cerff (202) 622–3980; concerning submissions and the hearing, Kelly D. Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by December 26, 2006. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The recordkeeping requirement in this proposed regulation is in § 1.141–6(a)(4). The recordkeeping requirement will apply only to State and local governmental issuers of tax-exempt bonds used to finance a facility that will be used for both governmental use and more than a *de minimis* amount of private business use. The recordkeeping is voluntary to obtain a benefit. The records will enable the Service to examine compliance by State and local governmental issuers of tax-exempt bonds used to finance a facility that will be used for both governmental use and more than a *de minimis* amount of private business use.

Estimated total annual recordkeeping burden: 3000 hours.

Estimated average annual burden hours per recordkeeper: 3 hours.

Estimated number of recordkeepers: 1000.

Estimated annual frequency of responses: the frequency of responses will depend on how often the recordkeeper issues tax-exempt bonds used to finance a facility that will be used for both governmental use and more an a *de minimis* amount of private business use, which will vary from rarely to a few times a year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains proposed amendments to 26 CFR part 1. Final regulations (TD 8712) under section 141 of the Internal Revenue Code (Code) were published in the **Federal Register** on January 16, 1997 (62 FR 2275) (the 1997 Final Regulations) to provide comprehensive guidance on most aspects of the private activity bond restrictions. The 1997 Final Regulations, however, reserved most of the general allocation and accounting rules for purposes of section 141. An advance notice of proposed rulemaking was published in the **Federal Register** on September 23, 2002 (REG–142599–02) (67 FR 59767) (the 2002 Advance Notice) regarding allocation and accounting rules for tax-exempt bond proceeds used to finance mixed-use output facilities.

This document amends the Income Tax Regulations under section 141 by proposing rules for the allocation of, and accounting for, tax-exempt bond proceeds. Special rules for allocating proceeds used to finance mixed-use facilities and rules regarding the treatment of partnerships as owners or users of facilities for purposes of section 141 are also included. This document also amends regulations under section 145 by proposing rules on certain related matters that apply to qualified 501(c)(3) bonds. These regulations are published as proposed regulations (the Proposed Regulations) to provide an opportunity for public review and comment.

Explanation of Provisions

I. Introduction

In general, the interest on State and local governmental bonds is excludable from gross income under section 103 of the Code upon satisfaction of certain requirements. Interest on a private activity bond, other than a qualified private activity bond within the meaning of section 141, is not excludable under section 103. Section 141 provides certain tests used to determine whether a State or local bond is a private activity bond. These tests look to whether the proceeds of tax-exempt bonds comply with certain restrictions, including private business use restrictions, private payment restrictions, and private loan restrictions. Similar restrictions apply in modified form to qualified 501(c)(3) bonds under section 145.

In general, these private activity bond restrictions permit certain *de minimis* amounts of private business use for proceeds of tax-exempt governmental bonds without causing such bonds to be classified as private activity bonds under section 141 (*de minimis* permitted private business use). De minimis permitted private business use generally means private business use of not more than 10% of the proceeds. Section 141(b)(3) further limits this *de minimis* permitted private business use to a 5% amount for certain unrelated or disproportionate use. Sections 141(b)(4) and 141(b)(5) further limit this *de minimis* permitted private business use to a prescribed $15 million nonqualified amount for certain output facility issues generally and for certain larger issues absent volume cap allocations for private business use in excess of the $15 million nonqualified amount.

The Proposed Regulations provide guidance regarding general allocation and accounting rules for purposes of the private activity bond restrictions under section 141. The Proposed Regulations provide guidance regarding allocations of proceeds of an issue of tax-exempt bonds (proceeds) and other funds to expenditures (as contrasted with investments), to property, and to uses (that is, governmental use or private business use).

The Proposed Regulations include certain special accounting rules for projects which have both governmental use and private business use (mixed-use projects), as described further herein. One purpose of these special accounting rules is to provide flexibility to allow issuers to use tax-exempt governmental bonds to finance the portion of a mixed-use project to be used for governmental use where private business use of the entire project may exceed the amount of *de minimis* permitted private business use.

The Proposed Regulations provide several general allocation rules. First, proceeds and other sources of funds

generally may be allocated to expenditures using any reasonable, consistently applied accounting method that is consistent with how proceeds are allocated for purposes of the arbitrage investment restrictions of section 148. Second, under a general pro rata allocation method (which also applies to mixed-use projects absent an election to use one of two elective special allocation rules), proceeds and other sources allocated to capital expenditures for a capital project generally are treated as allocated ratably throughout the project in proportion to the relative amounts of proceeds and other funds spent on that project (general pro rata allocation method). Third, allocations of sources of funds to uses, for example, governmental use and private business use, generally are made in a manner that reasonably corresponds to the relative amounts of the sources of funding spent on the property.

The Proposed Regulations provide special elective allocation rules for mixed-use projects. In general, the intent of these special allocation rules is to provide reasonable flexibility to allow issuers to finance portions of projects that are reasonably expected to be used for governmental use with tax-exempt governmental bonds, provided that the portions can be reasonably determined and measured in administrable ways. In particular, the Proposed Regulations provide two special elective allocation methods, the discrete physical portion allocation method and the undivided portion allocation method. These two special elective allocation methods permit proceeds to be allocated to a portion of a mixed-use project using certain prescribed reasonable, consistent allocation methods that properly reflect the proportionate benefit to be derived by the various users of the mixed-use project. These two special allocation methods for dividing mixed-use projects for financing purposes are based on principles similar to those used for measuring ongoing use under § 1.141–3(g) and are closely coordinated with those measurement rules. These methods may be elected for mixed-use projects only if they meet certain eligibility criteria. Absent a proper election to use one of these two special elective allocation methods, the general pro rata allocation method applies to a mixed-use project. The special allocation rules for mixed-use projects are described further herein.

In addition to general allocation and accounting rules and special allocation rules for mixed-use projects, the Proposed Regulations also provide guidance on certain related topics.

II. General Allocation Rules for Proceeds: General Pro Rata Allocation Method

The Proposed Regulations provide a general pro rata allocation method under which proceeds and other funds, if any, allocated under section 148 and § 1.141–6(a)(1) to capital expenditures for a project are treated as being allocated ratably throughout the project in proportion to the relative amounts of proceeds and other funds spent on the project. Generally, the project is the bond-financed property for purposes of section 141. Except where the issuer has elected to use one of the special allocation methods permitted for certain mixed-use projects, the Proposed Regulations provide that a general pro rata allocation method applies to mixed-use projects. Except as otherwise provided in the Proposed Regulations, if financed property is financed with two or more sources of funding (including two or more tax-exempt governmental bond issues), those sources of funding must be allocated to multiple uses (that is, governmental use and private business use) of that financed property in proportion to the relative amounts of those sources of funding expended on that financed property.

The Proposed Regulations prescribe the manner and timing of elections to use the special allocation rules for mixed-use projects and rules regarding final allocations of sources of funding to a project generally.

III. Mixed-Use Projects

(A) In General

The Proposed Regulations provide two special allocation methods that issuers may elect to use for certain mixed-use projects. Here, a mixed-use project refers to a project (as defined in the Proposed Regulations) that, absent the application of the special proposed rules, is reasonably expected to have both governmental use and private business use, and where the private business use is expected to be in excess of the amount of *de minimis* permitted private business use under section 141 for a project financed with an issue of tax-exempt governmental bonds.

The Proposed Regulations treat property as part of the same defined project if the property consists of capital projects that have reasonable nexus characteristics based upon functional and physical proximity, time of placement in service, and a common plan of financing for proceeds and other sources of funds expended on the capital projects.

The Proposed Regulations provide two special elective methods of allocating proceeds of tax-exempt governmental bonds and other funds, that is, proceeds of taxable bonds and funds that are not derived from proceeds of a borrowing (qualified equity), to capital expenditures within mixed-use projects: The discrete physical portion allocation method and the undivided portion allocation method. Absent eligibility and a proper election by an issuer to use one of these special elective allocation methods for mixed-use projects, the general pro rata allocation method applies.

(B) Discrete Physical Portion Allocation Method

In general, the discrete physical portion allocation method allows allocations for a mixed-use project based on dividing the project into physically discrete portions. Under the discrete physical portion allocation method, the percentage of capital expenditures that is allocable to a particular discrete portion of a mixed-use project is determined using a reasonable, consistently applied method that reflects the proportionate benefit to be derived by the various users of the mixed-use project. The Proposed Regulations provide several objective proportionate benchmarks (for example, cost, space, or fair market value) to determine the measure of a discrete portion.

An anti-abuse rule requires use of relative fair market values to measure the discrete portions when an allocation to a discrete portion expected to be used by a private business is significantly greater using relative fair market values than such allocation would be under the otherwise-chosen measure. This anti-abuse rule is comparable to a similar existing anti-abuse rule regarding the ongoing measurement of private business use under § 1.141–3(g)(4)(v). The Treasury Department and the IRS solicit public comment on this anti-abuse rule and whether quantifying the significantly greater than under fair market value standard (for example, an allocation under the fair market value standard is significantly greater if it exceeds an allocation made under another measure by more than X percent) would assist taxpayers in making effective use of the discrete physical portion allocation method.

In order to allow for targeting of tax-exempt bond proceeds to governmental use, an issuer generally may determine which source or sources of funds spent on a mixed-use project are allocated to a particular discrete portion. For example, an issuer may allocate tax-exempt bond proceeds to one discrete portion of a mixed-use courthouse

project which will be used in public court proceedings for governmental use and the issuer may allocate qualified equity to another discrete portion of the courthouse which will be used in private retail business operations as a restaurant for private business use.

Further, while final allocations generally may not be changed, an issuer may reallocate funds from one discrete portion to another if the discrete portions are comparable under certain criteria. For administrability reasons, the Proposed Regulations limit such reallocations to a frequency of not more than once every five years.

(C) Undivided Portion Allocation Method

In general, the undivided portion allocation method permits separating a mixed-use project into a governmental use portion and a private business use portion, each of which represents a fixed percentage of the use of the entire mixed-use project (for example, a fixed percentage of unreserved parking spaces in a parking garage). Unlike the discrete physical portion method, the undivided portion allocation method involves the allocation of a mixed-use project between portions that are not physically distinct but that can be notionally represented by percentages based on objective proportionate measures. Certain eligibility conditions apply to the undivided portion allocation method. This method may be used only for mixed-use projects where private business use and governmental use may be measured under § 1.141–3(g) because that use occurs: (1) At the same time and on the same basis (within the meaning of § 1.141–3(g)(4)(iii)); or (2) at different times (within the meaning of § 1.141–3(g)(4)(ii)). The issuer must reasonably expect as of the issue date that the undivided portion of the mixed-use project to be financed with proceeds of tax-exempt governmental bonds will not have private business use in excess of the amount of *de minimis* permitted private business use. The total capital expenditures for the mixed-use project are allocated between two undivided portions based on measures of the proportionate benefit to be derived by the various users. The Proposed Regulations list some reasonable allocation methods for determining the relative size of the portions. The undivided portion allocation method has an anti-abuse rule similar to that described previously with respect to the discrete physical portion allocation method which requires use of relative fair market values to measure the portions in certain circumstances.

Proceeds are allocated only to the undivided portion that is reasonably expected to be used for governmental use (and any *de minimis* permitted private business use). Qualified equity is allocated to the other undivided portion.

A number of special rules apply to the undivided portion allocation method for purposes of allocating sources to uses. In general, the entire mixed-use project is treated as the bond-financed property whose use must be measured. Also, in measuring ongoing use of a mixed-use project under the undivided portion allocation method, the measurement rules in § 1.141–3(g) (or § 1.141–7 in the case of a mixed-use output facility) apply. The issuer must use the same method for measuring use that it used for determining the allocation of funds to the undivided portions of the mixed-use project. After use of the entire mixed-use project is measured, however, the governmental use and private business use are generally allocated to the undivided portions financed with proceeds and qualified equity, respectively. Generally, in any year, the percentage of governmental use and private business use that is specially allocated to an undivided portion is limited. That percentage of use cannot exceed the percentage of capital expenditures for the mixed-use project that makes up that undivided portion. For example, the percentage of private business use that is specially allocated to the undivided portion financed with qualified equity cannot exceed the percentage of capital expenditures for the mixed-use project that makes up that undivided portion. In determining whether the private business use test is met, only use of the undivided portion to which proceeds are allocated is taken into account.

(D) Operating Rules for Mixed-Use Projects

The Proposed Regulations provide certain general operating rules for mixed-use project allocations. An issuer may elect to apply the discrete physical portion allocation method or the undivided portion allocation method only if the mixed-use project is wholly-owned by governmental persons. An exception to this rule applies to certain mixed-use output facilities. (See paragraph E. *Special rules for mixed-use output facilities.*) Consistent with § 1.141–1(b), common areas cannot be treated as discrete portions of the project. Proceeds and other sources of funds spent on common areas are allocated to the discrete portions in the same proportion as funds spent for the discrete portions are allocated.

Under the Proposed Regulations, the funds that may be allocated under the discrete physical portion allocation method or the undivided portion allocation method to a particular mixed-use project include proceeds of one or more issues of tax-exempt governmental bonds and qualified equity. If a project is financed with more than one issue of governmental bonds, proceeds of those issues are allocated ratably to a discrete portion or undivided portion to which any proceeds are allocated in proportion to the amounts of proceeds from each issue used for the project.

(E) Special Rules for Mixed-Use Output Facilities

The Proposed Regulations provide special rules for the application of the undivided portion allocation method to mixed-use projects that are output facilities. An issuer may apply the undivided portion allocation method to a mixed-use project that is an output facility if the facility is wholly-owned by governmental persons or if undivided ownership interests in the facility are owned by governmental persons or private businesses, provided that all owners of the undivided ownership interests share the ownership, output, and operating expenses in proportion to their contributions to the costs of the facility. The relative measures of the undivided portions of a mixed-use output facility are determined using the proportionate benefit to be derived by the users of the mixed-use project. For an output facility in which private business use arises from a private business owning an undivided ownership interest in the facility (with a governmental person owning the other undivided portion of the facility), the undivided portions are based on the ownership percentages. This rule implements the principles illustrated by § 1.141–7(i), *Example 1.* When private business use of a facility solely owned by a governmental person or of an undivided ownership interest of a facility owned by a governmental person arises from an output contract that meets the benefits and burdens tests under § 1.141–7, the undivided portions of that facility or ownership interest are determined by the proportionate shares of the available output of that project to be used for governmental use (and any de minimis permitted private business use) and for private business use. Section 1.141–7(h) controls allocation of output contracts to output facilities.

IV. Redemption of Bonds in Anticipation of Nonqualified Private Business Use

The Proposed Regulations provide a new special rule which permits certain proceeds of taxable bonds and certain funds that are not derived from proceeds of a borrowing that are used to retire tax-exempt governmental bonds (anticipatory redemption bonds) to be treated as qualified equity. In prescribed circumstances, this new special rule allows targeting of funds other than tax-exempt bond proceeds to redeem outstanding tax-exempt bonds and thereby to finance portions of projects which are expected to be used for nonqualified private business use in the future. This special rule has certain eligibility requirements. In general, the intent of this proposed rule is to encourage retirement of tax-exempt bonds before the occurrence of unqualified use to reduce the burden on the tax-exempt market. The eligibility requirements for this special rule address when the anticipatory redemption bond must be retired, the issuer's reasonable expectations regarding use of the project and actual use of the project prior to the redemption, and the length of the term of the issue of which the anticipatory redemption bond is a part.

Amounts that are treated as qualified equity under this special rule may be allocated to a discrete portion or undivided portion of the project in a manner provided in the discrete physical portion allocation method or undivided portion allocation method if such allocation would have satisfied the applicable allocation method had that portion been identified for purposes of financing it in a new issue at the time of the retirement of the anticipatory redemption bond.

V. Allocations of Private Payments, Common Costs, and Bonds

The Proposed Regulations provide that private payments generally are allocated in accordance with § 1.141–4, subject to certain special rules for allocating payments under output contracts. Private payments from output contracts that meet the benefits and burdens test under § 1.141–7 are allocated to the undivided portion financed with qualified equity (notwithstanding § 1.141–4(c)(3)(v)) in the same manner as is the private business use from such contracts. Thus, private business use and private payments arising under such an output contract are both allocated to the undivided portion financed with qualified equity (to the extent all such contracts do not exceed the percentage of such portion) without regard to whether the qualified equity consists of proceeds of taxable bonds or funds that are not derived from proceeds of a borrowing.

The Proposed Regulations provide ratable allocation rules for common costs (for example, issuance costs).

The Proposed Regulations provide that proceeds generally are allocated to bonds in accordance with the rules for allocations of proceeds to bonds in multipurpose issues under § 1.141–13(d). In the case of an issue that is not a multipurpose issue, proceeds are allocated to bonds ratably in a manner similar to the allocation of proceeds to projects under the general pro rata allocation method.

VI. Partnerships

The Proposed Regulations generally treat a partnership as a separate entity that is a nongovernmental person for purposes of section 141. For purposes of section 141, a limited exception disregards a partnership as a separate entity if each of the partners is a governmental person and treats such a partnership as an aggregate of its partners (that is, as governmental persons) for these purposes. In applying the private business tests for purposes of qualified 501(c)(3) bonds, the Proposed Regulations generally treat a partnership as an aggregate if each of the partners is either a governmental person or a section 501(c)(3) organization. The Proposed Regulations, however, do not apply such aggregate treatment for purposes of the ownership test under section 145(a)(1).

In general, the proposed treatment of partnerships reflects certain administrability concerns with partnerships which have both governmental persons and private businesses as partners and the associated potential for shifting allocations of various partnership items. The Treasury Department and the IRS understand that governmental persons or section 501(c)(3) organizations may be partners in partnerships that include private businesses. Permitting tax-exempt bonds used to finance facilities owned by such partnerships to qualify as governmental bonds rather than private activity bonds would raise administrability issues, including but not limited to, questions of how to measure use by an owner and questions regarding common profit or cost reduction motives and allocation of partnership items. Permitting such ownership by partnerships without administrable rules for tracking these items has the potential to allow the benefits of tax-exempt financing to inure to private business users.

One limited circumstance in which the Treasury Department and the IRS are considering favorable aggregate treatment for partnerships (that is, disregarding eligible partnerships as separate private business entities) and are soliciting specific comment is that of a partnership of governmental persons (or section 501(c)(3) organizations for 501(c)(3) bonds) and private businesses in which the respective partners receives the same distributive share of each partnership item for Federal tax purposes (including income, gain, deduction, loss, credit and basis) as their respective interests in the partnership and this share remains the same for the entire measurement period for the bonds or the entire period that the person is a partner. The Treasury Department and the IRS solicit specific public comment regarding whether it would be useful to treat such a partnership as an aggregate in this limited circumstance involving straight-up allocations of all partnership items in accordance with constant percentage interests in the partnership.

The contemplated limited circumstance in which the Treasury Department and the IRS are considering aggregate treatment for partnerships for private activity bond purposes involves partnership allocations similar to those treated as qualified allocations to tax-exempt entities for purposes of the tax-exempt use property provisions under section 168(h)(6).

VII. Multipurpose Issue Allocations

In general, § 1.141–13(d) provides guidance on multipurpose issue allocations for purposes of section 141. That guidance was included as part of the final regulations (TD 9234) under section 141 that were published in the **Federal Register** on December 19, 2005 (70 FR 242) (the 2005 Final Refunding Regulations) and that mainly provided rules for refunding bonds.

The Proposed Regulations also make a clarifying change to § 1.141–13(d). In response to the 2005 Final Refunding Regulations, the Treasury Department and the IRS have received comments seeking clarification of how those multipurpose rules work under section 141 in relation to an existing general multipurpose issue allocation rule under § 1.150–1(c)(3). The Proposed Regulations provide certain clarifying guidance on the multipurpose issue allocation rule under § 1.141–13(d) and provide an expanded example to illustrate how those rules operate in various circumstances.

In particular, the Proposed Regulations modify § 1.141–13(d) regarding multipurpose issue allocations to clarify how that provision applies when an issuer wants to elect the multi-purpose issue rule for an issue that would consist of qualified private activity bonds in part and governmental bonds in part with an appropriate allocation. The Proposed Regulations amend § 1.141–13(d) to eliminate a requirement that a multipurpose issue must consist of tax-exempt bonds prior to being allocated into separate issues. The Proposed Regulations retain the requirement that, after the multipurpose issue allocation, each of the separate issues must consist of tax-exempt bonds. This proposed amendment clarifies that an issuer may issue bonds intended to be qualified private activity bonds in part and governmental bonds in part as one issue (within the meaning of § 1.150–1(c)(1)) and make allocations under the section 141 multipurpose issue allocation rule in § 1.141–13(d) in conjunction with the general multipurpose issue allocation rule in § 1.150–1(c)(3), to treat the qualified private activity bonds and governmental bonds as separate issues, respectively.

VIII. Proposed Effective Dates

The Proposed Regulations are proposed to apply to bonds (1) that are sold on or after the date that is 60 days after the date of publication in the **Federal Register** of final regulations under § 1.141–6 and (2) that are subject to the 1997 Final Regulations. Issuers may apply §§ 1.141–13(d) and 1.141–13(g) *Example 5* of the Proposed Regulations to bonds sold before the date of publication of final regulations in the **Federal Register** to which § 1.141–13 applies. Except as otherwise provided in the preceding sentence, issuers may not apply or rely upon the rules contained in these Proposed Regulations until these rules are adopted as final regulations and made effective pursuant to a Treasury decision published in the **Federal Register**.

IX. Continued Reliance on Mixed-Use Output Notice

Pursuant to the 2002 Advance Notice, the Treasury Department and the IRS provided previous limited guidance regarding certain allocation and accounting rules for mixed-use output facilities. Issuers may continue to rely on the rules in the 2002 Advance Notice for bonds sold before the date of publication in the **Federal Register** of final regulations under § 1.141–6 (or such later effective date as may be specified in those final regulations or in future proposed regulations).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 553(b) does not apply to this notice of proposed rulemaking. It is hereby certified that the collection of information (recordkeeping requirement) in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small governmental jurisdictions. This certification is based upon the fact few small governmental jurisdictions issue tax-exempt bonds to finance facilities that will be used for both governmental use and more than the amount of de minimis permitted private business use. Also, the amount of time required to meet the recordkeeping requirement is not significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Small Business Administration for comment on its impact on small governmental jurisdictions.

Comments and Public Hearing

Before these Proposed Regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and IRS 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 January 11, 2007 at 10 a.m., in the auditorium of the New Carrollton Federal Building, 5000 Ellin Rd., Lanham, MD 20706. Due to building security procedures, visitors must enter at the main 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 written or electronic comments by December 26, 2006 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by December 26, 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 authors of these regulations are Rebecca L. Harrigal, Johanna Som de Cerff, and Michael P. Brewer, Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities), 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 1.141–0 is amended by adding an entry for § 1.141–1(e), revising entries for § 1.141–6, and adding an entry for § 1.141–15(k) and (l) as follows:

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* * * * *

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* * * * *

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§ 1.141–15 Effective dates

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(k) Effective date for certain regulations related to allocation and accounting.
(l) Permissive retroactive application of certain regulations.

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Par. 3. Section 1.141–1 is amended by adding additional definitions under paragraph (b) and by adding a new paragraph (e) as follows:

§ 1.141–1 Definitions and rules of general application

* * * * *

(b) *Certain general definitions.*

* * * * *

De minimis permitted private business use means the amount of private business use permitted for proceeds of tax-exempt bonds without causing such bonds to be classified as private activity bonds under section 141.

* * * * *

Financed property means, except as otherwise provided, any project (as defined in § 1.141–6(b)(2)(ii)) to which proceeds of an issue of tax-exempt bonds are allocated under § 1.141–6.

* * * * *

Governmental use or *government use* means any use that is not private business use under § 1.141–3.

* * * * *

Private business use means use by a person other than a governmental person in a trade or business, as more particularly defined in § 1.141–3.

* * * * *

(e) *Partnerships*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, a partnership (as defined under section 7701(a)(2)) is treated as a separate entity that is a nongovernmental person for purposes of section 141.

(2) *Governmental partnerships.* For purposes of section 141, in the case of a partnership (as defined in section 7701(a)(2)) in which each of the partners is a governmental person (as defined in § 1.141–1(b)), the partnership is disregarded as a separate entity and is treated as an aggregate of its partners.

Par. 4. Section 1.141–6 is revised to read as follows:

§ 1.141–6 Allocation and accounting rules

(a) *Allocations of proceeds to expenditures, property, and uses in general*—(1) *Allocations to expenditures.* Except as otherwise provided in this section, for purposes of §§ 1.141–1 through 1.141–15, the provisions of § 1.148–6(d) apply for purposes of allocating proceeds and other sources of funds to expenditures (as contrasted with investments). Except as otherwise provided in this section, allocations of proceeds and other sources of funds to expenditures generally may be made using any reasonable, consistently applied accounting method. Allocations of proceeds to expenditures under section 141 and section 148 must be consistent with each other. For purposes of the consistency requirements in this paragraph (a), it is permissible to employ an allocation method under paragraph (a)(2), (c), or (d) of this section (for example, the general pro rata allocation method under paragraph (a)(2) of this section) to allocate sources of funds within a particular project for purposes of section 141 in conjunction with an accounting method allowed under § 1.148–6(d) (for example, the first-in, first out method) to determine the allocation of proceeds or other sources of funds to expenditures for that project.

(2) *Allocations within property; the general pro rata allocation method.* Except as otherwise provided in this section, proceeds and other sources of funds allocated to capital expenditures for a project (as defined in paragraph (b)(2)(ii) of this section) under section 148 and paragraph (a)(1) of this section are treated as allocated ratably throughout that project in proportion to the relative amounts of proceeds and other funds spent on that project (the general pro rata allocation method). For example, if a building is financed with proceeds and other funds and the issuer allocates the proceeds and other funds to the capital expenditures of the building using a gross proceeds spent first allocation method under section 148 and paragraph (a)(1) of this section, the proceeds and other sources of funds so allocated to the building are treated as being allocated ratably throughout the building under this paragraph (a)(2).

(3) *Allocations of sources of funds to ultimate uses of financed property.* Except as otherwise provided in this section, if financed property is financed with two or more sources of funding (including two or more tax-exempt governmental bond issues), those sources of funding must be allocated to multiple uses (that is, governmental use and private business use) of that financed property in proportion to the relative amounts of those sources of funding expended on that financed property.

(4) *Manner and time for electing to apply special allocation methods for mixed-use projects; final allocations generally.* If an issuer is making an election under paragraph (c) or (d) of this section to use one of the special allocation methods for mixed-use projects, the issuer must make this election in writing by noting in its records the method of allocation chosen and the preliminary amounts and sources of funds it expects to allocate to specific discrete or undivided portions within the mixed-use project. The time for making this election is on or before the start of the measurement period. An issuer must make final allocations of proceeds and other funds under this section by noting in its records the final amounts of such allocations. The time for making these final allocations is set forth in the timing rules under § 1.148–6(d)(1)(iii). Except as otherwise provided in this section, once the time for making final allocations under

§ 1.148–6(d)(1)(iii) has passed, allocations cannot be changed.

(5) *References to proceeds.* For purposes of this section, except where the context clearly requires otherwise (for example, in references to ''proceeds'' of taxable bonds) and regardless of whether expressly specified, references to proceeds generally are intended to refer to proceeds of tax-exempt governmental bonds.

(b) *Special rules on reasonable proportionate allocation methods for mixed-use projects*—(1) *In general.* Once proceeds and other sources of funds are allocated to a mixed-use project (as defined in paragraph (b)(2) of this section) under section 148 and paragraph(a)(1) of this section, there are three methods for allocating those proceeds and other sources of funds to capital expenditures (as defined in § 1.150–1(b)) within the mixed-use project. These methods are the general pro rata allocation method in paragraph (a)(2) of this section, the discrete physical portion allocation method, and the undivided portion allocation method. Allocations will be made under the general pro rata allocation method unless the issuer elects to use either the discrete portion method or the undivided portion method and meets the requirements for making such election under paragraph (a)(4) of this section and using such a method. The discrete portion and undivided portion allocation methods are elective and permit, to the extent provided, proceeds to be allocated to a portion of a mixed-use project based on a consistent application of a permitted reasonable allocation method that properly reflects the proportionate benefit to be derived by the various users of those portions of the mixed-use project. Paragraph (c) of this section sets forth the rules for the discrete physical portion allocation method and paragraph (d) of this section sets forth the rules for the undivided portion allocation method. Paragraph (e) of this section sets forth certain general operating rules for all mixed-use project allocations. Paragraph (g) of this section provides special rules for applying the undivided portion allocation method to output facilities.

(2) *Definition of a mixed-use project*—(i) *In general.* For purposes of this section, the term *mixed-use project* means a project (as defined in paragraph (b)(2)(ii) of this section) that, absent the application of the special elective allocation methods for mixed-use projects under paragraphs (c) and (d) of this section, is reasonably expected as of the issue date to have private business use in excess of de minimis permitted private business use.

(ii) *Definition of project*—(A) *In general.* For purposes of this section, the term *project* means one or more facilities or capital projects, including land, buildings, equipment, or other property, that meets each of the following requirements:

(1) The facilities or capital projects are functionally related or integrated and are located on the same site or on reasonably proximate adjacent sites;

(2) The facilities or capital projects are reasonably expected to be placed in service within the same 12-month period; and

(3) The proceeds and other sources of funds that are expended on the facilities or capital projects are expended pursuant to the same plan of financing.

(B) *Subsequent improvements or replacements.* Subsequent improvements and replacements of portions of a project that are within the size, function, and usable space of the original design of the project are treated as part of that same project even if placed in service beyond the 12-month period in paragraph (b)(2)(ii)(A)(2) of this section. Thus, for example, improvements and replacements of damaged walls or worn-out fixtures within an original building that do not expand the scope or function of usable space are part of the original project.

(c) *Discrete physical portion allocation method*—(1) *In general.* An issuer may elect the discrete physical portion allocation method when a mixed-use project can be separated into discrete portions (as defined in § 1.141–1(b)). With a proper election, an issuer may use the discrete physical portion allocation method to allocate proceeds and qualified equity to capital expenditures for a discrete portion within a mixed-use project and to allocate those sources of funds to uses. The issuer must use a reasonable, consistently applied allocation method that reflects the proportionate benefits to be derived by the various users of the discrete portions to determine the aggregate amount of proceeds and qualified equity allocable to a particular discrete portion in a mixed-use project.

(2) *The measure of a discrete portion.* An issuer is treated as using a reasonable allocation method that reflects the proportionate benefits if the issuer determines the amount of proceeds and qualified equity to be allocated to the discrete portions based on reasonable discrete portion benchmarks. These benchmarks generally include expected actual costs of the discrete portions, a percentage of total space of the mixed-use project to be used in the discrete portion, a percentage of the total fair market value of the mixed-use project that will be associated with the discrete portion, or another objective measure that is reasonable based on all the facts and circumstances. A discrete portion benchmark other than relative fair market value may not be used to make an allocation to a discrete portion that is reasonably expected to be used for private business use if an allocation to that same discrete portion using relative fair market value, determined as of the start of the measurement period, would result in a significantly greater percentage of the total capital expenditures of the project being allocated to such discrete portion.

(3) *Allocations to expenditures for discrete portions.* Except as otherwise provided in this section, an issuer may determine how each source of funds (for example, proceeds or qualified equity) spent on a mixed-use project is allocated among discrete portions of that project. For example, proceeds may be specially allocated to capital expenditures for costs of a discrete portion that is reasonably expected to be used for governmental use (or for de minimis permitted private business use), and qualified equity may be specially allocated to capital expenditures for costs of a discrete portion that is reasonably expected to be used for private business use.

(4) *Allocations of uses to discrete portions.* In applying the measurement rules under § 1.141–3(g) to measure ongoing use of a discrete portion of a mixed-use project, the measurement rules under § 1.141–3(g) generally apply to the same extent and in the same manner that they otherwise would. If an issuer properly elects to apply the discrete physical portion allocation method, the financed property is limited to the discrete portion to which any proceeds are allocated under paragraph (c)(3) of this section, and under § 1.141–3(g)(4)(iv), the only use of the mixed-use project that is taken into account is the use of the discrete portions to which proceeds are specially allocated.

(5) *Certain reallocations among discrete portions.* An issuer may reallocate in whole, but not in part, proceeds and qualified equity that it allocated to capital expenditures for one discrete portion of a mixed-use project under paragraph (c)(3) of this section to another discrete portion of the same mixed-use project if the proportionate benefits to be derived by the users of the two discrete portions are reasonably comparable both at the time of the original allocation and at the time of the reallocation. For purposes of this

paragraph (c)(5), the proportionate benefits are reasonably comparable only if the measures of the discrete portion benchmarks are within five percent of each other. In determining whether the proportionate benefits of the discrete portions are reasonably comparable at the time of the reallocation, the same discrete portion benchmark used originally to determine the discrete portions and the fair market value of the discrete portions as of the time of the reallocation must be used. Reallocations under this paragraph (c)(5) may be made only once every five years.

(d) *The undivided portion allocation method*—(1) *In general.* An issuer may elect the undivided portion allocation method to make allocations with respect to a mixed-use project, provided that the undivided portions to which the allocations are made generally represent fixed percentages of the use of the entire mixed-use project (for example, a fixed percentage of unreserved parking spaces in a parking garage). The measures of the undivided portions may be based on physical or nonphysical characteristics of the project. In addition, the undivided portion allocation method may be applied separately to a discrete portion within a mixed-use project for which the issuer has elected to apply the discrete physical portion allocation method in which event the references in this paragraph (d) to mixed-use project generally shall be deemed to mean that discrete portion within which the undivided portion allocation method is applied separately. Upon a proper election, an issuer may, to the extent provided, use the undivided portion allocation method both to allocate proceeds or qualified equity to capital expenditures for the undivided portions and to allocate those sources of funds to uses of the mixed-use project. The issuer must use a reasonable consistently applied allocation method that properly reflects the proportionate benefit to be derived by the various users of the mixed-use project to determine the amount of proceeds or qualified equity allocable to a particular undivided portion of a mixed use project. See paragraph (g) of this section for special rules for output facilities. To apply the undivided portion allocation method, the following conditions must be met:

(A) The issuer must reasonably expect as of the start of the measurement period that private business use and governmental use of the mixed-use project will occur simultaneously and be on the same basis (within the meaning of § 1.141–3(g)(4)(iii)) or will occur at different times (within the meaning of § 1.141–3(g)(4)(ii)); and

(B) The issuer must reasonably expect as of the start of the measurement period that private business use allocated to the proceeds under paragraph (d)(4) of this section will not exceed de minimis permitted private business use.

(2) *The measure of an undivided portion.* An issuer is treated as using a reasonable allocation method that reflects the proportionate benefits if the issuer determines the amount of proceeds and qualified equity to be allocated to the undivided portions based on reasonable undivided portion benchmarks. Such benchmarks generally include a measure of how many units produced from the facility will be used by the various users, a percentage of the space in the mixed-use project to be used by the various users (for example, a percentage of the number of parking spaces or a percentage of square feet of usable leased office space), a percentage of the fair market value of the mixed-use project that will be used by the various users (for example, a dollar amount per parking space for a percentage of a total number of parking spaces or a dollar amount per square foot for a percentage of usable leased office space), a percentage of time that the project will be used by the various users (determined in a manner consistent with § 1.141–3(g)(4)(ii)), or another objective measure, which may include the present value of reasonably expected revenues associated with each user's use in circumstances in which no other measure is reasonably workable (for example, expected revenues from space in a research facility in which the qualified and nonqualified research is operationally fungible), that is reasonable based on all the facts and circumstances. An undivided portion benchmark other than relative fair market value may not be used to make an allocation to an undivided portion that is reasonably expected to be used for private business use if an allocation to that same undivided portion using relative fair market values, determined as of the start of the measurement period, would result in a significantly greater percentage of the total capital expenditures of the project being allocated to such undivided portion. For example, if a private business and a governmental person use a financed facility each for 50 percent of the time, but the relative fair market value of the private business use is significantly greater than 50 percent because the private business uses the facility during prime hours, the relative fair market values of the undivided portions must be used as the undivided portion benchmark.

(3) *Allocations to expenditures for undivided portions.* Except as otherwise provided in this section, proceeds are specially allocated to capital expenditures for costs of an undivided portion that is reasonably expected to be used for governmental use (or for *de minimis* permitted private business use). Qualified equity is specially allocated to capital expenditures for costs of an undivided portion of a mixed-use project that is reasonably expected to be used for private business use.

(4) *Allocations of uses to undivided portions*—(i) *General rule.* If an issuer elects to apply the undivided portion allocation method, then for purposes of section 141, the financed property is the mixed-use project. In measuring ongoing use of a mixed-use project, the measurement rules under § 1.141–3(g) (or § 1.141–7 in the case of an undivided portion of a mixed-use project that is an output facility) apply to the same extent and in the same manner that they otherwise would to the mixed-use project. However, under the undivided portion allocation method, after measuring private business use of the mixed-use project, subject to the limits in this paragraph (d)(4)(ii) of this section, private business use of the mixed-use project is specially allocated to the undivided portion of that project financed with qualified equity (as contrasted with the entire mixed-use project) for purposes of determining whether the issue meets the private business use test. Corresponding allocation rules apply to the undivided portion of a mixed-use project that is financed with proceeds and that is reasonably expected to be used for governmental use (or for *de minimis* permitted private business use). Thus, subject to the limitations in paragraph (d)(4)(ii) of this section, governmental use is specially allocated to the undivided portion that is financed with proceeds. Private business use of the mixed-use project that is properly allocated under this paragraph to an undivided portion financed with qualified equity is not private business use of proceeds. To determine whether the undivided portion to which proceeds are allocated is used for private business use, the measurement rules under § 1.141–3(g) (or § 1.141–7 for output facilities) apply, taking into account the special allocation rules for the undivided portion allocation method under this section.

(ii) *Limit on amount targeted.* In any year, the percentage of private business use of the mixed-use project, as

determined under the measurement rules for any one-year period under § 1.141–3(g)(4), that is specially allocated to an undivided portion financed with qualified equity cannot exceed the percentage of capital expenditures of the mixed-use project used to determine that undivided portion and allocated to that undivided portion. The percentage of governmental use (and *de minimis* permitted private business use), as determined in the same manner, that is specially allocated to an undivided portion financed with proceeds cannot exceed the percentage of capital expenditures of the mixed-use project used to determine that undivided portion and allocated to that undivided portion. Similarly, for output facilities, the percentage of private business use of the mixed-use project, as determined under § 1.141–7, that may be targeted to an undivided portion cannot exceed the percentage of capital expenditures of the mixed-use project allocated to that undivided portion.

(iii) *Consistency requirement.* In applying the measurement rules under § 1.141–3(g) to a mixed-use project for which an issuer has employed the undivided portion allocation method, the issuer must use the same measurement method (for example, costs, quantity, or fair market value) that it used as its benchmark measure to make the allocations to the undivided portions of the mixed-use project under this section. For example, if the issuer made an allocation to an undivided portion using a time-based allocation, the issuer must measure private business use using a time-based allocation.

(e) *Certain general operating rules for mixed-use project allocations*—(1) *In general.* This paragraph (e) provides certain general operating rules for allocations regarding mixed-use projects under this section.

(2) *Governmental ownership requirement for discrete physical portion and undivided portion allocation methods.* Except in the case of an output facility, an issuer may make an election to apply the discrete physical portion or the undivided portion allocation method only if the mixed-use project is wholly-owned by governmental persons. An issuer may elect to apply the undivided portion method to a mixed-use project that is an output facility in which non-governmental persons own undivided ownership interests if those interests meet the requirements of paragraph (g)(2) of this section.

(3) *Sources of funds for mixed-use project allocations*—(i) *In general.* For purposes of applying the permitted allocation methods for mixed-use projects under paragraphs (c) and (d) of this section, the only sources of funds that may be allocated to the mixed-use project are proceeds and qualified equity (as defined in paragraph (e)(3)(ii) of this section).

(ii) *Definition of qualified equity.* Except as otherwise provided in special rules for anticipatory redemption bonds in paragraph (f) of this section, for purposes of this section, the term *qualified equity* means only proceeds of taxable bonds and funds that are not derived from proceeds of a borrowing that are spent on the same mixed-use project as the proceeds of the applicable tax-exempt governmental bonds. By contrast, for example, qualified equity does not include equity interests in real property or tangible personal property. Further, qualified equity does not include any funds spent on subsequent improvements and replacements (including any subsequent improvements or replacements described in paragraph (b)(2)(ii)(B) of this section).

(4) *Common areas.* Common areas may not be treated as separate discrete portions of mixed-use projects. Proceeds or qualified equity used to finance capital expenditures for common areas are allocated ratably to the discrete portions of the mixed-use project in the same manner that funds for other capital expenditures of the mixed-use project are allocated.

(5) *Allocations regarding multiple issues.* If proceeds of more than one issue are allocated under section 148 and paragraph (a)(1) of this section to capital expenditures of a mixed-use project, and the issuer elects to apply the discrete portion or undivided portion allocation method to such mixed-use project, then proceeds of those issues are allocated ratably to capital expenditures for a discrete portion or undivided portion to which any proceeds are allocated in proportion to their relative shares of the total proceeds of such issues in the aggregate used for such mixed-use project.

(f) *Special rules for bond redemptions in anticipation of unqualified use*—(1) *In general.* Amounts other than proceeds of tax-exempt bonds that are used to retire a tax-exempt governmental bond (anticipatory redemption bond) are treated as qualified equity if the following requirements are met:

(i) Allocations to anticipatory redemption bonds are made in a manner similar to § 1.141–12(j)(2), and the anticipatory redemption bonds are retired within the time prescribed below in anticipation of a deliberate action that otherwise would cause the project to have private business use in excess of *de minimis* permitted private business use. An anticipatory redemption bond is redeemed in anticipation of the deliberate act when it is retired at least five years before its otherwise-scheduled maturity date or mandatory sinking fund redemption date and it is retired within a period that starts one year before the deliberate act occurs and ends 91 days before the deliberate act occurs;

(ii) The issuer must not reasonably expect at the start of the measurement period that the project would be a mixed-use project, and for the first five years of the measurement period, the project must not be used in a manner that would cause private business use of the project to exceed *de minimis* permitted private business use; and

(iii) The term of the issue of which the anticipatory redemption bond is a part must be no longer than is reasonably necessary for the governmental purpose of the issue (within the meaning of § 1.148–1(c)(4)).

(2) *Allocation of qualified equity.* Amounts that are treated as qualified equity under this paragraph (f) may be allocated to a discrete portion or undivided portion of a project in a manner provided in the discrete physical portion allocation method under paragraph (c) of this section or the undivided portion allocation method under paragraph (d) of this section if such allocation would have satisfied the applicable allocation method had that portion been identified for purposes of financing it in a new issue at the time of the retirement of anticipatory redemption bond. Allocations under this paragraph (f) cannot later be changed.

(3) *Allocations of use.* Use of a project to which this paragraph (f) applies is allocated in accordance with the discrete physical portion allocation method or undivided portion allocation method, as applied under the immediately preceding paragraph.

(4) *Relationship to § 1.141–12.* Anticipatory redemption bonds that are treated as qualified equity under this paragraph (f) have a comparable effect on continuing compliance as remedial actions under § 1.141–12 and need not be further remediated under § 1.141–12.

(g) *Special rules for applying the undivided portion allocation method to mixed-use output facilities*—(1) *In general.* This paragraph (g) sets forth certain special rules regarding how to apply the undivided portion allocation method to a mixed-use project that is an output facility.

(2) *Governmental ownership requirement for mixed-use output facilities.* An issuer may elect to apply the undivided portion method to a mixed-use project that is an output facility if it is wholly-owned by governmental persons or if it has multiple undivided ownership interests which are owned by governmental persons or private businesses, provided that all owners of the undivided ownership interests share the ownership, output, and operating expenses in proportion to their contributions to the costs of the output facility.

(3) *The measure of an undivided portion of a mixed-use output facility.* The measure of an undivided portion of a mixed-use project that is an output facility is based on a reasonable proportionate allocation method that properly reflects the proportionate benefit to be derived by the various users of the mixed-use project. For an output facility that has multiple undivided ownership interests that meet the requirements of paragraph (g)(2) of this section, those undivided ownership interests are treated as undivided portions. In addition, for purposes of determining the measure of proportionate benefit to be derived from users of an output facility (or of an undivided ownership interest in an output facility treated as an undivided portion) as a result of output contracts, the measure of an undivided portion is based on a benchmark equal to the proportionate share of available output (as defined in § 1.141–7(b)(1)) to be received by the user. For purposes of determining the measure of an undivided portion of an output facility based on the proportionate share of available output, the facts and circumstances test under § 1.141–7(h) governs allocations of output contracts to output facilities.

(h) *Allocations of private payments.* Private payments for financed property are allocated in accordance with § 1.141–4. Thus, private payments for a mixed-use project for which an election is made to apply the discrete physical portion allocation method are allocated under § 1.141–4(c)(3)(ii), and private payments for a mixed-use project for which an election is made to apply the undivided portion allocation method are allocated under 1.141–4(c)(3) without regard to the undivided portions. However, payments under output contracts that result in private business use are allocated to the undivided portion financed with qualified equity (notwithstanding § 1.141–4(c)(3)(v) (regarding certain allocations of private payments to equity)) in the same manner as the private business use from such contracts is allocated to that undivided portion under paragraph (d)(4) of this section.

(i) *Allocations of proceeds to common costs of an issue.* Proceeds of tax-exempt bonds allocated to expenditures for common costs (for example, issuance costs, qualified guarantee fees, or reasonably required reserve or replacement funds) are allocated in accordance with § 1.141–3(g)(6). Common costs allocable to a mixed-use project for which an election has been made to apply the undivided portion or discrete physical portion allocation method are allocated ratably to the discrete portions or undivided portion of the mixed-use project to which proceeds are allocated.

(j) *Allocations of proceeds to bonds.* In general, proceeds of tax-exempt bonds are allocated to bonds in accordance with the rules for allocations of proceeds to bonds for separate purposes of multipurpose issues in § 1.141–13(d). In the case of an issue that is not a multipurpose issue, proceeds are allocated to bonds ratably in a manner similar to the allocation of proceeds to projects under the general pro rata allocation method in paragraph (a)(2) of this section.

(k) *Examples.* The following examples illustrate the application of this section:

Example 1. Discrete portions of a mixed-use project. City A constructs a 10-story office building, having 100x square foot of office space, and costing $100x. Each floor has an equal amount of office space. Assume the building has no common areas. City A reasonably expects to use the first six floors for governmental use (and possibly for de minimis permitted private business use). City A will lease the top four floors to Corporation B for private business use. City A wants to divide the mixed-use project into two discrete portions and to allocate proceeds to the first six floors and qualified equity to the top four floors. City A treats the first six floors as one discrete portion (the Governmental Portion) and the top four floors as another discrete portion (the Private Business Portion). City A proposes to determine how much of the $100x can be allocated to each discrete portion using relative square feet of usable office space. The percentage of the $100x that would be allocated to the Private Business Portion using relative fair market values, determined at the start of the measurement period, would not be significantly greater than the amount that will be allocated using relative square footage. Relative square footage is an appropriate discrete portion benchmark because it is an objective measure that properly reflects the proportionate benefit to be derived by the various users. City A finances the costs of the Governmental Portion ($60x) with proceeds of tax-exempt governmental bonds (the Bonds) and the costs of the Private Business Portion ($40x) with qualified equity which consists of taxable bonds (the qualified equity). City A allocates Bond proceeds to capital expenditures for the costs of the Governmental Portion (that is, $60x for capital costs of six specific floors of the building). City A allocates the qualified equity to capital expenditures for the costs of the Private Business Portion (that is, $40x for capital costs of four specific floors of the building). The financed property to which proceeds of the Bonds are allocated is the Governmental Portion. For purposes of measuring ongoing use of the Bond proceeds, use of the Private Business Portion will be disregarded, but any private business use of the six specific floors which comprise the Governmental Portion will be taken into account during the measurement period. The proceeds of the Bonds are treated as used for the Governmental Portion and ongoing compliance depends on the amount of private business use of that Governmental Portion over the term of the applicable measurement period. Thus, if more than 10 percent of the specific physically discrete floors which comprise the Governmental Portion of the mixed-use project (that is, more than $6x of the proceeds or 6x square feet of the office space within the Governmental Portion) were used for private business use during the measurement period as a result of deliberate actions, then the Bonds would violate the private business use test.

Example 2. Reallocations among discrete portions. City A constructs a 10-story office building having 100x square feet of office space, and costing $100x. The top five floors are to be leased to a private business, Corporation B. Before the start of the measurement period, City A appropriately elected a discrete physical portion allocation method using a relative square footage measure and allocated $50x of proceeds to the first five floors (the Governmental Portion) and $50x in qualified equity to the top five floors (the Private Business Portion). After the time for finalizing allocations has passed, Corporation B defaults on its lease for the top five floors of the building and vacates the building. Corporation C, another private business, expresses interest in leasing office space, but Corporation C wants to lease the first five floors of the building rather than the top five floors previously leased by Corporation B. City A wants to reallocate the proceeds used for the Private Business Portion to the Governmental Portion. City A plans to use the Private Business Portion for governmental use. At the time of both the original allocation and this reallocation the measures of the Private Business Portion and Governmental Portion under the applicable discrete portion benchmarks are within five percent of each other. City A determines that the measures of the two discrete portions are reasonably comparable at the time of the reallocation by using the benchmarks of relative square footage and the then-current fair market values of the two discrete portions. This reallocation between discrete portions is permissible.

Example 3. Undivided portions of a mixed-use project. City A constructs a 10-story office building, having 100x square foot of

office space, and costing $100x. City A has not identified specific space to be leased to any specific private business. Instead, City A reasonably expects to use 70 percent of the office space in the building for governmental use (or possibly for *de minimis* permitted private business use) (the Governmental Portion). City A reasonably expects that it will lease out a maximum of 30 percent of the office space to one or more private businesses in unspecified locations in the building (the Private Business Portion). City A wants to allocate this mixed-use project between two undivided portions and target the expected private business use to the undivided portion financed with qualified equity. City A determines how much of the $100x can be financed with tax-exempt governmental bonds based on relative square feet of usable office space. This undivided portion benchmark is an objective measure that properly reflects the proportionate benefit to be derived by the various users. City A finances 70 percent of the costs of the building ($70x) with proceeds (the Bonds) and 30 percent ($30x) of those costs with qualified equity which consists of taxable bonds (the Qualified Equity). Bond proceeds are allocated to capital expenditures for the costs of the Governmental Portion. Qualified Equity is allocated to capital expenditures for the costs of the Private Business Portion. For purposes of measuring ongoing use of the mixed-use project, private business use and governmental use of the entire 10-story office building is considered. As long as average private business use of the mixed-use project under the measurement rules does not exceed 30 percent in a particular year, that private business use is allocated to the Private Business Portion. Thus, none of that private business use is allocated to the Governmental Portion, and that private business use is disregarded for purposes of determining whether there is private business use of the proceeds allocated to the Governmental Portion. If average private business use of the mixed-use project increases to 45 percent in a subsequent year, a maximum of 30 percent of that private business use is properly allocable to the Private Business Portion and thereby disregarded in determining ongoing use of the Governmental Portion. Private business use in excess of the 30 percent properly allocable to the Private Business Portion (for example, 15 percent of private business use) would be allocated to the Governmental Portion. Conversely, if private business use of the mixed-use project in a subsequent year decreased to 20 percent, all 20 percent of the private use would be allocated to the Private Business Portion and thereby disregarded for purposes of measuring private use of the proceeds in that year. Because there would be governmental use in that year in excess of the 70 percent that is properly allocable to the Governmental use Portion, the governmental use in excess of 70 percent (for example, 10 percent of governmental use) would be allocated to the Private Business Portion.

Example 4. Revenue-based undivided portion of research facility. University A is a state university. University A owns and operates research facilities. In 2008, University A plans to build a new research facility (the 2008 Mixed-Use Research Project), which it expects will be used for both qualified research arrangements for governmental use (Governmental Research) and nonqualified research arrangements for private business use (Private Business Research). University A wants to allocate the 2008 mixed-use research facility between two undivided portions for Governmental Research and for Private Business Research and to target Private Business Research to the undivided portion financed with equity. University A proposes to make this allocation using a revenue-based undivided portion benchmark. All of University A's research activities will have the following operational characteristics:

(i) The research facilities are continuously available for both Governmental Research and Private Business Research;

(ii) Governmental Research and Private Business Research take place simultaneously in the same research facilities; and

(iii) The same research may relate to one or more research projects involving both Governmental Research and Private Business Research. University A also has a reasonable basis for determining the percentage of revenues that will be derived from Private Business Research and Governmental Research. During the past five years, of the total revenues, net of royalties and licenses, from University A's research facilities, the percentage of revenues from Governmental Research and the percentage of revenues from Private Business Research (on a present value basis) have not changed. University A reasonably expects that this split of revenues will continue with the 2008 Mixed-Use Research Project. Under all the facts and circumstances, including, among other things, the nature of the particular research arrangements (for example, the governmental or private business nature of particular research grantors or contractual terms that result in governmental use or private business use) and historic actual revenues and future expected revenues from research arrangements of a particular nature, net of royalties and licenses, the only objective measurable benchmark that can reasonably distinguish the Governmental Research portion from the Private Business Research portion is the expected percentage of revenues each will generate. Therefore, University A will be using a reasonable method for determining the undivided portions of the 2008 mixed-use research facility if it bases the portions on the revenues each is expected to generate.

Example 5. Output facility. Authority A is a governmental person that owns and operates an electric transmission facility. Prior to 2009, Authority A used its equity to pay capital expenditures of $1000x for the facility. In 2009, Authority A wants to make capital improvements to the facility in the amount of $100x. Authority A reasonably expects that, after completion of such capital improvements, 54 percent of the available output from the facility, as determined under § 1.141–7, will be sold under output contracts for governmental use and that 46 percent of such available output will be sold under output contracts for private business use. Authority A wants to allocate this 2009 project for capital improvements (the 2009 Mixed-Use Output Project) between two undivided portions based on proportionate measures of available output and to finance the maximum eligible undivided portion with tax-exempt governmental bonds (assuming use of the maximum 10 percent de minimis amount of private business use permitted for tax-exempt governmental bonds). Authority A treats a 60 percent undivided portion of the 2009 Mixed-Use Output Project as one undivided portion (the Governmental Portion), which it reasonably expects to use for output contracts involving 90 percent governmental use (representing 54 percent of the available output), plus 10 percent private business use (representing 6 percent of the available output). Authority A treats a 40 percent undivided portion of the 2009 Mixed-Use Output Project as another undivided portion (the Private Business Portion), which it reasonably expects to use for output contracts involving private business use. Authority A determines the measures of these two undivided portions based on relative shares of available output, as determined under § 1.141–7. This measure uses a reasonable proportionate allocation method which properly reflects the proportionate benefit to be derived by the various users. On January 1, 2009, Authority A issues bonds with proceeds of $60x (the Bonds) to finance the Governmental Portion of the 2009 Mixed-Use Output Project and uses $40 million of funds that are not derived from proceeds of a borrowing (the Qualified Equity) to finance the Private Business Portion of the 2009 Mixed-Use Output Project. Authority A allocates Bond proceeds to capital expenditures for the costs of the Governmental Portion and Qualified Equity to capital expenditures for the costs of the Private Business Portion. For purposes of measuring ongoing use of the Governmental Portion financed with the Bond proceeds, use of the Private Business Portion is disregarded, but any private business use of the Governmental Portion will be taken into account during the measurement period. So long as the actual amount of private business use of the Governmental Portion's share of available output does not exceed 6 percent, the Bonds will not be private activity bonds.

Example 6. Treatment of retirement of bonds. City B issues bonds to build a parking garage (the Garage), costing $100x, that it will own and operate. At the start of the measurement period, City B reasonably expects that the only use of the garage will be governmental use. The term of the issue is no longer than reasonably necessary for the governmental purpose of the issue. During the first six years of the measurement period, the garage is used as the issuer expected. In year seven of the measurement period, however, City B expects that in less than one year it will enter into a contract with Corporation C, a private business, which will cause 20 percent of the Garage to be used for private business use. More than 90 days before entering into a binding contract with Corporation C, City B uses $20x of funds other than proceeds of tax-exempt bonds to retire bonds and City B determines the bonds to be retired on a pro rata basis. The

applicable bonds will be retired at least 5 years prior to their scheduled maturity dates. As of the date of the anticipatory redemption, the Garage qualifies as a mixed-use project, and City B applies paragraph (f) of this section and allocates the $20x that was used to redeem the bonds to an undivided portion to which the private business use will be allocated. If City B failed to meet the requirements of paragraph (f) of this section, amounts that City B used to redeem the bonds would not be qualified equity.

Par 5. Section 1.141–13 is amended by revising paragraph (d)(1) and paragraph (g) *Example 5* to read as follows:

§ 1.141–13 Refunding issues

* * * * *

(d) *Multipurpose issue allocations*—(1) *In general.* For purposes of section 141, unless the context clearly requires otherwise, § 1.148–9(h) applies to allocations of multipurpose issues (as defined in § 1.148–1(b)), including allocations involving the refunding purposes of the issue. An allocation under this paragraph (d) may be made at any time, but once made may not be changed. An allocation is not reasonable under this paragraph (d) if it achieves more favorable results under section 141 than could be achieved with actual separate issues. Each of the separate issues under the allocation must consist of one or more tax-exempt bonds. Allocations made under this paragraph (d) and § 1.148–9(h) must be consistent for purposes of section 141 and section 148.

* * * * *

(g) Examples. * * *

Example 5. Multipurpose issue. (i) In 2006, State D issues bonds to finance the construction of two office buildings, Building 1 and Building 2. D expends an equal amount of the proceeds on each building. D enters into arrangements that result in private business use of 8 percent of Building 1 and 12 percent of Building 2 during the measurement period under § 1.141–3(g). In addition, D enters into arrangements that result in private payments in percentages equal to that private business use. These arrangements result in a total of 10 percent of the proceeds of the 2006 bonds being used for a private business use and for private payments. In 2007, D purports to make a multipurpose issue allocation under paragraph (d) of this section of the outstanding 2006 bonds, allocating the issue into two separate issues of equal amounts with one issue allocable to Building 1 and the second allocable to Building 2. An allocation is unreasonable under paragraph (d) of this section if it achieves more favorable results under section 141 than could be achieved with actual separate issues. D's allocation is unreasonable because, if permitted, it would allow more favorable results under section 141 for the 2006 bonds (for example, private business use and private payments which exceeds the aggregate 10 percent permitted de minimis amounts for the 2006 bonds allocable to Building 2) than could be achieved with actual separate issues. In addition, if D's purported allocation was intended to result in two separate issues of tax-exempt governmental bonds (versus tax-exempt private activity bonds), the allocation would violate paragraph (d) of this section in the first instance because the allocation to the separate issue for Building 2 would fail to qualify separately as an issue of tax-exempt governmental bonds as a result of its 12 percent of private business use and private payments, which exceed the 10 percent permitted de minimis amounts.

(ii) The facts are the same as in paragraph (i) of this *Example 5*, except that D enters into arrangements that result in 8 percent private business use for Building 1, and it expects no private business use of Building 2. In 2007, D allocates an equal amount of the outstanding 2006 bonds to Building 1 and Building 2. D selects particular bonds for each separate issue such that the allocation does not achieve a more favorable result than could have been achieved by issuing actual separate issues. D uses the same allocation for purposes of both section 141 and 148. D's allocation is reasonable.

(iii) The facts are the same as in paragraph (ii) of this *Example 5*, except that as part of the same issue, D issues bonds for a privately used airport. The airport bonds if issued as a separate issue would be qualified private activity bonds. The remaining bonds if issued separately from the airport bonds would be governmental bonds. Treated as one issue, however, the bonds are taxable private activity bonds. Therefore, D makes its allocation of the bonds under §§ 1.141–13(d) and 1.150–1(c)(3) into 3 separate issues on or before the issue date. Assuming all other applicable requirements are met, the bonds of the respective issues will be tax-exempt qualified private activity bonds or governmental bonds.

* * * * *

Par. 6. Section 1.141–15 is amended by revising paragraph (a) and (i) and adding paragraphs (k) and (l) to read as follows:

§ 1.141–15 Effective Dates

(a) *Scope.* The effective dates of this section apply for purposes of §§ 1.141–1 through 1.141–14, 1.145–1 through 1.145–2, 1.150–1(a)(3) and the definition of bond documents contained in § 1.150–1(b).

* * * * *

(i) *Permissive application of certain regulations relating to output facilities.*

(1) Issuers may apply § 1.141–7(f)(3) and § 1.141–7(g) to any bonds used to finance output facilities.

(2) Issuers may apply § 1.141–6 to any bonds used to finance output facilities that are sold on or after the date that is 60 days after the date of publication of the Treasury decisions adopting these rules as final regulations in the **Federal Register**

* * * * *

(k) *Effective date for certain regulations relating to allocation and accounting.* Except as otherwise provided in this section, §§ 1.141–1(e), 1.141–6, 1.141–13(d), and 1.145–2(b)(4), (b)(5), and (c)(3) apply to bonds that are sold on or after the date that is 60 days after the date of publication of the Treasury decisions adopting these rules as final regulations in the **Federal Register** and that are subject to the 1997 Final Regulations.

(l) *Permissive retroactive application of certain regulations.* Issuers may apply § 1.141–13(d) to bonds to which § 1.141–13 applies.

Par. 7. Section 1.145–2 is amended by adding paragraphs (b)(4), (b)(5), and (c)(3) to read as follows:

§ 1.145–2 Application of Private Activity Bond Regulations

* * * * *

(b) * * *

(4) References to *governmental bonds* in § 1.141–6 mean qualified 501(c)(3) bonds.

(5) References to *ownership by governmental persons* in § 1.141–6 mean ownership by governmental persons or 501(c)(3) organizations.

(c) * * *

(3) *Partnerships.* Section 1.141–1(e)(2) does not apply for purposes of section 145(a)(1). For purposes of section 145(a)(2), in the case of a partnership (as defined in section 7701(a)(2)) in which each of the partners is a governmental person or a section 501(c)(3) organization, the partnership is disregarded as a separate entity and is treated as an aggregate of its partners.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 06–8202 Filed 9–25–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3900

[WO–3201310–PP–OSHL]

RIN 1004–AD90

Commercial Oil Shale Leasing Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Bureau of Land Management (BLM) is reopening and extending by 30 days, the public comment period for the Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** on August 25, 2006 (71 FR 50378). The ANPR requested comments and suggestions to assist in the writing of a proposed rule to establish a commercial leasing program for oil shale. In order to provide the public with additional time to prepare and submit comments, the BLM is extending the comment period 30 days from the original comment period closing date of September 25, 2006. The comment period is extended to October 25, 2006.

DATES: We will accept comments and suggestions on the ANPR until October 25, 2006.

ADDRESSES: Commenters may mail written comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240; or hand-deliver written comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC 20036. Federal eRulemaking Portal: *http://www.regulations.gov*. E-mail: *Comments_washington@blm.gov*. (Include ''Attn: 1004–AD90'')

FOR FURTHER INFORMATION CONTACT: For information on the substance of the Advance Notice, please contact Ted Murphy at (202) 452–0350. For information on procedural matters, please contact Kelly Odom at (202) 452–5028. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact the above individuals during business hours. FIRS is available twenty-four hours a day, seven days a week.

SUPPLEMENTARY INFORMATION: The BLM published the ANPR on August 25, 2006 (71 FR 50378), and provided a 30-day comment period that will end on September 25, 2006. We are extending the comment period on the ANPR until October 25, 2006. The comment period is being extended in order to provide additional time for the public to prepare and submit comments on the commercial oil shale leasing program that the BLM is developing.

As stated in the August 25, 2006, ANPR, the BLM is particularly interested in receiving comments on the following questions relating to regulations it is developing for an oil shale commercial leasing program:

1. What should be the royalty rate and point of royalty determination?
2. Should the regulations establish a process for bid adequacy evaluation, *i.e.*, Fair Market Value determination, or should the regulations establish a minimum acceptable lease bonus bid?
3. How should diligent development be determined?
4. What should be the minimum production requirement?
5. Should there be provisions for small tract leasing?

The BLM is also interested in receiving any other comments regarding content and structure of the oil shale leasing program.

Dated: September 19, 2006.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 06–8198 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU45

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus ampullarioides* (Shivwits Milk-Vetch) and *Astragalus holmgreniorum* (Holmgren Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of public comment period, notice of availability of draft economic analysis and draft environmental assessment, and revisions to proposed critical habitat boundaries.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposal to designate critical habitat for *Astragalus ampullarioides* (Shivwits milk-vetch) and *Astragalus holmgreniorum* (Holmgren milk-vetch) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis for the proposed designation of critical habitat for Holmgren and Shivwits milk-vetches. The draft economic analysis finds that, over 20 years, post-designation costs for Holmgren and Shivwits milk-vetch conservation-related activities are estimated to range between $8.8 and $14.1 million in undiscounted 2006 dollars. In discounted terms, potential post-designation economic costs are estimated to be $8.5 to $13.0 million (using a 3 percent discount rate) or $8.2 to $12.1 million (using a 7 percent discount rate). In addition, we announce the availability of a draft environmental assessment that has been prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). Finally, we propose to revise boundary descriptions for two critical habitat subunits: Holmgren milk-vetch's Unit 2a (Stucki Spring) and Unit 2b (South Hills).

DATES: We will accept comments until October 26, 2006.

ADDRESSES: If you wish to comment on the proposed rule, draft economic analysis, or draft environmental assessment, you may submit your comments and materials to us by any one of the following methods:

(1) *E-mail:* You may send comments by electronic mail (e-mail) to *hsmilkvetch@fws.gov*. Please see Public Comments Solicited section below for file format and other information about electronic filing.

(2) *Fax:* You may fax comments to (801) 975–3331.

(3) *Mail or hand delivery/courier:* You may submit written comments to Larry Crist, Acting Field Supervisor, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

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

FOR FURTHER INFORMATION CONTACT: Larry Crist, Acting Field Supervisor, Utah Ecological Services Field Office, at the address listed in **ADDRESSES** (telephone, 801–975–3330; facsimile, 801–975–3331).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the

original proposed rule published in the **Federal Register** on March 29, 2006 (71 FR 15966), revisions to the proposed rule described in this document, the draft economic analysis, and the draft environmental assessment. In addition to the points listed in the March 29, 2006, proposed rule, we particularly seek comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat;

(2) Specific information on the distribution of the Holmgren and Shivwits milk-vetches, the amount and distribution of the species' habitat, and which habitat contains the necessary features (primary constituent elements) essential to the conservation of these species and why;

(3) Land-use designations and current or planned activities in the subject area and their possible impacts on these species or proposed critical habitat;

(4) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed designation of critical habitat;

(6) Any foreseeable economic, national security or other potential impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families;

(7) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat, and information on any costs that have been inadvertently overlooked;

(8) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(9) Whether the economic analysis correctly assesses the effect on regional costs associated with land-use controls that derive from the designation;

(10) Whether the critical habitat designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(11) Whether the economic analysis appropriately identifies all costs that could result from the critical habitat designation; and

(12) Whether the benefit of exclusion in any particular area outweighs the benefits of inclusion under section 4(b)(2) of the Act.

Comments previously submitted on the March 29, 2006, proposed rule (71 FR 15966) need not be resubmitted as they have been incorporated into the record and will be fully considered in preparation of the final rule. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat for the Holmgren and Shivwits milk-vetches will take into consideration all comments and any additional information received during both comment periods. Based on public comment on the proposed rule, the draft economic analysis, and the draft environmental assessment, as well as on the conclusions of the final economic analysis and environmental assessment, we may find during the development of our final determination that some areas proposed do not contain the features that are essential to the conservation of the species, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AU45'' in the subject line, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments, and we will make all comments available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Utah Ecological Services Field Office at the address listed under **ADDRESSES**.

You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment by mail from the Utah Ecological Services Field Office at the address listed under **ADDRESSES** or by visiting our Web site at *http://mountain-prairie.fws.gov/species/plants/milkvetche/index.htm.*

Background

Holmgren and Shivwits milk-vetches are members of the pea family (*Fabaceae* or *Leguminosae*). Holmgren milk-vetch is a stemless, herbaceous (non-woody) perennial that produces leaves and small purple flowers in the spring. Shivwits milk-vetch is a perennial, herbaceous plant with yellow to cream-colored flowers that is considered a tall member of the pea family. Holmgren milk-vetch is known from Mohave County, Arizona, and Washington County, Utah. Shivwits milk-vetch is known only from Washington County in Utah. Threats to both species that resulted in their listing on September 28, 2001 (66 FR 49560), include development of land for residential and urban use, habitat modification from human disturbances such as off-road vehicle use, competition with nonnative plant species, and impacts from mining and grazing.

On March 29, 2006, we proposed to designate approximately 2,421 acres (ac) (980 hectares (ha)) of critical habitat for Shivwits milk-vetch, and 6,475 ac (2,620 ha) of critical habitat for Holmgren milk-vetch, which include known occupied sites and associated habitats containing the identified primary constituent elements (71 FR 15966). The proposed designation includes Federal, State, Tribal, and private lands in Arizona and Utah. On August 1, 2006, the Service announced the availability of a draft recovery plan for the two species (71 FR 43514). The recovery plan identifies the areas important for recovery; these areas correspond to those we have proposed as critical habitat.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their

proposed actions, under section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. In compliance with section 4(b)(2) of the Act, we have prepared a draft economic analysis of the March 29, 2006 (71 FR 15966), proposed designation of critical habitat for Holmgren and Shivwits milk-vetches.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the two milk-vetches, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the two milk-vetches in essential habitat areas. The draft economic analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use).

The draft economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the draft economic analysis looks retrospectively at costs that have been incurred since the date the two milk-vetches were listed in 2001, and considers those costs that may occur in the 20 years following a designation of critical habitat.

Pre-designation (2001–2006) costs associated with species conservation activities are estimated to range from $9.3 to $13.7 million in 2006 dollars. Potential post-designation (2007–2026) costs are estimated to range between $8.8 and $14.1 million in undiscounted 2006 dollars. In discounted terms, potential post-designation economic costs are estimated to be $8.5 to $13.0 million (using a 3 percent discount rate) and $8.2 to $12.1 million (using a 7 percent discount rate). In annualized terms, potential post-designation costs are expected to range from $0.6 to $0.9 million annually (annualized at 3 percent) and $0.9 to $1.1 million annually (annualized at 7 percent).

We solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposal to designate critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Draft Environmental Assessment; National Environmental Policy Act

The draft environmental assessment (EA) presents the purpose of and need for critical habitat designation, the Proposed Action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) as implemented by the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and according to the Department of the Interior's NEPA procedures.

The EA will be used by the Service to decide whether or not critical habitat will be designated as proposed, if the Proposed Action requires refinement, or if further analyses are needed through preparation of an environmental impact statement (EIS). If the Proposed Action is selected as described, or with minimal changes, and no further environmental analyses are needed, then a Finding of No Significant Impact (FONSI) would be the appropriate conclusion of this process.

Proposed Change to Boundaries of Holmgren Milk-Vetch Units 2a and 2b

Following publication of the proposed critical habitat rule on March 29, 2006, we received updated information from the Bureau of Land Management (BLM), St. George Field Office, St. George, Utah on plant habitat and occupancy. Based on this information, we propose to amend the boundaries of two subunits for the Holmgren milk-vetch within Unit 2 (Santa Clara): Unit 2a (Stucki Spring) and Unit 2b (South Hills). Corrected maps and boundary descriptions are provided in the Proposed Regulation Promulgation section below.

We propose changes to Unit 2a (Stucki Springs) and Unit 2b (South Hills) based on 2006 field survey results and comments contributed by BLM. Field reconnaissance in 2006 by BLM resulted in adjustment of boundaries to better include Holmgren milk-vetch habitat. Specific changes to Unit 2a (Stucki Springs) include: (1) Extension of the boundary to the north and west that results in the inclusion of an additional 139 ac (56.3 ha); and (2) retraction of the boundary on the south and southeast that results in the deletion of 114 ac (46.2 ha). The adjustment to the north and west further captures watershed and some of the formation contributing to the occupancy of Holmgren milk-vetch, and better reflects recent surveyed habitat and occupancy. The retraction to the south and southeast excludes habitat that is not occupied by Holmgren milk-vetch. Boundary adjustments for Unit 2a (Stucki Springs) result in an increase of proposed critical habitat in this subunits from approximately 412 ac (168 ha) to 437 ac (177 ha).

Specific changes to Unit 2b (South Hills) include: (1) The addition of 7 ac (2.8 ha) to the northeast portion of the subunit to include drainage patterns from the ridgeline and slope of the adjacent formation; (2) the deletion of 17 ac (6.9 ha) to the southeast to correct a mapping error that proposed critical habitat outside the area known to be occupied by the taxon; and (3) the realignment of the western boundary 100 feet (30 meters) to the east for management purposes. Boundary adjustments for Unit 2b (South Hills) result in a decrease of proposed critical habitat in this subunit from approximately 147 ac (59 ha) to 129 ac (52 ha).

Overall, therefore, the total proposed critical habitat for the two milk-vetches would be increased by only 8 ac (3.3 ha) as a result of these proposed changes to the boundaries of Holmgren milk-vetch Units 2a and 2b.

Future Boundary Changes

Manmade features within the boundaries of proposed designated, mapped units, such as buildings, roads, parking lots, and other paved areas, do not contain any of the primary constituent elements for Holmgren and Shivwits milk-vetches and are not considered critical habitat. Additional efforts will be made to remove these areas in the final critical habitat designation for Holmgren and Shivwits milk-vetches. However, any such structures and the land under them

inadvertently left inside critical habitat boundaries have been excluded by text and are not designated as critical habitat.

Required Determinations—Amended

In our March 29, 2006, proposed rule (71 FR 15966), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Orders 13132 and Executive Order 12988; the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning Executive Order 12866 and the Regulatory Flexibility Act; Executive Order 13211, Executive Order 12630; and the Unfunded Mandates Reform Act. We are also complying with NEPA by preparation of a draft environmental assessment of the critical habitat proposal.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise legal and policy issues. Based on our draft economic analysis, potential post-designation (2007–2026) costs are estimated to range between $8.8 and $14.1 million in undiscounted 2006 dollars. In discounted terms, potential economic costs are estimated to be $8.5 to $13.0 million (using a 3 percent discount rate) and $8.2 to $12.1 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from $0.6 to $0.9 million annually (annualized at 3 percent) and $0.9 to $1.1 million annually (annualized at 7 percent). Therefore, we do not believe that the proposed designation of critical habitat for the Holmgren and Shivwits milk-vetches would result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (OMB, Circular A–4, September 17, 2003). Under Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat, provided that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. This determination is subject to revision based on comments received as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Holmgren and Shivwits milk-vetches would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, livestock grazing, residential and related development, recreation activities, mining, and transportation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If the proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Our draft economic analysis of the proposed critical habitat designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of these species and proposed designation of their critical habitat. The activities affected by Holmgren and Shivwits milk-vetches' conservation

efforts may include land development, transportation and utility operations, and conservation on public and tribal lands. More than 98 percent of the prospective economic costs (based on upper-bound future undiscounted cost figures) associated with conservation activities for Holmgren and Shivwits milk-vetches are expected to be borne by Federal agencies (primarily BLM) and state departments of transportation. Thus, impacts to land development (*i.e.*, BLM land disposal) and transportation and utilities operations (*i.e.*, Western and Southern Corridor projects) are not expected to affect small entities. The following is a summary of the information contained in the draft economic analysis:

(a) Development

According to the draft economic analysis, Holmgren and Shivwits milk-vetches' development-related losses account for approximately 71 percent of forecast costs, and range from $7.2 to $10.0 million (in 2006 dollars) over 20 years. The costs consist of losses in Federal land value resulting from the removal of BLM-administered public lands from disposal status, meaning the lands cannot be sold or exchanged for private use. The only clearly directly affected entity is the BLM, a large government agency. Federal governments are not defined as small entities by the Small Business Administration. As a result of this information, we have determined that the proposed designation is not anticipated to have a substantial effect on a substantial number of small development businesses.

(b) Transportation and Utility Operations

Potential costs to transportation and utility operations in habitat proposed for designation account for another 25 percent of forecast costs. Undiscounted costs are estimated to range between $1.0 and $3.5 million (in 2006 dollars) over 20 years, or $0.8 to $2.5 million assuming a 3 percent discount rate and $0.6 to $1.7 million assuming a 7 percent discount rate. The amounts are driven by project modification costs associated with the Southern and Western Corridor transportation projects. These projects comprise more than 95 percent of the transportation and utility-related costs. These costs are expected to be borne by state departments of transportation. State governments are not defined as small entities by the Small Business Administration. As a result of this information, we have determined that the proposed designation is not anticipated to have a substantial effect on a substantial number of transportation and utility businesses.

Costs associated with utilities (power lines) as a result of species conservation activities is expected to be minimal, with total pre-designation (2001–2006) costs estimated around $3,000 (in 2006 dollars). No post-designation costs (2007–2026) are anticipated, since no foreseeable project is located within the proposed critical habitat area.

(c) Conservation on Public and Tribal Lands

Future costs associated with managing critical habitat on public and tribal lands account for an additional three percent of forecast costs. Undiscounted costs are estimated at approximately $0.5 million (in 2006 dollars) over 20 years, or $0.4 million assuming a 3 percent discount rate and $0.3 million assuming a 7 percent discount rate. The costs primarily consist of ecological studies and habitat monitoring by BLM and the United States Geological Survey. These activities constitute over 95 percent of the conservation activities on public and tribal lands.

In summary, three subunits (State Line, South Hills, and Stucki Springs) for Holmgren milk-vetch account for more than 95 percent of total undiscounted costs. We have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities, and we have concluded that it would not. Federal agencies (primarily BLM) and State Departments of Transportation account for approximately 74 and 25 percent of total undiscounted costs, respectively.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 due to potential novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix A of the draft economic analysis provides a discussion and analysis of this determination. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to the situation without any regulatory action being taken. The draft economic analysis finds that none of these criteria are relevant to this analysis (no foreseeable utility project is located within the proposed critical habitat area). Thus, no energy-related impacts associated with Holmgren and Shivwits milk-vetches' conservation activities within proposed critical habitat are expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with the following two exceptions: It excludes ''a condition of federal assistance'' and ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty

on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The draft economic analysis discusses potential impacts of critical habitat designation for the Holmgren and Shivwits milk-vetches on land development, transportation and utility operations, and conservation on public and tribal lands. The analysis estimates that costs of the rule could range from $8.8 million to $14.1 million in undiscounted dollars over 20 years. Ninety-nine percent of the impacts are anticipated to affect Federal agencies (primarily BLM) and State Departments of Transportation. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. Consequently, we do not believe that the designation of critical habitat for the Holmgren and Shivwits milk-vetches will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the Holmgren and Shivwits milk-vetches in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the Holmgren and Shivwits milk-vetches does not pose significant takings implications.

Author

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

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Critical habitat for the Holmgren milk-vetch (*Astragalus holmgreniorum*) and Shivwits milk-vetch (*Astragalus ampullarioides*) in § 17.96(a), which was proposed to be added on March 29, 2006, at 71 FR 15966, is proposed to be amended by revising the index map and two of the critical habitat unit descriptions for Holmgren milk-vetch as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Fabaceae: *Astragalus holmgreniorum* (Holmgren Milk-vetch).

* * * * *

(5) **Note:** Index map (Map 5) follows:

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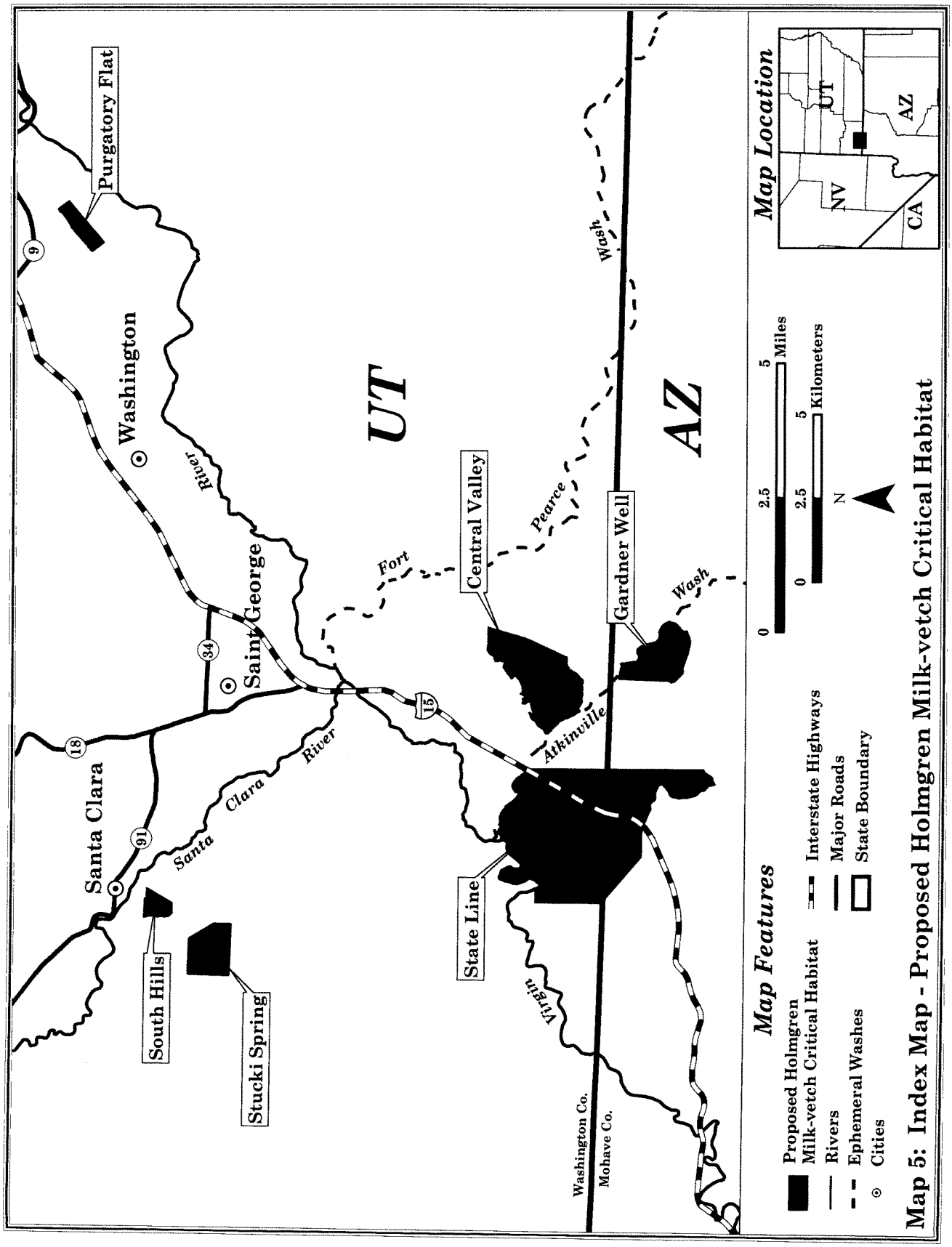

Map 5: Index Map - Proposed Holmgren Milk-vetch Critical Habitat

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* * * * *

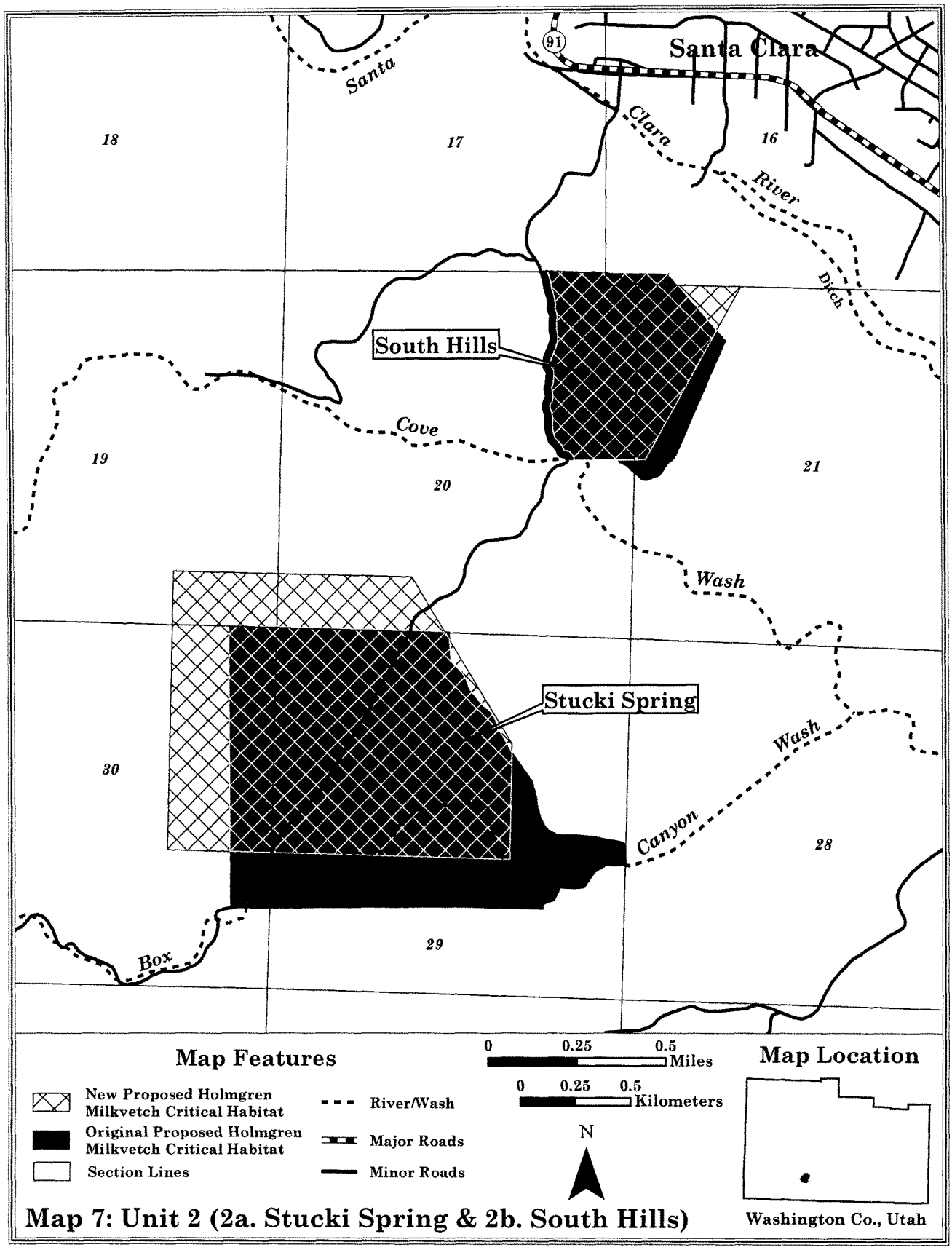
(7) Unit 2—Santa Clara Unit: Washington County, Utah. This Unit consists of two subunits: Stucki Spring and South Hills.

(i) Unit 2a: Stucki Spring, Washington County, Utah. Land bounded by the UTM Zone 12 NAD 83 coordinates (meters E, meters N): 263203, 4109419; 261650, 4109466; 261683, 4110718; 262761, 4110687; 263214, 4109938; 263203, 4109419.

(ii) Unit 2b: South Hills, Washington County, Utah. Land bounded by the UTM Zone 12 NAD 83 coordinates (meters E, meters N): 263385, 4112054; 263932, 4112044; 263975, 4111990; 264261, 4111983; 263824, 4111209; 263504, 4111208; 263503, 4111213; 263502, 4111218; 263501, 4111220; 263498, 4111226; 263494, 4111234; 263489, 4111239; 263485, 4111243; 263481, 4111246; 263476, 4111248; 263475, 4111249; 263463, 4111252; 263462, 4111253; 263456, 4111254; 263454, 4111259; 263453, 4111262; 263447, 4111274; 263443, 4111280; 263427, 4111298; 263427, 4111298; 263418, 4111308; 263413, 4111323; 263409, 4111337; 263406, 4111354; 263406, 4111366; 263406, 4111383; 263406, 4111386; 263405, 4111403; 263405, 4111407; 263402, 4111422; 263400, 4111427; 263396, 4111440; 263394, 4111449; 263395, 4111455; 263397, 4111460; 263400, 4111464; 263405, 4111473; 263406, 4111478; 263407, 4111479; 263408, 4111493; 263408, 4111503; 263406, 4111515; 263405, 4111516; 263403, 4111529; 263402, 4111534; 263407, 4111547; 263409, 4111553; 263411, 4111568; 263412, 4111572; 263413, 4111592; 263412, 4111597; 263411, 4111609; 263409, 4111615; 263407, 4111620; 263405, 4111624; 263399, 4111631; 263398, 4111634; 263397, 4111644; 263401, 4111660; 263408, 4111679; 263421, 4111711; 263422, 4111714; 263429, 4111738; 263430, 4111746; 263431, 4111767; 263431, 4111772; 263428, 4111792; 263428, 4111822; 263430, 4111853; 263429, 4111860; 263428, 4111865; 263428, 4111866; 263420, 4111884; 263419, 4111888; 263421, 4111904; 263421, 4111913; 263417, 4111935; 263416, 4111937; 263405, 4111976; 263399, 4112013; 263398, 4112017; 263390, 4112041; 263390, 4112042; 263385, 4112054.

(iii) **Note:** Map of Unit 2 (Map 7) follows:

BILLING CODE 4310–55–P



Map 7: Unit 2 (2a. Stucki Spring & 2b. South Hills)

* * * * *

Dated: September 19, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–8191 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU77

Endangered and Threatened Wildlife and Plants; Prudency Determination for the Designation of Critical Habitat for Trichostema austromontanum ssp. compactum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have reconsidered whether designating critical habitat for *Trichostema austromontanum* ssp. *compactum,* a plant, is prudent. This taxon was listed as threatened under the Endangered Species Act of 1973, as amended (Act), on September 14, 1998; at that time we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the taxon and would not benefit the taxon. As a consequence of a settlement agreement we are withdrawing our previous not prudent finding. Further, on the basis of our review and evaluation of the best scientific and commercial information available, we believe that designation of critical habitat continues to be not prudent for *T. a.* ssp. *compactum.* As a result, we are proposing a new ''not prudent'' determination for *T. a.* ssp. *compactum.*

DATES: We will accept comments from all interested parties until November 27, 2006.

ADDRESSES: If you wish to comment on the proposed finding, you may submit your comments and materials identified by RIN 1018–AU77, by any of the following methods:

(1) E-mail: *fw8cfwocomments@fws.gov.* Include ''RIN 1018–AU77'' in the subject line.

(2) Fax: 760/431–9624.

(3) Mail: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) Hand Delivery/Courier: You may hand-deliver written documents to our office (see **ADDRESSES**).

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

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, telephone, 760/431–9440; facsimile, 760/431–9624.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this finding will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed finding are hereby solicited. Comments particularly are sought concerning:

(1) Reasons that designation of critical habitat may or may not be prudent for *T. a.* ssp. *compactum*;

(2) Specific information on management activities for this taxon and how those activities do or do not address threats identified in the listing rule;

(3) The possible risks and benefits of designating critical habitat for *T. a.* ssp. *compactum;* and

(4) Ways in which we could improve or modify this finding to increase public participation and understanding.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw8cfwocomments@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AU77'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number (760) 431–9440.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and/or home addresses, etc. but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

It is our intent to discuss only those topics directly relevant to the not prudent critical habitat determination. For more information on biology and ecology of *Trichostema austromontanum* ssp. *compactum*, refer to the final rule listing this taxon as threatened published in the **Federal Register** on September 14, 1998 (63 FR 49006).

Taxonomy and Description

Trichostema austromontanum ssp. *compactum*, a member of the Lamiaceae (mint family), was described by F. Harlan Lewis (1945) based on specimens collected in 1941 by M. L. Hilend in Riverside County, California. The taxon occurs only on the northwestern margin of a single vernal pool (Bauder 1999, p. 13). *T. a.* ssp. *compactum* is a compact, soft-villous (with long, shaggy hairs) annual plant, approximately 4 inches (10 centimeters) tall, with short internodes (stem segments between leaves) (Lewis 1945, p. 284–386, Lewis 1993, p. 732), elliptic leaves, and blue flowers in a five-lobed corolla. The two stamens are blue. The fruit consists of four smooth, basally joined nutlets. This taxon flowers in July and August.

Threats

In the 1998 final listing rule, we stated that trampling and low numbers (small population size) threatened *Trichostema austromontanum* ssp. *compactum* (63 FR 49006). At the time of listing there were reports of on-going impacts caused by trampling associated with hikers and horses. It was observed that trampling by horses crushed plants and also created depressions that retained water where seeds and adult plants of *T. a.* ssp. *compactum* drown (Hamilton 1991, p 2, 22; Hamilton 1996). Since listing, the California

Department of Parks and Recreation (CDPR), which manages the area, has taken several actions to minimize the threat of trampling to this taxon (see the ''Prudency Determination'' section for a detailed discussion).

Regarding the threat posed by low numbers, the Service concluded in the final listing rule that the limited number of individual plants and the extremely localized range of *Trichostema austromontanum* ssp. *compactum*, make this taxon more susceptible to single disturbance events; such as trampling during the flowering season (63 FR 49006). According to Noss et al. (1997), a species distributed across multiple sites within its native range is less susceptible to extinction than another similar species confined to far fewer sites. As a result, being restricted to a single, small location clearly makes the species more vulnerable to stochastic (i.e., random, less predictable) threats. Using the three categories described by Noss et al. (1997), these threats would be (1) genetic (primarily loss of genetic variation), (2) demographic (principally extremely small population size), and (3) environmental (vernal pool changes and unknown stochastic events).

Previous Federal Actions

Trichostema austromontanum ssp. *compactum* was federally listed as threatened on September 14, 1998 (63 FR 49006). This taxon is not listed by the State of California. At the time of Federal listing, we determined that the designation of critical habitat was not prudent because the designation would likely encourage more visitors to the geographic location containing the single known occurrence, and would undermine attempts by the CDPR to protect the site. We determined that critical habitat designation would, therefore, increase the degree of threat to the taxon as well as provide no benefit for the taxon. At the time of listing, CDPR had initiated actions to decrease the public notoriety of the location and visibility of this taxon and accessibility by the public to the geographic location containing the single occurrence in an effort to decrease threats to this taxon. We believed a critical habitat designation would increase notoriety of the location and visibility of the taxon, the opposite of what the CDPR was trying to accomplish. The increased notoriety and visibility would potentially increase visitorship to the area, thus increasing the threat of trampling to the taxon.

On September 13, 2004, the Center for Biological Diversity (CBD) and California Native Plant Society (CNPS) challenged our failure to designate critical habitat for this taxon and four other plant species (*Center for Biological Diversity, et al.* v. *Gale Norton, Secretary of the Department of the Interior, et al.*, ED CV–04–1150 RT (SGLx) C. D. California). The CBD and CNPS alleged that the Service failed to provide evidence in the final listing rule supporting its finding that critical habitat would not be beneficial to the species and establishing how the publication of critical habitat maps would increase the threat to the species. Without reaching any conclusions on the merits of the previous decision, the Service agreed to withdraw its previous not prudent finding and publish a proposed designation of critical habitat, if prudent, on or before September 20, 2006, and a final rule by September 20, 2007. This withdrawal of the previous not prudent finding and new proposed prudency determination complies with that settlement agreement.

Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. In our September 14, 1998 final rule (63 FR 49006), we determined that a designation of critical habitat could increase the degree of threat to *Trichostema austromontanum* ssp. *compactum,* and that such designation would also not be beneficial to the taxon.

In the final listing rule (63 FR 49019) we stated:

(1) *Trichostema austromontanum* ssp. *compactum* occurs only in a wilderness area on State [CDPR] lands with little potential for Federal involvement. Trails, signage, map notations, and references to the habitat area have been removed by the State to reduce impacts to this highly localized taxon;

(2) Designation of critical habitat would have little benefit to this taxon and would not increase the commitment or management efforts of the State; and

(3) Designation of critical habitat likely would be detrimental to this taxon because publishing maps and descriptions of the exact locality identifies the site as a unique area. Such a distinction may encourage recreational use of the area and negatively impact the taxon.

Pursuant to the Court's April 14, 2005, stipulated settlement agreement and order, we are hereby withdrawing our previous ''not prudent'' determination. Consistent with the requirements of the Act and our aforementioned agreement and order, we are simultaneously making a new proposed determination of ''not prudent'' for *Trichostema austromontanum* ssp. *compactum*. An explanation of this proposed ''not prudent'' determination follows. We encourage the public to comment on this proposed determination as described in the ''Public Comments Solicited'' section above.

Trichostema austromontanum ssp. *compactum* was listed based on threats of trampling associated with recreational activities and low numbers of individual plants. Prior to the CDPR taking steps to minimize the visibility of the sensitive habitat that supports *T. a.* ssp. *compactum* there was a clearly marked trail to the location. The area was used for many different types of recreational uses. These activities impacted the sensitive vegetation in the area by trampling live plants and creating multiple footprints in the wet soil around the margin of the vernal pool, further impacting habitat through soil compaction and alteration of hydrology (Hamilton 1983, 63 FR 49006). Since the taxon's listing, the CDPR has continued to implement management actions designed to reduce the visitation to this area. As stated in the 1998 listing rule, they have removed reference to the area from their trail maps and signs, and removed all markers for trails to this area in order to reduce recreational use. Although the taxon's location was in the public domain in the past, the exact location is no longer easily accessible to the public via normal information sources (e.g., internet). In contrast, the public notice requirements of the Act, including publication of site location information and a map in the **Federal Register**, is intended to make information readily accessible to the public in a form that is easy to understand.

The CDPR has continued their efforts to address the threats from trampling by further excluding recreational users from the area. In 2000, CDPR erected a barrier on the trail to the area to exclude horses and pack animals from this sensitive area. In 2002, they designated the vernal pool and the surrounding area as a Natural Preserve (CDPR 2002 p. 62). A Natural Preserve is a state

designation that places resource protection within the area over recreational use and, therefore, measures can be taken to ensure the long-term survival of *T. a.* ssp. *compactum*. Recent visits to the site suggest that there has been a decrease in equestrian use of the area as a result of the barrier installed along the trail (Wallace 2003, 2005; Snapp-Cook 2006).

As part of the process of determining the prudency of designating critical habitat for *Trichostema austromontanum* ssp. *compactum*, we met with CDPR to discuss management activities now being conducted for this taxon. The current and past actions that they have initiated, partially due to the listing of this taxon, appear to be adequate to protect and maintain the plant's habitat. On a 2006 field visit to the site, we only found signs of minimal human use at the vernal pool reflected in a worn trail passing the upper boundary of the vernal pool; however, we did not see evidence of higher impact activities such as trash or fire pits that would be associated with camping, nor hoof prints or horse manure that would be associated with equestrian use (Snapp-Cook 2006). This contrasted with the condition of the site prior to the CDPR implementing management actions for this plant and the condition of the site described at the time of listing (Hamilton 1983; 63 FR 49006). We were able to observe *T. a.* ssp. *compactum* around the margins of the vernal pool and none of the plants showed any signs of damage from trampling.

To support the effectiveness of the management measures that CDPR has put in place, a formal study to monitor the recreation use of the area is needed. The Service has recently helped the State of California to secure funding to conduct a study to determine the condition of the population and the effectiveness of the management by CDPR. Funding has also been secured to survey and sign the legal boundaries of the established Natural Preserve so the regulations of the Natural Preserve can be enforced. In addition to these two tasks, a seed banking program that includes collection of seeds, a conservation strategy, and monitoring, will be established. Through this funding, we are committed to work with CDPR, California Department of Fish and Game, the California Native Plant Society and Rancho Santa Ana Botanic Garden to establish a long-term conservation strategy for *T. a.* ssp. *compactum*. These actions should provide additional protection for this taxon and help to conserve this plant.

While the primary threat to *Trichostema austromontanum* ssp. *compactum,* trampling, appears to have been minimized, little information exists on the status of the taxon overall. To obtain all available information on this taxon, we initiated a 5-year status review. We published a notice announcing the initiation of this review for *T. a.* ssp. *compactum* and the opening of the first 60-day comment period in the **Federal Register** on July 7, 2005 (70 FR 39327). We published another notice reopening the comment period for an additional 60 days in the **Federal Register** on November 3, 2005 (70 FR 66842). As part of our review, we evaluated the federally-listed status of this taxon based on the threats to the plant and its habitat and recommended that no change be made to the listing status until a few specific conservation actions underway by the CDPR have been concluded. The completed 5-year review for this taxon is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Increased Threat to the Species

The process of designating critical habitat would be expected to increase human threats to *Trichostema austromontanum* ssp. *compactum* by bringing publicity to this plant and its localized habitat with the publication of maps likely resulting in an increase in visitation to the site. We generally notify all major regional newspapers, local, State, and Federal agencies and other interested parties, including all Congressional offices in the local area when designating critical habitat to raise the visibility of our actions and involve the public. These actions would undermine the conservation efforts taken by the CDPR to reduce the threat of trampling to this taxon. For example, the designation of critical habitat often generates interest in a species and inspires people to study the species and visit the habitat. In the case of *T. a.* ssp. *compactum*, it takes careful and detailed training to recognize this taxon. The plant is small and blends in with other low-lying species on the ground. It is unlikely that even informed hikers could discern the plant's presence in particular areas. In addition, as discussed above, this area has been designated as a Natural Preserve, and CDPR manages the area to minimize recreational use. There are no signed trails or observation areas in place that could allow for interested persons to observe the plant from a non-intrusive location. Thus, even well-meaning and informed visitors may cause significant damage by inadvertently trampling these tiny plants and adversely affecting the habitat.

The District Superintendent of the Inland Empire District of California State Parks has expressed concern to the Service that the critical habitat designation process may place this plant at increased risk via increased visitation (Watts 2006). Our publication of a critical habitat map identifying the location and subsequent publicity of this action would be counter to CDPR's conservation actions to make the area less visible. Prior to the CDPR taking actions to minimize the recreational impacts to this taxon, it was apparent that the plant was in danger of going extinct. The small size and delicate structure of this plant make it especially vulnerable to trampling by people and animals (Lewis 1945, p. 284–386; Hamilton 1996). The actions that CDPR undertook once these concerns were expressed began to reverse the negative impacts to the taxon from recreational activities. Following the listing of this plant, CDPR continued to provide measures that were designed to recover it. It is important that these and further conservation efforts continue so that this taxon no longer requires the protections afforded it under the Act. We believe that the identification of the specific areas essential to its conservation, based on past experiences and information concerning this taxon, would be expected to further increase the degree of threat to this plant from human activity and undo the conservation efforts and progress by CDPR.

In addition to increasing threats to this taxon and countering past and ongoing conservation actions by the State of California, designating critical habitat for this plant would not support our ongoing partnership with CDPR.

Most federally listed species in the United States will not recover without the cooperation of non-federal landowners. Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (i.e., 90–100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all. Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is

essential to understanding the status of species on non-federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection. Therefore, to achieve the conservation of *Trichostema austromontanum* ssp. *compactum*, it is necessary to maintain our partnership with CDPR.

Benefits to the Species From Critical Habitat Designation

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation under section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

There is virtually no possibility of a Federal nexus for activities that may occur within *Trichostema austromontanum* ssp. *compactum*'s habitat. The San Jacinto Mountains have been botanically explored for over 100 years and only one population of this taxon has been found. Because of its association with vernal pool margins, other areas of suitable habitat likely do not exist in this mountain range. The Mount San Jacinto State Park Wilderness is protected from uses that would degrade or destroy natural resources. The specific area where this plant is found is designated as a Natural Preserve, which means that protection and management of sensitive resources is the highest priority for this area. Due to the fact that the taxon occurs only in a Natural Preserve on State lands, an area where no changes in land-use are planned for the foreseeable future, virtually no chance exists for a future Federal nexus that would result in a section 7 consultation for this taxon. In fact, the Service has not engaged in any consultations for *T. a.* ssp. *compactum* since its listing in 1998.

Another benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the affected species.

In this particular circumstance, any educational benefits that could be received through a designation of critical habitat have the high probability of undermining the conservation efforts by CDPR and causing harm to *Trichostema austromontanum* ssp. *compactum*. The designation of critical habitat often generates interest in a species and inspires people to study the species and visit the habitat. As discussed above, *T. a.* ssp. *compactum* is small and blends in with other low-lying species on the ground. Thus, someone attempting to learn more about this plant and its habitat would likely actually harm members of the population in the process.

The educational benefit is closely related to a second, more indirect benefit: that designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. However, as discussed above, CDPR is well aware of the areas important to *Trichostema austromontanum* ssp. *compactum*, and is actively implementing measures to conserve this taxon.

Increased Threat to the Species Outweighs Benefits of Designation

Upon reviewing the available information, we have determined that the designation of critical habitat would increase the degree of threat from human activity to *Trichostema austromontanum* ssp. *compactum*. There is a strong possibility that through the designation of critical habitat negative impacts to the habitat would occur. The dissemination of location information is likely to result in an increased threat to the plant from trampling. Designation of critical habitat will undermine the conservation actions that CDPR has already put into place for this taxon. These ongoing conservation actions appear to have minimized the primary threat to this taxon; and as discussed above, we believe that designation of critical habitat would reverse these efforts and increase the threat of trampling to this plant. Furthermore, we have determined that there is no benefit of critical habitat designation to *T. a.* ssp. *compactum* because (1) it is highly unlikely that a Section 7 consultation will occur for this taxon; (2) the general educational benefits afforded by critical habitat designation are minimal for this particular taxon; and (3) designation of critical habitat would undermine ongoing conservation efforts and hinder our partnership with CDPR. Based on our determination that critical habitat designation would increase the degree of threats to *T. a.* ssp. *compactum* and our inability to determine a benefit of designation, we believe the increased threat to *T. a.* ssp. *compactum* from the designation of critical habitat far outweighs any benefits of designation.

Summary

Pursuant to the Court's April 14, 2005, stipulated settlement agreement and order we are withdrawing our previous ''not prudent'' determination. Further, on the basis of our review of the best scientific and commercial information available, we have reaffirmed that designation of critical habitat is not prudent for *Trichostema austromontanum* ssp. *compactum*. We have determined that the designation of critical habitat would increase the degree of threat to this taxon and will undermine the conservation actions that CDPR has already put into place for this taxon. These ongoing conservation actions appear to have minimized the primary threat to *T. a.* ssp. *compactum*; and as discussed above, we believe that designation of critical habitat would reverse these efforts and increase the threat of trampling to this taxon. Furthermore, we have determined that there is no benefit of critical habitat designation to *T. a.* ssp. *compactum*, and that, even if some benefit from designation may exist, the increased threat to the plant from human activity far outweighs any potential benefit to the taxon. We therefore propose that it is not prudent to designate critical habitat for *T. a.* ssp. *compactum* at this time.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least five appropriate and independent peer reviewers regarding the science in this proposed rule. The purpose of such review is to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed determination to the peer reviewers immediately following publication in the **Federal Register**, and will invite the

peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed prudency determination. We will consider all comments and information received during the comment period on this proposed determination during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed determination easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed determination clearly stated? (2) Does the document contain technical jargon that interferes with the clarity? (3) Does the format of the document (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section helpful in understanding the proposed determination? (5) What else could we do to make this proposed determination easier to understand? Send a copy of any comments on how we could make this proposed determination easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

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

This proposed determination does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This determination will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing contain the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of *Trichostema austromontanum* ssp. *compactum.* Therefore, no tribal lands will be affected by this finding.

References Cited

A complete list of all references cited in this finding is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 19, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–8190 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060906236–6236–01; I.D. 083006B]

RIN 0648–AU83

Fisheries of the Northeastern United States; Method For Measuring Net Mesh Size

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing how fishing net mesh size is measured in the Northeast. This proposed change would increase the weight used to measure mesh larger than 120 mm (4.72 inches) in all fisheries. The intent of this proposed rule is to ensure consistent and accurate measurements of fishing net mesh size.

DATES: Written comments must be received no later than 5 p.m. local time on October 26, 2006

ADDRESSES: Comments may be submitted by any of the following methods:

E-mail: *MeshRegChange@noaa.gov*

Federal e-Rulemaking Portal: *http://www.regulations.gov*.

Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Please write on the envelope: Comments on Proposed Change to Mesh Measurement Regulations.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Management Specialist, (978) 281–9341, FAX (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

NOAA Office of Law Enforcement, U.S. Coast Guard, and state enforcement partners have recently issued a clarification of the method used in measuring fishing net mesh size. This protocol closely follows the regulatory language, at 50 CFR Part 648, that a wedge-shaped net measurement gauge be allowed to settle under a specified weight, without shaking the net or pressing on the gauge to force it deeper into the mesh opening. This clarification eliminated some of the

variation in methods used previously by the various enforcement agencies and personnel. However, the New England Fishery Management Council (Council) raised a concern that the twine bars of stiffer twines (especially those used in larger mesh) may not align properly under a load of 5 kg (11.02 lb), the specified force for all mesh sizes for many years. This has led to an increase in citations for mesh-size violations on gear that had previously measured as legal.

The Council has requested that the NMFS increase the weight to 8 kg (17.64 lb) for measuring the opening in mesh greater than 120 mm (4.72 inches). The increased weight would produce a force consistent with the recommendations of the International Council for the Exploration of the Seas (ICES) in the 2004 report *Mesh Size Measurement Revisited*, which were incorporated into ICES's new OMEGA (Objective Mesh Gauge) mesh measurement gauge. The 5–kg weight would continue to be used to measure mesh smaller than 120 mm. Other measurement systems require frequent calibration and/or are subject to loss of battery power. The wedge gauge also has a long established case history in the Northeast.

It is not expected that the increased weight would result in any de facto reduction in legal mesh size. Scientific studies that determine the selectivity and retention of specific mesh sizes typically use a longitudinal measuring force such as the old ICES gauge or the new OMEGA gauge rather than the wedge. The increased weight is not enough to significantly distort the mesh and would not result in the use of mesh smaller than that considered in previous analyses of environmental impacts.

Classification

NMFS has determined that this proposed rule is consistent with the FMPs and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Regional Administrator has determined that this proposed rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This amendment would not change the minimum mesh size for any fishery or require any fishermen to purchase new gear. The only economic impact of the proposed rule would be to law enforcement agencies to acquire the additional weights. In addition, because this rule is expected to correct the increase in mesh size violations on gear that had previously measured legally, this rule may provide an economic benefit to fishermen. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 20, 2006.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.51, paragraph (a)(2)(ii) is revised to read as follows:

§ 648.51 Gear and crew restrictions.

(a) * * *

(2) * * *

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

* * * * *

3. In § 648.80, paragraph (f)(2) is revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(f) * * *

(2) *All other nets.* With the exception of gillnets, mesh size is measured by a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

* * * * *

4. In § 648.104, paragraph (a)(2) is revised to read as follows:

§ 648.104 Gear restrictions

(a) * * *

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

* * * * *

[FR Doc. 06–8187 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 71, No. 186

Tuesday, September 26, 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

September 20, 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 Housing Service

Title: 7 CFR 1940–G, Environmental Program.

OMB Control Number: 0575–0094.

Summary of Collection: The National Environmental Policy Act (NEPA) requires Federal agencies prior to the approval of proposed actions to consider the potential environmental impacts of these actions. Consequently, for the agencies to comply with NEPA, it is necessary to have information on the types of environmental resources on site or in the vicinity that might impact the proposed action. Also, information is required on the nature of the project selected by the applicant.

Need and Use of the Information: The agency will collect environmental data using form RD 1940–20, *Request for Environmental Information.* Having all activities and environmental information on the proposed project site will enable the Agency official to determine the magnitude of the potential environmental impacts and whether the project is controversial for environmental reasons. The agency failure to collect environmental information would result in a violation of NEPA. Thus, the agency would have no basis to support a decision regarding the need for an environmental impact statement.

Description of Respondents: Farms; individuals or households; business or other for-profit; not-for-profit institutions; State, local or tribal government.

Number of Respondents: 4,539.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 27,499.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 06–8214 Filed 9–25–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 20, 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: Federal Collection Methods for Food Stamp Program Recipient Claims.

OMB Control Number: 0584–0446.

Summary of Collection: The Debt Collection Improvement (DCIA), Food Stamp Act (FSA) and the Privacy Acts require that State agencies advise debtors of the intended referral to the Treasury Offset Program (TOP). TOP is a method used to collect debts owed for over-issued food stamp recipient claims. TOP offers debtors an opportunity to repay the claim, and an opportunity to request a review of the validity of the collection action.

Need and Use of the Information: The information collected is used to operate Federal offset. State agencies collect this information to offset debts as a result of over-issuance of Food Stamp benefits that become delinquent claims. Without the information, compliance with the DCIA would not be possible and departmental participation in TOP would be jeopardized.

Description of Respondents: State, local, or tribal government; individual or households.

Number of Respondents: 380,053.

Frequency of Responses: Recordkeeping; reporting: on occasion; annually.

Total Burden Hours: 69,451.

Food and Nutrition Service

Title: Supplemental form for collecting taxpayer identifying numbers.

OMB Control Number: 0584–0501.

Summary of Collection: Section 31001(y) of the Debt Collection Improvement Act of 1996 (Public Law 104–134) requires all Federal agencies to obtain taxpayer identifying number (TINs) from all individuals and entities they do business with, and to furnish the TIN whenever a request for payment is submitted to Federal payment officials. A taxpayer identifying number can be either a Social Security Number or an Employer Identification Number. The Food and Nutrition Service (FNS) will collect information using form FNS–711.

Need and Use of the Information: FNS will collect taxpayer identify numbers from individuals and entities receiving payments directly from the agency under any of the various nutrition and nutrition education programs administered by the Agency. The information is collected at the time of program application, and is only collected once unless an entity renews its application or reapplies for program participation. If the information were not collected, FNS would be unable to include taxpayer identifying numbers with each certified request for payment.

Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions.

Number of Respondents: 800.

Frequency of Responses: Report: on occasion; other (at time of app.).

Total Burden Hours: 66.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 06–8215 Filed 9–25–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. FV–06–18]

Notice of Funds Availability (NOFA) Inviting Applications for the Specialty Crop Block Grant Program (SCBGP)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces the availability of approximately $7 million in block grant funds to enhance the competitiveness of specialty crops. State departments of agriculture interested in obtaining grant program funds are invited to submit applications to USDA. State departments of agriculture, meaning agencies, commissions, or departments of a State government responsible for agriculture within the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, are eligible to apply. State departments of agriculture are encouraged to involve industry groups, academia, and community-based organizations in the development of applications and the administration of projects.

DATES: Applications must be postmarked not later than October 11, 2007.

ADDRESSES: Applications may be sent to: SCBGP, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0235, Room 2077 South Building, Washington, DC 20250–0235.

FOR FURTHER INFORMATION CONTACT: Trista Etzig, (202) 690–4942, or Margaret Irby, (202) 720–3209, e-mail: *Scblockgrants@usda.gov* or your State department of agriculture listed on the SCBGP Web site at *http://www.ams.usda.gov/fv/.*

SUPPLEMENTARY INFORMATION: SCBGP is authorized under section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note) and is implemented under 7 CFR part 1290 [Docket No. FV06–1290–1 FR]. The SCBGP assists State departments of agriculture in enhancing the competitiveness of U.S. specialty crops. Specialty crops are defined as fruits and vegetables, dried fruit, tree nuts, and nursery crops (including floriculture). Examples of enhancing the competitiveness of specialty crops include, but are not limited to: Research, promotion, marketing, nutrition, trade enhancement, food safety, food security, plant health programs, education, ''buy local'' programs, increased consumption, increased innovation, improved efficiency and reduced costs of distribution systems, environmental concerns and conservation, product development, and developing cooperatives.

Each interested State department of agriculture is to submit an application anytime before October 11, 2007 to the USDA contact noted in the **FOR FURTHER INFORMATION CONTACT** section. AMS will process the application after the Specialty Crop Block Grant Program, 7 CFR part 1290, becomes effective on October 11, 2006. States that do not apply for or do not request all available funding during the specified grant application period will forfeit all or that portion of available funding not requested for that application year. AMS will work with State departments of agriculture and provide assistance as necessary.

Additional details about the SCBGP application process for all applicants are available at the SCBGP Web site: *http://www.ams.usda.gov/fv/.*

To be eligible for a grant, each State department of agriculture's application shall be clear and succinct and include the following documentation satisfactory to AMS.

(a) Completed applications must include an SF–424 ''Application for Federal Assistance''.

(b) Completed applications must also include one State plan to show how grant funds will be utilized to enhance the competitiveness of specialty crops. SCBGP grant funds will be awarded for projects of up to 3 years duration. The state plan shall include the following:

(1) *Cover page.* Include the lead agency for administering the plan and an abstract of 200 words or less for each proposed project.

(2) *Project purpose.* Clearly state the specific issue, problem, interest, or need to be addressed. Explain why each project is important and timely.

(3) *Potential Impact.* Discuss the number of people or operations affected, the intended beneficiaries of each project, and/or potential economic impact if such data are available and relevant to the project(s).

(4) *Financial Feasibility.* For each project, provide budget estimates for the total project cost. Indicate what percentage of the budget covers administrative costs. Administrative costs should not exceed 10 percent of any proposed budget. Provide a justification if administrative costs are higher than 10 percent.

(5) *Expected Measurable Outcomes.* Describe at least two discrete,

quantifiable, and measurable outcomes that directly and meaningfully support each project's purpose. The outcome measures must define an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public.

(6) *Goal(s).* Describe the overall goal(s) in one or two sentences for each project.

(7) *Work Plan.* Explain briefly how each goal and measurable outcome will be accomplished for each project. Be clear about who will do the work. Include appropriate time lines. Expected measurable outcomes may be long term that exceed the grant period. If so, provide a timeframe when long term outcome measure will be achieved.

(8) *Project Oversight.* Describe the oversight practices that provide sufficient knowledge of grant activities to ensure proper and efficient administration.

(9) *Project Commitment.* Describe how all grant partners commit to and work toward the goals and outcome measures of the proposed project(s).

(10) *Multi-state Projects.* If a project is a multi-state project, describe how the States are going to collaborate effectively with related projects. Each state participating in the project should submit the project in their State plan indicating which State is taking the coordinating role and the percent of the budget covered by each State.

Each State department of agriculture that submits an application that is reviewed and approved by AMS is to receive $100,000 to enhance the competitiveness of specialty crops. In addition, AMS will allocate the remainder of the grant funds based on the proportion of the value of specialty crop production in the state in relation to the national value of specialty crop production using the latest available (2005 National Agricultural Statistics Service (NASS) cash receipt data for the 50 States and the District of Columbia and 2002 Census of Agriculture data for the Commonwealth of Puerto Rico) specialty crop production data in all states whose applications are accepted.

The amount of the base grant plus value of production available to each State department of agriculture shall be:

(1) Alabama $108,926.78
(2) Alaska $100,520.67
(3) Arizona $133,290.44
(4) Arkansas $102,675.16
(5) California $652,477.92
(6) Colorado $116,139.35
(7) Connecticut $107,934.62
(8) Delaware $102,403.75
(9) District of Columbia $100,000.00
(10) Florida $253,750.10
(11) Georgia $129,864.25
(12) Hawaii $109,201.37
(13) Idaho $121,388.06
(14) Illinois $111,450.21
(15) Indiana $109,567.29
(16) Iowa $103,249.43
(17) Kansas $102,197.15
(18) Kentucky $102,827.56
(19) Louisiana $104,950.42
(20) Maine $105,806.75
(21) Maryland $111,602.37
(22) Massachusetts $107,596.35
(23) Michigan $136,342.33
(24) Minnesota $113,274.97
(25) Mississippi $103,626.70
(26) Missouri $104,289.46
(27) Montana $102,726.15
(28) Nebraska $104,133.83
(29) Nevada $101,478.01
(30) New Hampshire $102,244.91
(31) New Jersey $117,036.97
(32) New Mexico $108,507.39
(33) New York $129,212.32
(34) North Carolina $136,155.66
(35) North Dakota $109,135.59
(36) Ohio $122,689.29
(37) Oklahoma $107,188.11
(38) Oregon $148,320.35
(39) Pennsylvania $128,893.21
(40) Puerto Rico $106,053.13
(41) Rhode Island $101,417.97
(42) South Carolina $110,424.99
(43) South Dakota $100,850.02
(44) Tennessee $111,629.63
(45) Texas $156,488.66
(46) Utah $103,135.47
(47) Vermont $101,397.90
(48) Virginia $111,797.84
(49) Washington $182,441.82
(50) West Virginia $100,286.87
(51) Wisconsin $120,305.36
(52) Wyoming $100,695.09

Applicants submitting hard copy applications should submit one unstapled original and one unstapled copy of the application package. The SF–424 must be signed (with an original signature) by an official who has authority to apply for Federal assistance. Hard copy applications should be sent only via express mail to AMS at the address noted at the beginning of this notice because USPS mail sent to Washington, DC headquarters is still being sanitized, resulting in possible delays, loss, and physical damage to enclosures. AMS will send an e-mail confirmation when applications arrive at the AMS office.

Applicants who submit hard copy applications are also encouraged to submit electronic versions of their application directly to AMS via e-mail addressed to *scblockgrants@usda.gov* in one of the following formats: Word (*.doc); or Adobe Acrobat (*.pdf). Alternatively, a standard 3.5″ HD diskette or a CD may be enclosed with the hard copy application.

Applicants also have the option of submitting SCBGP applications electronically through the central Federal grants Web site, *http://www.grants.gov* instead of mailing hard copy documents. Applicants considering the electronic application option are strongly urged to familiarize themselves with the Federal grants Web site and begin the application process well before the application deadline.

SCBGP is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.169 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all federally assisted programs.

Authority: 7 U.S.C. 1621 note.

Dated: September 19, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–8213 Filed 9–25–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Census Bureau

2007 Economic Census Covering the Manufacturing Sector

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before November 27, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Arminta N. Quash, U.S. Census Bureau, Manufacturing and Construction Division, Room 2108, Building #4, Washington, DC 20233, (301) 763–8189, (or via the Internet at *arminta.n.quash@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during non-decennial census years. The economic census, conducted under authority of Title 13 United States Code, 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 2007 Economic Census covering the Manufacturing Sector will measure the economic activity for 345,000 manufacturing establishments.

The information collected from companies in the manufacturing sector of the economic census will produce basic statistics by industry for number of establishments, payroll, employment, value of shipments, value added, capital expenditures, depreciation, materials consumed, selected purchased services, electric energy used and inventories held.

Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, electronic data interchange, and other electronic data collection methods.

II. Method of Collection

Establishments included in this collection will be selected from a frame given by the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions; (i) It must be classified in the manufacturing sector; (ii) it must be an active operating establishment of a multi-establishment company, or it must be an operating single-establishment company with payroll; and (iii) it must be located in one of the 50 states or the District of Columbia. Most establishments will be included in the mail portion of the collection. Forms tailored for the particular kind of business will be mailed to the establishment to be filled out and returned. Establishments not meeting certain cutoffs for payroll will be included in the non-mail portion of the collection. We will use administrative data in lieu of collecting data directly from these establishments.

Mail selection procedures will distinguish several groups of establishments.

Establishment selection to a particular group is based on a number of factors. The more important considerations are the size of the company and whether it is included in the intercensal Annual Survey of Manufactures (ASM) sample panel. The ASM panel is representative of both large and small establishments from the mail component of the manufacturing census. The ASM sample panel includes approximately 53,000 establishments. The various groups of establishments that will constitute the 2007 Economic Census are outlined below.

A. Establishments of Multi-Establishment Companies

Selection procedures will assign eligible establishments of multi-establishment companies to the mail components of the universe.

We estimate that the census mail canvass for 2007 will include the following:

1. ASM sample establishments: 36,000.
2. Non-ASM: 51,000.

B. Single-Establishment Companies Engaged in Manufacturing Activity With Payroll

As an initial step in the selection process, we will analyze the potential universe for manufacturing. This analysis will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small-establishment companies within each industry. This payroll size distinction will affect selection as follows:

1. Large Single-Establishment Companies.

Single-establishment companies having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry will be assigned to the mail component of the universe.

We estimate that the census mail canvass for 2007 will include the following:

a. ASM sample establishments: 17,000.
b. Non-ASM: 66,000.

2. Small Single-Establishment Companies.

In selected industries, small single-establishment companies that satisfy a particular criteria (administrative record payroll cutoff) will receive a manufacturing short form, which will collect a reduced amount of basic statistics and other essential information that is not available from administrative records.

We estimate that the census mail canvass for 2007 will include approximately 35,000 companies in this category. This category does not contain ASM establishments.

3. All remaining single-establishment companies with payroll will be represented in the census by data estimated from Federal administrative records. Generally, we do not include these small employers in the census mail canvass.

We estimate that this category for 2007 will include approximately 140,000 manufacturing companies.

III. Data

OMB Number: Not Available.

Form Number: The forms used to collect information from businesses in this sector of the economic census are tailored to specific business practices and are too numerous to list separately in this notice. You can obtain information on the proposed content at this Web site: *http://www.census.gov/mcd/clearance/census*.

Type of Review: Regular Review.

Affected Public: Business or Other for Profit, Not-for-Profit institutions, and Small Business or Organizations.

Estimated Number of Respondents:

ASM	53,000
Non-ASM (Long Form)	117,000
Non-ASM (Short Form)	35,000
Total	205,000

Estimated Time Per Response:

ASM	5.9 hrs.
Non-ASM (Long Form)	3.7 hrs.
Non-ASM (Short Form)	2.5 hrs.

Estimated Total Annual Burden Hours: 833,100.

Estimated Total Annual Cost: $20,552,577.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 224.

IV. Request for Comments

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 (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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 21, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 06–8251 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2007 Economic Census Covering the Mining Sector

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before November 27, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Arminta N. Quash, U.S. Census Bureau, Manufacturing and Construction Division, Room 2108, Building #4, Washington, DC 20233, (301) 763–8189, (or via the Internet at *arminta.n.quash@census.gov).*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The economic census, conducted under authority of Title 13, United States Code, 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 2007 Economic Census Covering the Mining Sector (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of almost 25,000 mineral establishments.

The information collected from establishments in this sector of the economic census will produce basic statistics for number of establishments, shipments, payroll, employment, detailed supplies and fuels consumed, depreciable assets, inventories, and capital expenditures. It also will yield a variety of subject statistics, including shipments by product line, type of operation, size of establishments and other industry-specific measures.

Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, on-line questionnaires and other electronic data collection.

II. Method of Collection

Establishments included in this collection will be selected from a frame given by the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the mining sector; (ii) it must be an active operating establishment of a multi-establishment firm (including operations under exploration and development), or it must be a single-establishment firm with payroll; and (iii) it must be located in one of the 50 states, offshore areas, or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

A. Establishments of Multi-Establishment Firms

Selection procedures will assign all active mineral establishments of multi-establishment firms to the mail component of the universe, except for those in industries classified in the Support Activities for Mining subsector. In these selected industries, where activities are not easily attributable to individual locations or establishments, firms will be asked to report their basic data for several establishments at a nationwide level on a consolidated report form. Approximately seven percent of establishments of multi-establishment firms will not be required to file separate reports because they will be included in consolidated company reports. We estimate that the census mail canvass for 2007 will include approximately 6,400 establishments of multi-establishment firms.

B. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will analyze the universe for mining. The analysis will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry. This payroll size distinction will affect selection as follows:

1. Large Single-Establishment Firms

Selection procedures will assign large single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the universe. We estimate that the census mail canvass for 2007 will include approximately 6,000 firms in this category. These firms will receive a standard form.

2. Small Single-Establishment Firms

Small single-establishment firms in the crushed stone, sand and gravel, and crude petroleum and natural gas industries, where application of the cutoff for nonmail establishments results in a larger number of small establishments included in the mail canvass, will receive a short form. The short form will collect basic statistics and other essential information that is not available from administrative records.

The short form will be mailed to approximately 2,600 single-establishment firms in these industries which are larger than the nonmail cutoff for their industry, but which have annual payroll under a certain criteria. In terms of employment, this criteria will identify establishments with approximately 5 to 19 employees.

The approximately 10,000 remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records.

III. Data

OMB Number: Not available.

Form Number: The forms used to collect information from businesses in this sector of the economic census are tailored to specific business practices and are too numerous to list separately in this notice. You can obtain information on the proposed content at

this Web site: *http://www.census.gov/mcd/clearance/census.*

Type of Review: Regular review.

Affected Public: Business or Other for Profit, Not-for-Profit institutions, and Small Businesses or Organizations.

Estimated Number of Respondents:

Standard Form	12,400
Short Form	2,600
Total	15,000

Estimated Time Per Response:

Standard Form	4.6 hours.
Short Form	2.5 hours.

Estimated Total Annual Burden Hours: 63,540.

Estimated Total Annual Cost: $1,567,532.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131 and 224.

IV. Request for Comments

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 (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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 21, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 06–8252 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–810)

Stainless Steel Bar from India: Notice of Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request for a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating an antidumping new shipper review of Ambica Steels Limited.

EFFECTIVE DATE: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0179 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce (the ''Department'') published in the **Federal Register** the antidumping duty order on stainless steel bar (''SSB'') from India. *See Antidumping Duty Orders: Stainless Steel Bar form Brazil, India and Japan*, 60 FR 9661 (February 21, 1995).

On August 31, 2006, the Department received a timely request from Ambica Steels Limited (''Ambica''), for a new shipper review of the antidumping duty order on SSB from India, in accordance with 19 CFR 351.214(c). The Department also received a timely request for a new shipper review from D.H. Exports Pvt., Ltd. (''DHX'') on August 31, 2006. However, this request did not contain documentation establishing: the date on which DHX first shipped the subject merchandise for export to the United States; the date on which subject merchandise entered the United States; or the volume of the shipment. On September 1, 2006, the Department received an amended request from DHX that contained shipment documentation, however, no documentation establishing the date of first entry into the United States was provided.

This order has a February anniversary month and an August semiannual anniversary month.

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(i) and (iii)(A), Ambica certified in its request that it did not export the subject merchandise to the United States during the period of investigation (''POI'') and that it is not now and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI (*i.e.*, July 1, 1993, through December 31, 1993). Pursuant to 19 CFR 351.214(b)(2)(iv), Ambica also submitted documentation establishing the date on which its stainless steel bar was first shipped for export to the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States. Therefore, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India.

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the standard period of review (''POR'') in a new shipper review based on the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month, *i.e.*, for the instant review, February 1 through July 31, 2006. In accordance with 19 CFR 351.214(i), we intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated. All provisions of 19 CFR 351.214 will apply to Ambica throughout the duration of this new shipper review, except for 351.214(e), which allows a new shipper to post a single entry bond or other types of securities in lieu of a cash deposit. See the ''Cash Deposit Requirements'' section below.

In its August 31, 2006, new shipper request, DHX certified that it did not export the subject merchandise to the United States during the POI and that it is not now and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI pursuant to 19 CFR 351.214(b)(2)(i) and (iii)(A). However, the request did not submit documentation establishing the date on which its stainless steel bar was first shipped for export to the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States in accordance with 19 CFR 351.214(b)(2)(iv).

Therefore, we are not initiating a new shipper review of DHX for the semiannual review period February 1, 2006, through July 31, 2006, because its initial August 31, 2006, request did not meet the Department's regulatory requirements by the semiannual anniversary month deadline (*i.e.*, August 31, 2006). However, the Department will treat DHX's September 1, 2006, request as a ''new'' request to be considered for the next new shipper initiation deadline (*i.e.*, February 28, 2007) for the annual anniversary period of February 1, 2006, through January 21,

2007. The Department will send a letter to DHX requesting additional documentation establishing entry date and/or shipment date to support its September filing.

Cash Deposit Requirements

Pursuant to Section 1632 of the Pension Protection Act of 2006 (H.R. 4), which was signed into law on August 17, 2006, U.S. Customs and Border Protection (''CBP'') is no longer allowing collection of bonds or other types of securities in lieu of a cash deposit for new shippers for each entry of subject merchandise during the period April 1, 2006, through June 30, 2009, except for goods from Canada and Mexico. Therefore, CBP must collect a cash deposit of estimated antidumping duties on each entry of subject merchandise entered, or withdrawn from warehouse, for consumption. We note that the Department transmitted to CBP a set of instructions concerning this provision of the law where cash deposits are now required for all new shippers of the subject merchandise. The instructions can viewed on the Import Administration Web site, (http://ia.ita.doc.gov/download/customs/suspension–of-bonding–privilege-for–new-shippers.pdf).

Interested parties may submit applications for disclosure of business proprietary information under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Dated: September 20, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–15739 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Economic Performance in the Commercial Stone Crab and Lobster Fisheries in Florida

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before November 27, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jim Waters, (252) 728–8710 or *Jim.Waters@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service proposes to collect socio-economic data from commercial fishermen in Florida's stone crab and lobster fisheries. The survey intends to collect economic information about revenues, variable and fixed costs, capital investment and other auxiliary and demographic information. The data gathered will be used to describe economic performance and to evaluate the socio-economic impacts of future Federal regulatory actions. The information will improve fishery management decision making and satisfy legal requirements under Executive Order 12866, the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801, *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, the National Environmental Policy Act, and other pertinent statutes.

II. Method of Collection

The Southeast Fisheries Science Center plans to conduct approximately 150–175 voluntary, in-person interviews from approximately 1,000 commercial stone crab and lobster fishermen who do not live in the Florida Keys. A stratified random sampling strategy will be employed, with strata defined by county.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 175.
Estimated Time Per Response: 1 hour.
Estimated Total Annual Burden Hours: 175.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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 (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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 21, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–15733 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice requesting nominations for the Marine Protected Areas Federal Advisory Committee.

SUMMARY: The Department of Commerce is seeking nominations for membership on the Marine Protected Areas Federal Advisory Committee (Committee). The Marine Protected Areas Federal Advisory Committee was established to advise the Secretary of Commerce and the Secretary of the Interior in implementing Section 4 of Executive Order 13158, specifically on strategies and priorities for developing the national system of marine protected areas (MPAs) and on practical approaches to further enhance and expand protection of new and existing MPAs.

Nominations are sought for highly qualified non-Federal scientists, resource managers, and people representing other interests or

organizations involved with or affected by marine conservation including in the Great Lakes. Fifteen members of the Committee have terms that expire October 31, 2007, and nominations are sought to fill these vacancies.

Individuals seeking membership on the Committee should possess demonstrable expertise in a related field or represent a stakeholder interest affected by MPAs. Nominees also will be evaluated based on the following factors: Marine policy experience, leadership and organization skills, region of country represented, and diversity characteristics. The membership reflects the Departments' commitment to attaining balance and diversity. The full text of the Committee Charter and its current membership can be viewed at the Agency's Web page at *http://mpa.gov/fac.html.*

DATES: Nominations must be postmarked on or before November 1, 2006.

ADDRESSES: Nominations should be sent to Lauren Wenzel, National Marine Protected Areas Center, NOAA, 1305 East West Highway, Station #12227, Silver Spring, MD 20910. E-mail: *Lauren.Wenzel@noaa.gov.* E-mail nominations are acceptable.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, National Marine Protected Areas Center (301) 713–3100 x136, *Lauren.Wenzel@noaa.gov.*

SUPPLEMENTARY INFORMATION: In Executive Order 13158, the Department of Commerce and the Department of the Interior were directed to seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested people and organizations through a Marine Protected Areas Federal Advisory Committee. The Committee was established in June 2003 and includes 30 members.

The Committee meets at least once annually. Committee members serve for one four-year nonrenewable term. Members of the Committee will not be compensated, but may, upon request, be allowed travel and per diem expenses.

Each nomination submission should include the proposed Committee member's name and organizational affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each submission: The nominee's name, address, telephone number, fax number, and e-mail address if available.

Dated: September 20, 2006.

Mitchell A. Luxenberg,

Deputy Director, Management and Budget, National Ocean Service.

[FR Doc. E6–15759 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082106A]

Notice of Availability of a Final Record of Decision on the Issuance of Permits

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Final Record of Decision and issuance of permits.

SUMMARY: The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) announce the availability of a Final Record of Decision on the issuance of incidental take permits to the state of Washington under section 10 of the Endangered Species Act for the Washington Forest Practices Habitat Conservation Plan (HCP). The two incidental take permits (one from each of the Services) authorize incidental take of aquatic species (16 listed fish species, 54 unlisted fish species, and 7 unlisted amphibian species) from covered forest practices implemented under the HCP. These forest practices affect approximately 9 million acres of non-Federal and non-tribal lands in Washington State. The permits were issued on June 5, 2006, and will remain in effect for 50 years.

FOR FURTHER INFORMATION CONTACT: For further information, or to receive copies of the documents, please contact Sally Butts, Project Manager, FWS, (360) 753–5832; or Laura Hamilton, Project Manager, NMFS, (360) 753–5820.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Services gathered the information necessary to; (1) determine impacts and formulate alternatives for the EIS related to the issuance of incidental take permits to the state of Washington; and (2) develop and implement the HCP, which describes the measures to minimize and mitigate the effects of the incidental take of federally listed species to the maximum extent practicable. The notice of availability for the draft EIS, draft Forest Practices HCP, and draft Implementing Agreement was published in the **Federal Register** on February 11, 2005 (70 FR 7245), and the notice of availability for the Final EIS, Final Forest Practices HCP, and Implementing Agreement was published in the **Federal Register** on January 27, 2006 (71 FR 4609). Copies of the Record of Decision, which was signed on June 5, 2006, are available from the Services. (see **FOR FURTHER INFORMATION CONTACT** for contact information).

Dated: September 19, 2006.

David Wesley,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon

Dated: September 19, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–15761 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–55–S and 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092006A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; proposal to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by the Gulf of Maine Research Institute (GMRI) contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP) and the Northeast Multispecies FMP. However, further review and consultation may be necessary before a final determination is made to issue the

EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow general category scallop vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the northeastern United States. The EFP would exempt vessels from certain gear restrictions, minimum fish size possession restrictions, and seasonal area restrictions.

DATES: Comments must be received on or before October 11, 2006.

ADDRESSES: Written comments should be submitted by any of the following methods:

Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Scallop RSA EFP Proposal;''

Email: *06–SCA–011@noaa.gov*, include ''Comment on EFP Proposal'' in the subject line of the e-mail; or

Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Management Specialist, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: In response to the Request for Proposals issued to solicit research proposals under the Atlantic Sea Scallop Research Set Aside (RSA) Program, GMRI submitted a proposal on November 18, 2005, entitled, ''Testing Bycatch in an Observer-based Experimental Scallop Fishery Outside the Gulf of Maine (GOM) Scallop Dredge Exemption Area and within Statistical Area 521 and 526.'' The grant was approved on August 4, 2006, as NOAA Award No. NA06NMF4540262. An EFP application was submitted September 7, 2006.

The project would survey the Great South Channel Dredge Exemption Area (GSC) over a 10-month period to quantify catch rates of scallops and finfish bycatch across multiple seasons using the general category regulated 3.2 m (10.5–ft) scallop dredge. From March through June, project investigators would identify the sex and maturity stage of captured yellowtail flounder to improve spawning data. Since portions of the GSC are closed seasonally to protect spawning yellowtail flounder, vessels would require an exemption from regulations at 50 CFR 648.80(a)(18)(ii)(C) and (D).

Vessels would conduct a total of 264 tows over 66 days in the study area. Each trip would be 1 day in length. Approximately four 30-minute tows would be made per day. Tow length and vessel speed, as well as all other gear characteristics, would match the standards employed by the general category fleet. For each tow, environmental data, including water temperature, wind, sea state, and weather, would be recorded. Total weight of the scallop catch would be obtained. All other species would be identified, weighed, measured, and returned to the sea as quickly as possible to minimize mortality. Since project investigators would retain fish below the minimum fish size to collect data, vessels would require exemption from minimum fish size regulations at § 648.83(a). Only marketable scallops would be retained for sale.

On approximately one third of the total number of tows, vessels would cover the 25–cm (10–inch) mesh twine top to collect dredge selectivity information, thus requiring exemption from gear requirements at § 648.51(b)(2).

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–15685 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of the next meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in Newport, Oregon.

DATES: The meeting will be held Tuesday, October 10, 2006, from 8:30 a.m. to 5 p.m., Wednesday, October 11, 2006, from 8 a.m. to 5 p.m., and Thursday, October 12, 2006, from 8 a.m. to 4:30 p.m. These times and the agenda topics described below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the Oregon Coast Aquarium, 2820 SE Ferry Slip Road, Newport, Oregon 97365.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Designated Federal Official, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland, 20910. (Phone: 301–713–3100 x136, Fax: 301–713–3110); e-mail: *lauren.wenzel@noaa.gov*; or visit the National MPA Center Web site at *http://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce to provide advice to the Secretary of Commerce and the Secretary of the Interior on implementation of Section 4 of Executive Order 13158 on MPAs. The meeting will be open to public participation with a one hour time period set aside from 4 p.m. to 5 p.m. on Tuesday, October 10, 2006, and one hour set aside from 8:10 a.m. to 9:10 a.m. on Thursday, October 12, 2006, for the Committee to receive verbal comments or questions from the public. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Copies of written statements should be submitted to the Designated Federal Official by October 6, 2006.

Matters To Be Considered: On Tuesday, October 10, 2006, the Committee will receive presentations on the draft Framework for Developing a National System of MPAs and on ocean zoning. In addition, the subcommittees will meet. On Wednesday, October 11, 2006, the Committee will hear from speakers on MPAs in Oregon and tribal MPA policies in the Pacific Northwest. The subcommittees will also continue their work. On Thursday, October 12, 2006, the Committee will hear about MPA management on the Pacific coast, and the subcommittees will report on their work to the full Committee. The agenda is subject to change, and the latest version will be posted at *http://www.mpa.gov.*

Dated: September 20, 2006.

Mitchell A. Luxenberg,

Deputy Director, Management and Budget, National Ocean Service.

[FR Doc. E6–15760 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091906C]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Mackerel, Squid, and Butterfish Committee, its Advisors, and the Amendment 10 Fishery Management Action Team (FMAT) will hold a public meeting.

DATES: The meeting will be held on Wednesday, October 18, 2006, from 8 a.m. to 5:30 p.m. See **SUPPLEMENTARY INFORMATION** for meeting agenda.

ADDRESSES: The meeting will be held at the Montauk Yacht Club Resort and Marina, 32 Star Island Road, Montauk, NY 11954, telephone: (888) 692–8668.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss management measures necessary to rebuild the overfished butterfish stock including bycatch reduction measures in the Loligo fishery.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders (302) 674–2331 extension 18 at least 5 days prior to the meeting date.

Dated: September 20, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–15687 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091906A]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council); its Research Set-Aside (RSA) Committee; its Protected Resources Committee; its Law Enforcement Committee; and, its Executive Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, October 10, 2006 through Thursday, October 12, 2006. See **SUPPLEMENTARY INFORMATION** for a meeting agenda.

ADDRESSES: This meeting will be held at The Hilton Garden Inn, 5353 North Virginia Dare Trail, Kitty Hawk, NC 27949; telephone: (252) 261–1290.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION:

Tuesday, October 10, 2006

1 p.m. until 3 p.m.–The Research Set-Aside Committee will meet to review, discuss and establish RSA priorities for 2008, receive an update from NMFS on program administrative changes, discuss status of projects and additional project requirements.

3 p.m. until 4 p.m.–The Protected Resources Committee will meet to address issues regarding Atlantic Trawl Fisheries Take Reduction Team initiatives and potential impacts on Council managed species.

4 p.m. until 4:30 p.m.–The Law Enforcement Committee will meet to review Fishery Achievement Award (FAA) nominations and recommend recipients for recognition.

Wednesday, October 11, 2006

8:30 a.m.–The Council will convene for the swearing-in of new and reappointed Council members, and the elections of a Chairman and Vice Chairman for the Council. Following the elections, the Council will receive a presentation by New England Council staff regarding its Marine Protected Areas (MPA), Habitat Areas of Particular Concern (HAPC), Essential Fish Habitat (EFH) activities and their potential impacts on Mid-Atlantic Council constituents and jurisdiction.

10 a.m. until 11:30 a.m.–The Council will review alternatives for Framework 1 to the Surfclam/Ocean Quahog Fishery Management Plan (FMP) regarding adoption of Vessel Monitoring Systems (VMS) and electronic reporting by clam industry.

12:30 p.m. until 3 p.m.–The Council will approve its August 2006 Council meeting minutes, review actions from the August Council meeting, and receive various reports provided to the Council during its regular business session.

3 p.m.–The Council will review and adopt the public hearing document for Amendment 14 to the Summer Flounder, Scup, and Black Sea Bass FMP regarding scup rebuilding.

Thursday, October 12, 2006

8 a.m. until 9 a.m.–The Executive Committee will meet to review the 2007 Annual Work Plan.

9 a.m.–The Council will convene to review Amendment 15 to the Summer Flounder, Scup and Black Sea Bass FMP and refine the list of potential actions to be included in this Amendment.

1 p.m. until 5 p.m.–The Council will receive a presentation from the Northeast Fisheries Science Center on the state of the Atlantic marine environment and fish growth rates of various Council stocks, review and approve the public hearing document for the Omnibus Amendment to Council's FMPs regarding Standardized Bycatch Reporting Methodology (SBRM), and address any continuing or new business.

Although non-emergency issues not contained in this agenda may come before the Council and its Committees for discussion, these issues may not be the subject of formal Council or Committee action during this meeting. Council and Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aids should be directed to M. Jan Saunders at (302) 674–2331 extension 18 at least 5 days prior to the meeting date.

Dated: September 20, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–15692 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091906B]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Charter Halibut Stakeholder Committee will meet on October 16–18, 2006, in Anchorage, AK.

DATES: The meeting will be held on October 16, 1 p.m. to 5 p.m., October 17, 9 a.m. to 5 p.m., and October 18, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the North Pacific Research Board, 1007 West 3rd Avenue, Suite 100 Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee will review: (1) 2005 charter halibut harvests and status of the guideline harvest level (GHL) from Statewide Harvest Survey and pending legislation with State Legislature and Congress; (2) implementation plan for 5–halibut annual limit in Area 2C and NOAA Fisheries request to reconsider its June 2006 preferred alternative; (3) moratorium discussion paper; and (4) permanent solution discussion paper (DiCosimo and King).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 19, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–15691 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091306B]

Marine Mammals; File No. 1034–1854

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Markus Horning, Ph.D., Department of Fisheries & Wildlife, Oregon State University, Hatfield Marine Science Center, 2030 SE Marine Science Drive, Newport, OR 97365, has been issued a permit to conduct research on Weddell seals (*Leptonychotes weddellii*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 29, 2006, notice was published in the **Federal Register** (71 FR 37060) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Dr. Horning has been issued a 5–year permit to study aging in Weddell seals in Antarctica. Specifically, researchers will capture and sedate seals to attach instruments and take tissue samples to compare oxygen handling, body condition, muscle physiology, and foraging behavior of young and old adults. Incidental harassment and mortality may occur during these activities. Samples will be imported into the U.S. for analyses.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 19, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–15682 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric

September 21, 2006.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New Cap on Duty and Quota Free Benefits

EFFECTIVE DATE: October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 3103 of the Trade Act of 2002; Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA)

beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

For the period beginning on October 1, 2006 and extending through December 31, 2006, preferential tariff treatment is limited under the regional fabric provision to imports of qualifying apparel articles in an amount not to exceed 5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period that ended July 31, 2006. In Presidential Proclamation 7616, (published in the **Federal Register** on November 5, 2002, 67 FR 67283), the President directed CITA to publish in the **Federal Register** the aggregate quantity of imports allowed during each period.

For the period beginning on October 1, 2006 and extending through December 31, 2006, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,164,288,418 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.E6–15737 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

September 20, 2006.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement

EFFECTIVE DATE: *September 26, 2006.*

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain 2-way stretch woven fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA-DR region. The product will be added to the list in Annex 3.25 of the CAFTA-DR in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 2582.

FOR FURTHER INFORMATION ON-LINE:

http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf. Reference number: 15.2006.08.17.Fabric.ST&RforLido

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. Articles that otherwise meet the rule of origin to qualify for preferential treatment are not disqualified because they contain one of the products on the Annex 3.25 list.

The CAFTA-DR Agreement provides that the list in Annex 3.25 may be modified pursuant to Article 3.25(4)-(6). The CAFTA-DR Act states that the President will make a determination on whether additional fabrics, yarns, and fibers are available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and to provide an opportunity for interested entities to submit comments and supporting evidence before making a determination. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On February 23, 2006, CITA published interim procedures it would follow in considering requests to modify the Annex 3.25 list (71 FR 9315).

On August 17, 2006, the Chairman of CITA received a request from Sandler, Travis, & Rosenberg, P.A. on behalf of Lido Industrias for certain 2-way stretch woven fabrics, of the specifications detailed below. On August 21, 2006, CITA notified interested parties of, and posted on its Web site, the accepted petition and requested that interested entities provide, by August 31, 2006, a response advising of its objection to the request or its ability to supply the subject product, and rebuttals to responses by September 7, 2006.

No interested entity filed a response advising of its objection to the request or its ability to supply the subject product.

In accordance with Section 203(o)(4) of the CAFTA-DR Act, and its procedures, as no interested entity submitted a response objecting to the request or expressing an ability to supply the subject product, CITA has determined to add the specified fabrics to the list in Annex 3.25.

The subject fabrics are added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been published at: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf/Annex3.25.*

Specifications:

HTSUS Subheading:	5515.11.00
Fiber Content:	60% to 75% Polyester / 20% to 35% viscose rayon /3% to 6% spandex
Fiber Length:	51 to 70 millimeter staple (2 to 2.75 inches)

Yarn Number:	Warp and filling: 50/2 to 68/2 metric wrapped around 225 metric spandex (30/2 to 40/2 wrapped around 40-denier spandex)
Thread Count:	30 to 32 warp ends x 24 to 26 filling picks per square centimeter (76 to 81 warp ends x 60 to 66 filling picks per square inch)
Weave Type:	Various
Weight:	220 to 250 grams per square meter (6.5 to 7.4 ounces per square yard)
Width:	142 to 148 centimeters (56 to 59 inches)
Finish:	Dyed; of yarns of different colors

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–15736 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries from Regional and Third-Country Fabric

September 21, 2006.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New 12-Month Cap on Duty- and Quota-Free Benefits.

EFFECTIVE DATE: October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000, as amended by Section 3108 of the Trade Act of 2002 and Section 7(b)(2) of the AGOA Acceleration Act of 2004; Presidential Proclamation 7350 of October 4, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459).

Title I of the Trade and Development Act of 2000 (TDA 2000) provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles. This special rule for lesser-developed countries applied through September 30, 2004. TDA 2000 imposed a quantitative limitation on imports eligible for preferential treatment under these two provisions.

The Trade Act of 2002 amended TDA 2000 to extend preferential treatment to apparel assembled in a beneficiary sub-Saharan African country from components knit-to-shape in a beneficiary country from U.S. or beneficiary country yarns and to apparel formed on seamless knitting machines in a beneficiary country from U.S. or beneficiary country yarns, subject to the quantitative limitation. The Trade Act of 2002 also increased the quantitative limitation but provided that this increase would not apply to apparel imported under the special rule for lesser-developed countries. Section 7(b)(2)(B) of the AGOA Acceleration Act extended the expiration of the quantitative limitation through September 30, 2015, and the expiration of the limitation for the special rule for lesser-developed countries through September 30, 2007. It also further amended the percentages to be used in calculating the quantitative limitations for each twelve-month period, beginning on October 1, 2003. The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2006 will be an amount not to exceed 6.43675 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. See Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 1.6071 percent of all apparel articles imported into the United States in the preceding 12-month period. See Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act. For the purpose of this notice, the most recent 12-month period for which data are available is the 12-month period ending July 31, 2006.

Presidential Proclamation 7350 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**. Presidential Proclamation 7626, published on November 18, 2002, modified the aggregate quantity of imports allowed during each 12-month period.

For the one-year period, beginning on October 1, 2006, and extending through September 30, 2007, the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,498,846,694 square meters equivalent. Of this amount, 374,225,583 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–15735 Filed 9–25–06; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: October 11–13, 2006.

Place: Ocean Place Resort and Spa, One Ocean Boulevard, Long Branch, NJ 07740.

Time: 10 a.m. to 5:30 p.m. (October 11, 2006).
8 a.m. to 5:30 p.m. (October 12, 2006).
8:30 a.m. to 12 p.m. (October 13, 2006).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend

the meeting may be addressed to Colonel Richard B. Jenkins, Executive Secretary, Commander, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

Proposed Agenda: For Board members, the morning of October 11 is devoted to an overflight of the New Jersey shoreline. The afternoon of October 11 is devoted to presentations pertaining to North Atlantic Division Project-Specific Coastal Engineering Challenges. They include: Coastal Engineering Technical Challenges of the Fire Island to Montauk Point Reformulation Study; Renourishment Triggers and Emergency Fill Procedures, Technical and Policy challenges; Monitoring Challenges; Sea Level Rise Implications in New York Area; and Surfer Perspective on Corps Design on Shore Protection Projects. On Thursday morning, October 12, presentations will be made concerning Shore Protection Project Performance. These presentations include: Economic Performance of Federal Shore Protection Project, Martin County, FL; Shore Protection Project Design and Formulation Improvement; Modeling Relevant Physics of Sedimentation in 3D (MORPHOS 3D); and Communicating the Corps' Role in Coastal Zone Management. There will also be presentations concerning Coastal Planning Center of Expertise and Regional Sediment Management as it Applies to North Atlantic Division. The Honorable Frank Pallone, Jr., is scheduled to speak immediately after lunch on October 12. Presentations will also be made concerning Joint Subcommittee on Ocean Science and Technology and National Research Council Shelter Coast Final Report. Presentations concerning Coastal Environmental Restoration Challenges are also Scheduled for Thursday afternoon. They include: Collaborative Ecosystem Restoration at Jamaica Bay Marsh Islands; Collaboration with the Corps on Coastal Initiatives; and Biological Opinion on the Sea Bright to Manasquan Project, Piping Plover and Sea Beach Amaranth. Friday morning, October 13, is devoted to Board Executive Session discussing ongoing initiatives and actions.

These meetings are open to the public; participation by the public is scheduled for 4:30 p.m. on October 12.

The entire meeting is open to the public, but since seating capacity of the meeting is limited, advance notice of attendance is required. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–8249 Filed 9–25–06; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

U.S. Patent No. 6,865,455: MAGNETIC ANOMALY GUIDANCE SYSTEM AND METHOD.//U.S. Patent No. 6,868,360: SMALL HEAD-MOUNTED COMPASS SYSTEM WITH OPTICAL DISPLAY.//U.S. Patent No. 6,868,197: CONNECTOR-LESS HIGH SPEED UNDERWATER DATA INTERFACE.//U.S. Patent No. 6,870,534: METHOD OF SIMULATING EXPLOSIVE PERFORMANCE.//U.S. Patent No. 6,879,544: MANATEE VOCALIZATION DETECTION METHOD AND SYSTEM.//U.S. Patent No. 6,879,397: LIGHT SCATTERING DETECTOR.//U.S. Patent No. 6,879,547: COMBINED STABILIZATION BRACKET AND MINE SYSTEM FOR GATHERING UNDERSEA DATA.//U.S. Patent No.6,883,390: INSTRUMENT FOR MEASURING WATER-SPRAY BLAST FORCE.//U.S. Patent No. 6,888,353: MAGNETIC ANOMALY HOMING SYSTEM AND METHOD USING MAGNETIC TOTAL FIELD SCALARS.//U.S. Patent No. 6,893,540: HIGH TEMPERATURE PELTIER EFFECT WATER DISTILLER.//U.S. Patent No. 6,907,326: AUTONOMOUS SURF ZONE LINE CHARGE DEPLOYMENT SYSTEM.//U.S. Patent No. 6,927,790: DIGITAL CAMERA SYSTEM PROVIDING FOR CONTROL OF A CAMERA'S OPERATIONAL PARAMETERS AND IMAGE CAPTURE.//U.S. Patent No. 6,931,339: COMPASS AND COMMUNICATION SYSTEM.//U.S. Patent No. 6,934,633: HELMET-MOUNTED PARACHUTIST NAVIGATION SYSTEM.//U.S. Patent No. 6,944,816: AUTOMATED SYSTEM FOR PERFORMING KEPNER TREGOE ANALYSIS FOR SPREAD SHEET OUTPUT.//U.S. Patent No. 6,945,187: INSTRIDE INFLATABLE AUTONOMOUS FUEL DEPOT.//U.S. Patent No. 6,957,132: METHOD OF GUIDING A VEHICLE TO A POSITION.//U.S. Patent No. 6,957,651: SYSTEM FOR SIMULATING METABOLIC CONSUMPTION OF OXYGEN.//U.S. Patent No. 6,963,263: NON-CONTACT ELECTRICAL ENERGY TRANSFER SYSTEM.//U.S. Patent No. 6,970,578: METHOD OF GENERATING IMAGES TO AID IN THE DETECTION OF MANMADE OBJECTS IN CLUTTERED UNDERWATER ENVIRONMENTS.//U.S. Patent No. 6,982,790: COHERENT IMAGING IN TURBID MEDIA.//U.S. Patent No. 6,990,239: FEATURE-BASED DETECTION AND CONTEXT DISCRIMINATE CLASSIFICATION FOR KNOWN IMAGE STRUCTURES.//U.S. Patent No. 6,994,048: FLOATING LOW DENSITY CONCRETE BARRIER.//U.S. Patent No. 6,997,218: INFLATABLE BODY ARMOR SYSTEM.//U.S. Patent No. 6,999,624: CONTEXT DISCRIMINATE CLASSIFICATION FOR DIGITAL IMAGES.//U.S. Patent No. 6,999,625: FEATURE-BASED DETECTION AND CONTEXT DISCRIMINATE CLASSIFICATION FOR DIGITAL IMAGES.//U.S. Patent No. 7,002,681: SPECTROSCOPY SYSTEM FOR THE DETECTION OF CHEMICALS.//U.S. Patent No. 7,004,039: AMBIENT PRESSURE COMPENSATED TACTILE SENSOR.// U.S. Patent No. 7,010,401: SYSTEM FOR GUIDING A VEHICLE TO A POSITION.//U.S. Patent No. 7,007,569: TELESCOPING AND LOCKING LEVER ARM.//U.S. Patent No. 7,025,931: METHOD AND SYSTEM FOR REDUCING OXYGEN IN A CLOSED ENVIRONMENT.//U.S. Patent No. 7,036,894: TANDEM DRIVE FOR TRACKED VEHICLES.//U.S. Patent No. 7,038,458: MAGNETIC ANOMALY HOMING SYSTEM AND METHOD USING ROTATIONALLY INVARIANT SCALAR CONTRACTIONS OF MAGNETIC GRADIENT TENSORS.// U.S. Patent No. 7,038,639: DISPLAY SYSTEM FOR FULL FACE MASKS.// U.S. Patent No. 7,039,367: COMMUNICATIONS USING UNMANNED SURFACE VEHICLES AND UNMANNED MICRO-AERIAL

VEHICLES.//U.S. Patent No. 7,039,506: LIGHT SYSTEM FOR DEFINING LINE OF APPROACH.//U.S. Patent No. 7,068,819: SYSTEM FOR STORING GEOSPECIFIC DATA.//

ADDRESSES: Requests for copies of the patents cited should be directed to Office of Counsel, Naval Surface Warfare Center Panama City, 110 Vernon Ave., Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. James Shepherd, Patent Counsel, Naval Surface Warfare Center Panama City, 110 Vernon Ave., Panama City, FL 32407–7001, telephone 850–234–4646.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: September 18, 2006.

M. A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–15702 Filed 9–25–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; NaturalNano, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to NaturalNano, Inc., a revocable, nonassignable, exclusive license to practice in the fields of use in Electromagnetic Shielding; Strength Enhancement; Cosmetics; Odor Masking; Eluting Implantable Medical Devices; Visibility Enhanced Implantable Medical Devices; Eluting Bandages; Local Drug Delivery; Agricultural; Vertebrate Aversion; Veterinary; Ink and Paper; Electronics; Fabrics and Textiles; all other fields of use specifically excluding: Halloysite in Building Materials and Petroleum; and Paint in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 4,877,501: Process for Fabrication of Lipid Microstructures, Navy Case No. 70,173.//U.S. Patent No. 4,911,981: Metal Clad Lipid Microstructures, Navy Case No. 70,238.//U.S. Patent No. 5,049,382: Coating and Composition Containing Lipid Microstructure Toxin Dispensers, Navy Case No. 71,593.//U.S. Patent No. 5,492,696: Controlled Release Microstructures, Navy Case No. 76,896.//U.S. Patent No. 5,651,976: Controlled Release of Active Agents Using Inorganic Tubules, Navy Case No. 76,652.//U.S. Patent No. 5,705,191: Sustained Delivery of Active Compounds from Tubules With Rational Control, Navy Case No. 77,037.//U.S. Patent No. 6,013,206: Process for the Formation of High Aspect Ratio Lipid Microtubules, Navy Case No. 79,038.// U.S. Patent No. 6,280,759: Method of Controlled Release and Controlled Release Microstructures, Navy Case No. 78,215.//U.S. Patent Application Serial No. 10/353,952: Microwave-Attenuating Composite Materials, Methods for Preparing the Same, Intermediates for Preparing the Same, Devices Containing the Same, Methods of Preparing Such a Device, and Methods of Attenuating Microwaves, Navy Case No. 83,273.// U.S. Patent Application Serial No. 10/863,848: Waterborne Coating Containing Microcylindrical Conductors and Non-Conductive Space Filling Latex Polymers, Navy Case No. 84,828 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 11, 2006.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–7230. Due to U.S. Postal delays, please fax 202–404–7920, e-mail: *techtran@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: September 19, 2006.

M. A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–15705 Filed 9–25–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 27, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 20, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Educational Support Needs Assessment.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 350.

Burden Hours: 88.

Abstract: This data collection will assess the support needs of Curriculum Coordinators and Principals in each of seven States: Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota and Wyoming. The survey will focus on their needs for support in the various areas: Obtaining, understanding and utilizing educational research, in-service needs, developing leadership and management capabilities in the staff, improvement plans and interventions. It will also determine the perceptions of the importance for McREL to fund such initiatives in support of these areas.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3190. 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. E6–15710 Filed 9–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 26, 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: September 20, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Student Aid on the Web.

Frequency: On occasion; monthly; annually.

Affected Public: Individuals or household; Federal Government; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,013,550.

Burden Hours: 1,560,825.

Abstract: Federal Student Aid of the U.S. Department of Education seeks renewal of the registration system within the Student Aid on the Web (previously the ''Students Portal''), an Internet Portal Web site (hereafter ''the Web site''). The Web site makes the college application process more efficient, faster, and accurate by making it an automated, electronic process that targets financial aid and college applications. The Web site uses some personal contact information criteria to automatically fill out the forms and surveys initiated by the user. The Web site also provides a database of demographic information that helps Federal Student Aid target the distribution of financial aid materials to specific groups of students and/or parents. For example, studies have shown that providing student financial assistance information to middle school (or elementary school) students and/or their parents dramatically increases the likelihood that those students will attend college. The demographic information from the Web site helps us to identify potential customers in the middle school age range and is information that was previously unavailable to us. Only content has been updated on the Web site since its first approval.

Requests for copies of the 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 3153. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–15711 Filed 9–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Faculty Research Abroad (FRA) Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.019A.

Dates: Applications Available: October 10, 2006.

Deadline for Transmittal of Applications: November 15, 2006.

Eligible Applicants: Institutions of higher education (IHE). As part of the application process, faculty submit individual applications to the IHE. The IHE then officially submits all eligible

individual faculty applications with its grant application to the Department.

Estimated Available Funds: The Administration has requested $1,395,000 for new awards in this program for FY 2007. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $20,000–$100,000.

Estimated Average Size of Fellowship Awards: $60,000.

Estimated Number of Fellowship Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning June 1, 2007. Faculty may request funding for 3–12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Faculty Research Abroad Fellowship Program offers opportunities to faculty of IHEs to engage in research abroad in modern foreign languages and area studies.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 663.21(d)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on Western Europe are not eligible.

Within this absolute priority, we are particularly interested in applications that address the following competitive priority.

Competitive Preference Priority: Within the absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105 (c)(2)(i) and 663.21(d)(2) we award an additional five (5) points to an application, that meets this priority.

This priority is: Research projects that focus on one or more of the areas where one or more of the following critical languages are spoken: Arabic, Chinese, Japanese, Korean, Russian, as well as the Indic, Iranian, and Turkic language families.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 663.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries.

Estimated Available Funds: The Administration has requested $1,395,000 for this program for FY 2007. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $20,000—$100,000.

Estimated Average Size of Fellowship Awards: $60,000.

Estimated Number of Fellowship Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning June 1, 2007. Faculty may request funding for 3–12 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, faculty submit individual applications to the IHE. The IHE then officially submits all eligible individual faculty applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and faculty applicants may obtain an application package via the Internet by downloading the package from the program Web site: *http://www.ed.gov/programs/iegpsfra/applicant.html.*

IHEs and faculty applicants may also obtain a copy of the application package by contacting Amy Wilson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7689 or by e-mail: *amy.wilson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms to be submitted, are in the application package for this program.

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the narrative to the equivalent of 10 pages and the bibliography to the equivalent of two (2) pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, faculty applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10-page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. However, faculty applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a faculty applicant's application if—

- A faculty applicant applies these standards and exceeds the page limits; or
- A faculty applicant applies other standards and exceeds the equivalent of the page limits.

3. *Submission Dates and Times: Applications Available:* October 10, 2006.

Deadline for Transmittal of Applications: November 15, 2006.

Applications for grants under this program must be submitted electronically using the Electronic Grant

Application System (e-Application) available through the Department's e-Grants system. Please note that the application availability date for this competition is October 10. The application will not be available on the e-Application system until October 10. For information (including dates and times) about how to submit an IHE's application electronically or by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to Section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Fulbright-Hays Faculty Research Abroad Program—CFDA Number 84.019A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing the electronic application, both the IHE and the faculty applicant will be entering data online that will be saved into a database. Neither the IHE nor the faculty applicant may e-mail an electronic copy of a grant application to us.

Please note the following:

- The process for submitting applications electronically under the Fulbright-Hays Faculty Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *amy.wilson@ed.gov:* name of university, full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than October 31, 2006, in order to facilitate timely submission of their applications; (2) Faculty must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual faculty must complete and submit reference forms for the faculty and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual faculty applications, reference forms, and other required forms, using e-Application. Unless an IHE applicant qualifies for an exception to the electronic submission requirement in accordance with the procedures in this section, all portions of the application must be submitted electronically.
- The IHE must complete the electronic submission of the grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the faculty applicant not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- Faculty applicants will not receive additional point value because he/she submits his/her application in electronic format, nor will we penalize the IHE or faculty applicant if it qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.
- IHEs must submit all documents electronically, including the Application for Federal Assistance (SF 424), and all necessary assurances and certifications. Both IHEs and faculty applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (portable document) format. If an IHE or a faculty applicant uploads a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Both the IHE's and the faculty applicant's electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After the individual faculty applicant electronically submits his/her application to his/her IHE, the faculty member will receive an automatic acknowledgment. In addition, the applicant IHE's Project Director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he/she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual faculty applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to the IHE's application).
- Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If an IHE is prevented from electronically submitting the application on the application deadline date because the e-Application system is unavailable, we will grant the IHE an extension of one business day in order

to transmit the application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: An IHE may qualify for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through the e-Application system because—

- The IHE or a faculty applicant does not have access to the Internet; or
- The IHE or a faculty applicant does not have the capacity to upload large documents to the Department's e-Application system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevent the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Amy Wilson, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Fax: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.019A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address the IHE uses, the IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.019A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department:

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number—and suffix letter, if any—of the competition under which the IHE is submitting its application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to the IHE. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Faculty applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in seven discrete world area-based panels will review the faculty applications. Each panel reviews, scores and ranks its applications separately from the applications assigned to the other world area panels. However, all fellowship applications will be ranked from the highest to lowest score for funding purposes.

Selection Criteria: The following selection criteria for this competition are from 34 CFR 663.21: The maximum score for all of the criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): In determining the quality of the research project proposed by the applicant, the Secretary considers (1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10 points); (2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's importance in terms of the concerns of the discipline (10 points); (3) The preliminary research already completed or plans for research prior to going overseas, and the kinds,

quality and availability of data for the research in the host country or countries (10 points); (4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points); (5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community (10 points); and (6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies (10 points).

Qualifications of the applicant (40 points): In determining the qualifications of the applicant, the Secretary considers (1) The overall strength of the applicant's academic record (teaching, research, contributions, professional association activities) (10 points); (2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization (10 points); (3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and (4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a faculty application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN). We may also notify the IHE informally.

If a faculty application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of its binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the electronic reporting system Evaluation of Exchange, Language, International and Area Studies (EELIAS) to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measures will be used by the Department in assessing the performance of the Fulbright-Hays Faculty Research Abroad Program:

(1) The average language competency score of Fulbright-Hays Training Grants—Faculty Research Abroad fellows at the end of the research period (post-test) minus the average competency score at the beginning of the research period (pre-test). All grantees will be expected to provide documentation of the improved language proficiency of the fellows through the EELIAS system. Reporting screens for institutions and fellows may be viewed at: *http://www.eelias.org/eelias/pdfs/FRA/fraDirectorCombined.pdf, http://www.eelias.org/eelias/pdfs/FRA/fraFellowCombined.pdf.*

(2) The percent of projects judged to be successful by the program officer, based on a review of information provided in the final performance reports. The information provided by grantees in their performance reports submitted via EELIAS will be the source of data for this measure.

VII. Agency Contact

For Further Information Contact: Amy Wilson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7689 or via the Internet: *amy.wilson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 20, 2006.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E6–15757 Filed 9–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.022A.

DATES: Applications Available: October 10, 2006.

Deadline for Transmittal of Applications: November 15, 2006.

Eligible Applicants: Institutions of higher education (IHE). As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

Estimated Available Funds: The Administration has requested $4,400,000 for new awards for this program for FY 2007. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $15,000–$60,000.

Estimated Average Size of Fellowship Awards: $29,330.

Estimated Number of Fellowship Awards: 150.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2007. Students may request funding for 6–12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program provides opportunities to graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (excluding the United States and its territories). Please note that applications that propose projects focused on Western Europe are not eligible.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority.

Under 34 CFR 75.105 (c)(2)(i) and 34 CFR 662.21(d) we award an additional five (5) points to an application that meets this priority.

This priority is:

A research project that focuses on one or more of the areas where the following critical languages are spoken: Arabic, Chinese, Japanese, Korean, Russian, as well as Indic, Iranian, and Turkic language families.

Program Authority: 22 U.S.C. 2452(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 662.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual beneficiaries. As part of its FY 2007 budget request, the Administration proposed to continue to allow funds to be used to support the applications of individuals who plan to utilize their language skills in world areas vital to the United States national security in the fields of government, international development, and the professions. Therefore, students planning to apply their language skills in such fields are eligible to apply for this program, in addition to those planning teaching careers. However, authority to use funds in this manner depends on final Congressional action. Applicants will be given an opportunity to amend their applications if such authority is not provided.

Estimated Available Funds: The Administration has requested $4,400,000 for this program for FY 2007. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Fellowship Awards: $15,000–$60,000.

Estimated Average Size of Fellowship Awards: $29,330.

Estimated Number of Fellowship Awards: 150.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2007. Students may request funding for 6–12 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs. As part of the application process, students submit individual applications to the IHE. The IHE then officially submits all eligible individual student applications with its grant application to the Department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Both IHEs and student applicants may obtain an application package via the Internet by downloading the package from the program Web site: *http://www.ed.gov/programs/iegpsddrap/index.html*.

IHEs and student applicants may also obtain a copy of the application package by contacting Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or by e-mail: *ddra@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission*: Requirements concerning the content of an application, together with the forms to be submitted, are in the application package for this program.

Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student applicant must limit the narrative to the equivalent of 10 pages and the bibliography to the equivalent of two (2) pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. However, student applicants may single space all text in charts, tables, figures, graphs, titles, headings, footnotes, endnotes, quotations, bibliography, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Student applicants may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are considered part of the narrative and counted within the 10 page limit.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.

The page limits only apply to the application narrative and bibliography. However, student applicants must include their complete responses to the selection criteria in the application narrative.

We will reject a student applicant's application if—

- A student applicant applies these standards and exceeds the page limits; or
- A student applicant applies other standards and exceeds the equivalent of the page limits.

3. *Submission Dates and Times*: Applications Available: October 10, 2006.

Deadline for Transmittal of Applications: November 15, 2006.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. Please note that the application availability date for this competition is October 10. The application will not be available on the e-Application system until October 10.

For information (including dates and times) about how to submit an IHE's application electronically or by mail or hand delivery if an IHE qualifies for an exception to the electronic submission requirement, please refer to Section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review*: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements*: Applications for grants under this program must be submitted electronically, unless an IHE qualifies for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications*.

Applications for grants under the Fulbright-Hays Doctoral Dissertation Research Abroad Program—CFDA Number 84.022A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*.

We will reject an application if an IHE submits it in paper format unless, as described elsewhere in this section, the IHE qualifies for one of the exceptions to the electronic submission requirement *and* submits, no later than two weeks before the application deadline date, a written statement to the Department that the IHE qualifies for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

While completing the electronic application, both the IHE and the student applicant will be entering data online that will be saved into a database. Neither the IHE nor the student applicant may e-mail an electronic copy of a grant application to us.

Please note the following:

• The process for submitting applications electronically under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program has several parts. The following is a brief summary of the process; however, all applicants should review and follow the detailed description of the application process that is contained in the application package. In summary, the major parts are as follows: (1) IHEs must e-mail the following information to *ddra@ed.gov*: name of university, full name and e-mail address of potential project director. We recommend that applicant IHEs submit this information as soon as possible to ensure that applicant IHEs obtain access to the e-Application system well before the application deadline date. We suggest that applicant IHEs send this information no later than October 31, 2006, in order to facilitate timely submission of their applications; (2) Students must complete their individual applications and submit them to their IHE's project director using e-Application; (3) Persons providing references for individual students must complete and submit reference forms for the students and submit them to the IHE's project director using e-Application; and (4) The IHE's project director must officially submit the IHE's application, which must include all eligible individual student applications, reference forms, and other required forms, using e-Application. Student transcripts, however, must be mailed or hand delivered to the Department on or before the application deadline date using the applicable mail or hand delivery instructions for paper applications in this notice.

• The IHE must complete the electronic submission of the grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that both the IHE and the student applicant not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• Student applicants will not receive additional point value because he/she submits his/her application in electronic format, nor will we penalize the IHE or student applicant if it qualifies for an exception to the electronic submission requirement, as described elsewhere in this section, and submits an application in paper format.

• IHEs must submit all documents, except for student transcripts, electronically, including the Application for Federal Assistance (SF 424), and all necessary assurances and certifications. Both IHEs and student applicants must attach any narrative sections of the application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If an IHE or a student applicant uploads a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Student transcripts must be mailed or hand delivered to the Department on or before the application deadline date in accordance with the applicable mail or hand delivery instructions for paper applications described in this notice.

• Both the IHE's and the student applicant's electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After the individual student applicant electronically submits his/her application to his/her IHE, the student will receive an automatic acknowledgment. In addition, the applicant IHE's Project Director will receive a copy of this acknowledgment by e-mail. After a person submits a reference electronically, he/she will receive an online confirmation. After the applicant IHE submits its application, including all eligible individual student applications, to the Department, the applicant IHE will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to the IHE's application).

• Within three working days after submitting the IHE's electronic application, the IHE must fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant IHE's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If an IHE is prevented from electronically submitting the application on the application deadline

date because the e-Application system is unavailable, we will grant the IHE an extension of one business day in order to transmit the application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) The IHE is a registered user of e-Application and the IHE has initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting the IHE an extension. To request this extension or to confirm our acknowledgement of any system unavailability, an IHE may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: An IHE may qualify for an exception to the electronic submission requirement, and may submit its application in paper format, if the IHE is unable to submit an application through the e-Application system because—

- The IHE or a student applicant does not have access to the Internet; or
- The IHE or a student applicant does not have the capacity to upload large documents to the Department's e-Application system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), the IHE mails or faxes a written statement to the Department, explaining which of the two grounds for an exception prevent the IHE from using the Internet to submit its application. If an IHE mails a written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If an IHE faxes its written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax this statement to: Carla White, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. FAX: (202) 502–7860.

The IHE's paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE may mail (through the U.S. Postal Service or a commercial carrier) its application to the Department. The IHE must mail the original and two copies of the application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 400 Maryland Avenue, SW., Washington, DC 20202–4260,

or

By mail through a commercial carrier:

U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.022A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address the IHE uses, the IHE must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If the IHE mails its application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If the IHE's application is postmarked after the application deadline date, we will not consider its application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the IHE should check with its local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If an IHE qualifies for an exception to the electronic submission requirement, the IHE (or a courier service) may deliver its paper application to the Department by hand. The IHE must deliver the original and two copies of the application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.022A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If an IHE mails or hand delivers its application to the Department:

(1) The IHE must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number—and suffix letter, if any—of the competition under which the IHE is submitting its application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to the IHE. If the IHE does not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, the IHE should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Student applications are divided into seven categories based on the world area focus of their research projects, as described in the absolute priority listed in this notice. Language and area studies experts in seven discrete world area-based panels will review the student applications. Each panel reviews, scores and ranks its applications separately from the applications assigned to the other world area panels. However, all applications will be ranked jointly from the highest to the lowest score for funding purposes.

Selection Criteria: The following selection criteria for this competition are from 34 CFR 662.21: The maximum score for all of the criteria, including the competitive preference priority, is 105 points. The maximum score for each criterion is indicated in parentheses.

Quality of proposed project (60 points): In determining the quality of the research project proposed by the applicant, the Secretary considers (1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used (10

points); (2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline (10 points); (3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries (10 points); (4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad (10 points); (5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries (10 points); and (6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field (10 points).

Qualifications of the applicant (40 points): In determining the qualifications of the applicant, the Secretary considers (1) The overall strength of the applicant's graduate academic record (10 points); (2) The extent to which the applicant's academic record demonstrates a strength in area studies relevant to the proposed project (10 points); (3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers (15 points); and (4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both (5 points).

VI. Award Administration Information

1. *Award Notices:* If a student application is successful, we notify the IHE's U.S. Representative and U.S. Senators and send the IHE a Grant Award Notification (GAN). We may also notify the IHE informally.

If a student application is not evaluated or not selected for funding, we notify the IHE.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates its approved application as part of its binding commitments under the grant.

3. *Reporting:* At the end of the project period, the IHE must submit a final performance report, including the final reports of all of the IHE's fellows, and financial information, as directed by the Secretary. The IHE and fellows are required to use the electronic reporting system Evaluation of Exchange, Language, International and Area Studies (EELIAS) to complete the final report.

4. *Performance Measures:* The objective of the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program is to maintain a U.S. higher education system able to produce experts in less commonly taught languages and area studies who are capable of contributing to the needs of the U.S. government, academic, and business institutions.

The following performance measure has been developed to evaluate the overall effectiveness of the DDRA program—The improvement of language proficiency of fellows. All grantees will be expected to provide documentation of the improved language proficiency of the fellows through the EELIAS system. Reporting screens for institutions and fellows may be viewed at: *http://www.eelias.org/pdfs/ddra/ddradirectorcombined.pdf*, *http://www.eelias.org/pdfs/ddra/ddrafellowcombined.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carla White, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or via the Internet: *ddra@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 20, 2006.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E6–15758 Filed 9–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Overview Information; Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.328M.

Dates: Applications Available: September 26, 2006.

Deadline for Transmittal of Applications: November 13, 2006.

Deadline for Intergovernmental Review: January 9, 2007.

Eligible Applicants: Parent organizations, as defined in section III. Eligibility Information in this notice.

Estimated Available Funds: The Administration has requested $25,704,000 for the Training and Information for Parents of Children with Disabilities program for FY 2007, of which we intend to use an estimated $8,957,406 for the Parent Training and Information Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Information concerning funding amounts for individual States is provided in a chart elsewhere in this notice under section II. Award Information.

Estimated Average Size of Awards: $319,907.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: With the exception of projects in the States of Alabama, Oklahoma, and Region 3 of Florida, projects will be funded for a period up to 60 months. Projects in Alabama and Florida—Region 3 will be funded for a period up to 48 months; projects in Oklahoma will be funded for a period up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 671 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Parent Training and Information Centers (PTI Centers) Background: This priority supports parent training and information centers that will provide parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities, with the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

In addition, a purpose of this priority is to ensure that children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under IDEA in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services.

Text of Priority: Each Parent Training and Information Center (PTI Center) assisted under this program shall—

(a) Provide training and information that meets the needs of parents of children with disabilities living in the area served by the PTI Center, particularly underserved parents and parents of children who may be inappropriately identified as having a disability when they may not have one, to enable their children with disabilities to—

(1) Meet developmental and functional goals and challenging academic achievement goals established for all children; and

(2) Be prepared to lead productive independent adult lives, to the maximum extent possible;

(b) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA;

(c) Familiarize themselves with the provision of special education, related services, and early intervention services in the areas they serve to help ensure that children with disabilities are receiving appropriate services;

(d) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

(e) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(2) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(3) Participate in decision making processes, including those regarding participation in State and local assessments, and the development of individualized education programs under part B of IDEA and individualized family service plans under part C of IDEA;

(4) Obtain appropriate information about the range, type and quality of—

(A) options, programs, services, technologies, practices and interventions that are based on scientifically based research, to the extent practicable; and

(B) resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs' (OSEP) technical assistance network and Communities of Practice;

(5) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities;

(6) Participate in activities at the school level that benefit their children; and

(7) Participate in school reform activities.

(f) In States where the State elects to contract with the PTI Center, contract with the State educational agencies to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process;

(g) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA;

(h) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law);

(i) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including the resolution session described in section 615(e) of IDEA;

(j) Assist parents in understanding, preparing for, and participating in, the resolution session described in section 615(f)(1)(B) of IDEA;

(k) If there is more than one PTI Center or one or more Community Parent Resource Centers (CPRCs) in a particular State funded under section 672 of IDEA, demonstrate in the application how it will coordinate its services and supports with the other center or centers to ensure the most effective assistance to parents in that State;

(l) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 of IDEA and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3) of IDEA;

(m) Annually report to the Assistant Secretary on—

(1) The number and demographics of parents to whom the PTI Center provided information and training in the most recently concluded fiscal year, including additional information regarding their unique needs and levels of service provided to them;

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities by providing evidence of how those parents were served effectively; and

(3) The number of parents served who have resolved disputes through alternative methods of dispute resolution.

(n) Respond to requests from the National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs) and use the technical assistance services of the NTAC and PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. PTACs are charged with assisting parent centers with administrative and programmatic issues;

(o) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project. In addition, a project's budget must include funds for the center's project director to attend a Regional Project Directors' meeting to be held each year of the project;

(p) If the PTI Center maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility;

(q) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of OSEP's Dissemination Center;

(r) In collaboration with OSEP and the NTAC, participate in an annual collection of program data for PTI Centers and CPRCs; and

(s) Identify with specificity in its application the special efforts it will make to—

(1) Ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

(2) Work with community based organizations, including those that work with low-income parents and parents of limited English proficient children.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of IDEA makes the public comment requirements in the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1471.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $25,704,000 for the Training and Information for Parents of Children with Disabilities program for FY 2007, of which we intend to use an estimated $8,957,406 for the Parent Training and Information Centers competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Information concerning funding amounts for individual States is provided elsewhere in this section of this notice.

Estimated Average Size of Awards: $319,907.

Estimated Number of Awards: 28.

Note: The Department is not bound by any estimates in this notice.

Project Period: With the exception of projects in the States of Alabama, Oklahoma, and Region 3 of Florida, projects will be funded for a period up to 60 months. Projects in Alabama and Florida—Region 3 will be funded for a period up to 48 months; projects in Oklahoma will be funded for a period up to 36 months. As explained elsewhere in this notice, the Assistant Secretary makes awards to groups of States in five-year cycles. We are proposing shorter project periods for Alabama, Oklahoma, and Florida—Region 3 in order to align the funding cycle for these areas with those of other States in their groups. Alabama, Oklahoma, and Florida—Region 3 did not receive awards with their groups in previous competitions.

In order to allocate resources equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Assistant Secretary is making awards in five-year cycles for each State. In FY 2007, applications for 5-year awards will be accepted for the following States: Arkansas, California, Connecticut, Georgia, Illinois, Kansas, Michigan, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina, Texas, and Utah. Exceptions to the 5-year awards will be in the States of Alabama, Oklahoma and Region 3 of Florida. Applications for projects in Alabama and Florida—Region 3 will be accepted for 4-year awards and applications for projects in Oklahoma will be accepted for a 3-year award. Awards also may be made to eligible applicants in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States.

Estimated Project Awards: Project award amounts are for a single budget period of 12 months. To ensure maximum coverage for this competition, the Assistant Secretary has adopted regional designations established by California, Florida, Illinois, Michigan, Ohio, and Texas and has identified corresponding maximum award amounts for each region. Any applicant that applies for grants for more than one region must complete a separate application for each region.

The Assistant Secretary took into consideration current funding levels and population distribution when determining the award amounts for grants under this competition.

In the following States, one award may be made for up to the amounts listed in the chart to a qualified applicant for a PTI Center to serve the *entire* State:

Alabama	$273,959
Arkansas	258,634
Connecticut	276,016
Georgia	469,482
Kansas	292,033
Montana	227,965
New Jersey	454,176
New Mexico	277,918
Oregon	283,548
South Carolina	288,215
Utah	246,148
Oklahoma	249,215

(These figures represent the maximum amounts the Assistant Secretary will award. In addition, the Assistant Secretary has not specified maximum amounts for Guam, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States).

In the following States with the exception of Illinois, one award will be made in the following amounts to a qualified applicant for a PTI Center to serve each identified region. In Illinois, the Assistant Secretary will make up to two awards for Region 1. The total of these two awards for Illinois' Region 1 will not exceed the maximum amount listed for that region in the chart below. A list of the counties that are included in each region also follows.

California:	
Region 1	$633,165
Region 2	519,072
Region 3	176,732
Region 4	462,011
Region 5	176,732
Florida:	
Region 3	190,154
Illinois:	
Region 1	548,708
Region 2	281,878
Michigan:	
Region 1	239,170
Region 2	403,970
Ohio:	

Region 1	220,569
Region 2	427,224
Texas:	
Region 1	421,347
Region 2	421,347
Region 3	238,015

Consistent with 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2007

CFDA number and name	Maximum award (per year)**
84.328M Parent Training and Information Centers:*	
Alabama	$273,959
Arkansas	258,634
Connecticut	276,016
Georgia	469,482
Kansas	292,033
Montana	227,965
New Jersey	454,176
New Mexico	277,918
Oregon	283,548
South Carolina	288,215
Utah	246,148
Oklahoma	249,215
California:	
Region 1	633,165
Region 2	519,072
Region 3	176,732
Region 4	462,011
Region 5	176,732
Florida:	
Region 3	190,154
Illinois:	
Region 1	548,708
Region 2	281,878
Michigan:	
Region 1	239,170
Region 2	403,970
Ohio:	
Region 1	220,569
Region 2	427,224
Texas:	
Region 1	421,347
Region 2	421,347
Region 3	238,015

Listing of States/Regions/Counties

California Regions

Region 1 includes the following counties: Los Angeles, Ventura, Santa Barbara, San Luis Obispo.

Region 2 includes the following counties: Mono, Inyo, San Bernadino, Orange, Riverside, San Diego, Imperial.

Region 3 includes the following counties: Madera, Stanislaus, Mercer, Mariposa, San Benito, Monterey, Fresno, Kings, Tulare, Kern.

Region 4 includes the following counties: Sonoma, Napa, Yolo, Solano, Marin, Contra Costa, San Joaquin, Alameda, San Mateo, Santa Clara, Santa Cruz, San Francisco.

Region 5 includes the following counties: Del Norte, Humboldt, Mendocino, Sisklyou, Trinity, Shasta, Modoc, Lassen, Tehama, Lake, Glenn, Colusa, Butte, Sutter, Yuba, Sacramento, Nevada, Plumas, Sierra, Placer, El Dorado, Amador, Calavaras, Alpine, Tuolumne.

Florida Region

Region 3 includes the following counties: Dade, Broward, Palm Beach, Monroe, Collier, Lee, Hendry, Martin, Glades.

Illinois Regions

Region 1 includes the following counties: Cook, DuPage, Grundy, Kane, Kendall, Lake, McHenry, Will.

Region 2 includes the remainder of the State.

Ohio Regions

Region 1 includes the following counties: Darke, Preble, Butler, Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Jackson, Pike, Ross, Fayette, Greene, Clark, Champaign, Logan, Shelby, Miami, Montgomery, Warren, Clinton, Highland.

Region 2 includes the remainder of the State.

Michigan Regions

Region 1 includes the following counties: Oakland, Macomb, Wayne.

Region 2 includes the remainder of the State.

Texas Regions

Region 1 includes the following counties: Hardeman, Foard, Knox, Wilbarger, Baylor, Throckmorton, Wichita, Archer, Young, Clay, Jack, Montague, Cooke, Wise, Palo Pinto, Eralh, Parker, Hood, Somerveil, Denton, Tarrant, Johnson, Grayson, Collin, Dallas, Ellis, Fannin, Hunt, Rockwall, Kaufman, Lamar, Delta, Hopkins, Red River, Franklin, Titus, Camp, Morris, Bowie, Casa, Cass, Marion, Bosque, Hamilton, Mills, Lampaas, Coryell, Hill, McLennan, Bell, Navarro, Freestone, Limestone, Falls, Burnet, Llano, Gillespie, Kendall, Comal, Blanco, Williamson, Travis, Hays, Lee, Bastrop, Caldwell, Guadalupa, Fayette, Gonzales, Leon, Robertson, Millam, Burleston, Washington, Austin, Brazoa, Madison, Grimes, Houston, Trinity, Walker, Montgomery, Polk, San Jacinto, Tyler, Hardin, Jefferson, Orange, Jasper, Newton, Raine, Van Zandt, Henderson, Anderson, Wood, Smith, Cherokee, Upshur, Gregg, Rusk, Nacogdoches, Angelina, Harrison, Panola, Shelby, San Augustine, Sabine.

Region 2 includes the following counties: Kerr, Real, Kinney, Maverik, Uvalde, Zavala, Dimmit, Bandera, Medina, Frio, La Salle, Boxer, Atascosa, Wilson, Webb, Zapata, Jim Hogg, Staarr, Hidalgo, Willsoy, Cameron, McMullen, Duval, Live Oak, Jim Wells, Brooke, Nueces, Kisberg, Kenedy, San Patricio, Aransas, Bee, Karnes, Gollad, Dewitt, Lavaca, Colorado, Wharton, Malagorda, Jackson, Victoria, Refugio, Calhoun, Waller, Fort Bond, Brezoria, Harris, Galveston, Liberty, Chambers.

Region 3 includes the following counties: El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Reeves, Brewster, Pecos, Terrell, Dallam, Hartley, Oldham, Deaf Smith, Parmer, Bailey, Cochran, Yoakum, Gaines, Andrews, Loving, Winkler, Ward, Sharman, Moore, Potter, Randall, Castro, Swisher, Lamb, Hockley, Terry, Ector, Crane, Upton, Reagan, Midland, Glasscook, Dawson, Martin, Borden, Howard, Hansford, Hutchinson, Carson, Armstrong, Briscoe, Ochiltree, Roberts, Gray, Donley, Hall, Lipscomb, Hemphill, Wheeler, Collingsworth, Childress, Hale, Lubbock, Lynn, Floyd, Crosby, Garza, Motley, Dickens, Kent, Cottle, King, Scurry, Mitchell, Stonewall, Fisher, Nolan, Haskall, Jones, Taylor, Shackelford, Callahan, Stephens, Eastland, Sterling, Irion, Crockett, Val Verde, Coke, Tom Green, Schlelcher, Sutton, Edwards, Runnels, Concho, Menard, Kimble, Coleman, McCulloch, Mason, Brown, San Sabe.

III. Eligibility Information

1. *Eligible Applicants:* Parent organizations, as defined in section 671(a)(2) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that—

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention; and

(ii) Individuals with disabilities; and

(iii) The parent and professional members of which are broadly representative of the population to be served including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.328M.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under *For Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 60 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times*: Applications Available: September 26, 2006. Deadline for Transmittal of Applications: November 13, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: January 9, 2007.

4. *Intergovernmental Review*: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements*: Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications*.

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2007. Parent Training and Information Centers—CFDA Number 84.328M is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Parent Training and Information Centers—CFDA Number 84.328M competition at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration

process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You may submit all documents electronically, including all information typically included on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (portable document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.

- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact*, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the *grants.gov* system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address: By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328M), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.328M), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S.

Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Training and Information for Parents of Children with Disabilities program. The measures will focus on: the extent to which projects provide high quality materials, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Lisa Gorove, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4056, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7357.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 20, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–15762 Filed 9–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Research Fellowships Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F.

Dates: Applications Available: September 26, 2006.

Deadline for Transmittal of Applications: November 27, 2006.

Eligible Applicants: Only individuals who have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities are eligible. The program provides two categories of Research Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(b) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most recent competitions, Merit Fellowship recipients had research experience at the doctoral level.

Note: Institutions are not eligible to be recipients of Research Fellowships.

Estimated Available Funds: The Administration has requested $106,705,000 for NIDRR for FY 2007, of which we intend to use an estimated $500,000 for the Research Fellowships competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Awards: Merit Fellowships: $65,000; Distinguished Fellowships: $75,000.

Estimated Number of Awards: 7 including both Merit and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to enable highly qualified individuals, including those who are individuals with disabilities, to conduct research about the rehabilitation of individuals with disabilities.

Note: This program is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and

rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR part 356).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Research Fellowships Program: Fellows must conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Section 204 authorizes research designed to maximize the full inclusion and integration into society, employment, independent living, family, support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75.60–61, 77, 82, 84, 85, and 97. (b) The regulations in 34 CFR 350.51–52. (c) The regulations for this program in 34 CFR part 356.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $106,705,000 for NIDRR for FY 2007, of which we intend to use an estimated $500,000 for the Research Fellowships competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Awards: Merit Fellowships: $65,000; Distinguished Fellowships: $75,000.

Estimated Number of Awards: 7 including both Merit and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

III. Eligibility Information

1. *Eligible Applicants:* Only individuals who have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities are eligible. The program provides two categories of Research Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(b) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most recent competitions, Merit Fellowship recipients had research experience at the doctoral level.

Note: Institutions are not eligible to be recipients of research Fellowships.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133F.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under *For Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. The application package will provide instructions for completing all components to be included in either the paper application or electronically using Grants.gov. Each application must include the required forms; an abstract; Human Subjects narrative, if applicable; Part III narrative; resume; and other related materials, if applicable.

Note: Part II, the budget section, is not required for this program and should not be included.

Applicants submitting a paper application or electronically using Grants.gov must place their Social Security Number in Block #8bSF 424 form in place of the Employer Identification Number (EIN).

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 24 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, Application for Federal Assistance; Part IV, the assurances and certifications; or the one-page abstract, the resume, the bibliography, or the letters of support. However, you must include all of the narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 26, 2006.

Deadline for Transmittal of Applications: November 27, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times)

about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Applicants are not required to submit a budget with their proposal. The Merit Fellowships and Distinguished Fellowships awards are one Full Time Equivalent (FTE) awards. The Fellow must work principally on the fellowship during the term of the fellowship award. We define one FTE as equal to 40 hours per week. The Fellow cannot receive support through any other Federal Government grants during the term of the fellowship award.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2007. Research Fellowships—CFDA Number 84.133F is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Research Fellowships Program at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must register as an individual. You do not need to register in the Central Contractor Registry (CCR). The steps to register as an individual are—

(1) Go to the Grants.gov Credential Provider Web page, *https://apply.grants.gov/IndCPRegister.* Then enter the funding opportunity number.

Note: The funding opportunity number can be located when you search for this grant opportunity on *http://www.grants.gov/applicants/search_opportunities.jsp.*

(2) Fill out the credential information to obtain a credential username and password.

(3) Take the credential username and password and go to the Register with Grants.gov link to complete the registration at: *https://apply.grants.gov/IndGGRegister.*

(4) Registration for individuals is complete, once the Grants.gov registration step is finished.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including the Application for Federal Assistance (SF 424), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact*, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington,

DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133F), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133F), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and in Item 11 of the Application for Federal Assistance (SF 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 356.30 through 356.32 and are listed in the application package for this competition.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period you must submit a final performance report as directed by 34 CFR 356.51.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the Research Fellowships program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals;
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field; and
- The number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through review of grantee performance and products. NIDRR uses information submitted by grantees as part of their final performance report for these reviews. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–

888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 20, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–15763 Filed 9–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Overview Information; Technology and Media Services for Individuals With Disabilities—Research on Technology Effectiveness and Implementation for Children With Disabilities: Web-Supported Instructional Approaches Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327W

DATES: Applications Available: September 26, 2006.

Deadline for Transmittal of Applications: November 13, 2006.

Deadline for Intergovernmental Review: January 9, 2007.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: The Administration has requested $31,063,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2007, of which we intend to use an estimated $500,000 for the Research on Technology Effectiveness and Implementation for Children with Disabilities: Web-Supported Instructional Approaches competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities; and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Research on Technology Effectiveness and Implementation for Children With Disabilities: Web-Supported Instructional Approaches

Background: A number of Office of Special Education Programs (OSEP)-funded projects have developed and tested World Wide Web-supported approaches for improving educational results for children with disabilities. In some cases, these projects have used generally available Web resources (*e.g.*, newspaper sites, museum sites, and search engines). In other cases, the projects have developed specialized Web sites (*e.g.*, simulation of learning environments, discussion boards, and strategy reminders) to improve student learning.

Web-supported educational approaches have a number of potential benefits for students with disabilities. The Web can support varied learning strategies and Web-supported activities can be designed to address different student needs. For example, they can provide supports to compensate for learning difficulties, sensory impairments, and academic skill deficits. Research on the benefits of Web-supported approaches for students with disabilities is not entirely conclusive, however. While some studies have found the Web or some of its features to be effective in teaching and learning, other studies have not found the Web to be effective in teaching. We also have little information about whether Web-based resources that provide access for one population of students may create accessibility barriers for others (*e.g.*, graphic features may not be accessible to students with visual disabilities, hyper-linked resources or graphic organizers may increase intellectual demands and thus create barriers for students with cognitive disabilities). Finally, the effectiveness of Web-supported instruction in widespread use in typical educational environments has not been fully explored.

Priority: This priority supports a Center to conduct a systematic program of research on the use of Web-supported instructional approaches to improve access to, and participation and progress in, the general curriculum for students with disabilities. In carrying out its research, the Center must apply the principles of universal design (*i.e.*, design of products that will be usable by children with different disabilities, to the greatest extent possible, with minimal need for additional adaptations).

In their applications, applicants must—

(a) Propose an operational definition of Web-supported instructional approaches to be used in a program of research;

(b) Describe their access to existing Web-supported instructional materials that will allow the Center to proceed quickly with the research without substantial time devoted to additional development;

(c) Demonstrate knowledge of the state of practice in terms of use of products, sources of products, and research on the use of the Web to support instruction;

(d) Present a plan for conducting a program of research to answer the following questions: (1) Do Web-supported instructional approaches improve learning of academic content for students with disabilities in actual educational settings with typical resources and levels of teacher support? (2) What characteristics of Web-supported instruction facilitate or impede access to and learning of academic content for students with disabilities? (3) What student characteristics (*e.g.*, disability, technology skills) and contextual factors (*e.g.*, teacher training, hardware

resources, student groupings) influence the effectiveness of Web-supported instruction?

This plan may focus on specific academic content areas or student ages, but, at a minimum, must address each of the three research questions separately for each of the following populations: students with learning disabilities, students with mental retardation, students with visual impairments or blindness, students with hearing impairments or deafness, and students with physical disabilities.

These research questions are intended to test causal relationships, and the research must employ rigorous experimental designs using randomized assignment unless a compelling case is made that such designs are not possible and that other designs, such as quasi-experiments with matched groups and statistical controls, can be used to determine treatment effects.

Applicants must fully describe methodologies and must provide documentation that available sample sizes and methodologies are sufficient to produce the statistical power needed to yield conclusive findings. Experimental research may be supplemented with qualitative or non-experimental methodologies, provided sufficient rigor is maintained.

The plan must provide for conducting the majority of research in actual educational environments using typical resources and levels of teacher support.

Once funded, the Center must—

(a) Establish a technical review board to review its operational definition of Web-supported instructional approaches and its research plans, and identify any needed improvements.

(b) Revise its operational definition of Web-supported instructional approaches and its research plan in accordance with comments from the technical review board and input from the U.S. Department of Education.

(c) Conduct the program of research called for in its plan, as revised, taking appropriate steps to ensure that the research is rigorous and objective. Toward this end, the Center must maintain communication with the U.S. Department of Education and the technical review board to identify needed corrective actions.

(d) Disseminate findings to appropriate audiences. The Center must submit reports for publication in peer-reviewed professional journals and for presentation at professional conferences, and must post reports on a Web site that meets a government or industry-recognized standard for accessibility.

(e) Formulate research-based guidelines for the development and use of the Web to support instruction and to improve access to, and participation and progress in the general education curriculum for students with disabilities.

(f) Budget for a two-day Project Directors' meeting and a two-day Technology Innovation meeting, each in Washington, DC during each year of the project.

(g) Budget five percent of the grant amount annually to support emerging needs as identified jointly through consultation with the OSEP project officer.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of the IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: The Administration has requested $31,063,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2007, of which we intend to use an estimated $500,000 for the Research on Technology Effectiveness and Implementation for Children with Disabilities: Web-Supported Instructional Approaches competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*— (a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327W.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under *For Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection

criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 26, 2006.

Deadline for Transmittal of Applications: November 13, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: January 9, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide Grants.gov Apply site in FY 2006. The Research on Technology Effectiveness and Implementation for Children with Disabilities: Web-Supported Instructional Approaches competition—CFDA number 84.327W is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Research on Technology Effectiveness and Implementation for Children with Disabilities: Web-Supported Instructional Approaches competition—CFDA number 84.327W at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (*see http://www.Grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (portable document)

format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact*, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327W), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.327W), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327W), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The

GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving the results for children with disabilities. Data on these measures will be collected from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Jane Hauser, U.S. Department of Education, 400 Maryland Avenue, SW., room 4067, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7373.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: September 20, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–15765 Filed 9–25–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995), intends to propose an information collection package with the Office of Management and Budget (OMB) concerning the Work Authorization System, as prescribed in DOE O 412. 1A, in order to authorize and control work performed by designated Management and Operating (M&O) contractors and other contractors as determined by the senior procurement executive, consistent with the budget execution and program evaluation requirements of the DOE Planning, Programming, Budget, and Evaluation process. Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

DATES: Comments regarding this proposed information collection must be received on or before November 27, 2006. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to:

Sandra Cover, U.S. Department of Energy, 1000 Independence Ave. SW., MA–61, Washington, DC 20585, or by fax at (202) 287–1345 or by e-mail at *Sandra.Cover@hq.doe.gov* and to:

Jeffrey Martus, IM–11/Germantown Building, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585, or by fax at 301–903–9061 or by e-mail at *jeffrey.martus@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jeffrey Martus at the address listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No. {enter current number} (2) *Package Title:* Work Authorization; (3) *Type of Review:* New; (4) *Purpose:* This information is required by the Department to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively; (5) *Respondents:* 33; (6) *Estimated Number of Burden Hours:* 528 hours; *Statutory Authority:* Sec. 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC.

Jeffrey Martus,

Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–15721 Filed 9–25–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Intent To Grant Exclusive or Partially Exclusive Patent License

AGENCY: National Energy Technology Laboratory (NETL, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of intent to grant to Johnson Matthey Inc. of Malvern, PA, an exclusive or partially exclusive license to practice the invention described in the U.S. patent number 7,033,419, ''Method for High Temperature Mercury Capture from Gas Streams.'' The invention is owned by the United States of America, as represented by the Department of

Energy (DOE). The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than fifteen (15) days after the date of this published Notice.

ADDRESSES: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone (304) 285–4086; E-mail: *newlon@netl.doe.gov*.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the DOE with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Johnson Matthey, a large business, has applied for an exclusive or partially exclusive license to practice the invention and has a plan for commercialization of the invention.

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 15 days of publication of this Notice the Technology Transfer Manager, Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880, receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 15-day notice period, and after consideration of any written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Carl O. Bauer,

Director, National Energy Technology Laboratory.

[FR Doc. E6–15722 Filed 9–25–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–571–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 19, 2006.

Take notice that on August 31, 2006, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective October 1, 2006: Sixth Revised Sheet No. 17; Sixth Revised Sheet No. 331; First Revised Sheet No. 331A.

CIG states that the tariff sheets are being filed to waive the billing and payment on interest for late charges for amounts less than $100.00 and to reference the invoice for the most up to date account information for payment.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15677 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–594–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 19, 2006.

Take notice that on September 14, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 14, 2006: Sixth Revised Sheet No. 196.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date

need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15678 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PA05–63–002]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

September 19, 2006.

Take notice that, on September 13, 2006, East Tennessee Natural Gas, LLC (East Tennessee) submitted a compliance filing pursuant to the order of the Federal Energy Regulatory Commission issued August 29, 2006 in Docket No. PA05–63–001.

East Tennessee states that copies of the filing were served on all affected customers and interested State commissions and all parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15674 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–453–001]

Enbridge Offshore Pipelines (UTOS) LLC; Notice of Compliance Filing

September 19, 2006.

Take notice that on September 14, 2006, Enbridge Offshore Pipelines (UTOS) LLC (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be deemed effective August 31, 2006:

Substitute First Revised Sheet No. 329
Substitute First Revised Sheet No. 330

UTOS states that the above-referenced tariff sheets are being filed in order to comply with the conditions contained in the Commission's Letter Order, issued August 30, 2006 in this proceeding, 116 FERC ¶ 61,194 (2006).

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15676 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–449–000, Docket No. CP06–450–000, Docket No. CP06–451–000, Docket No. CP06–448–000]

Kinder Morgan Louisiana Pipeline LLC, Natural Gas Pipeline Company of America; Notice of Applications

September 19, 2006.

Take notice that on September 8, 2006, Kinder Morgan Louisiana Pipeline LLC (Kinder Morgan Louisiana), 747 East 22nd Street, Lombard, Illinois 60148, filed applications in Docket Nos. CP06–451–000, CP06–450–000 and CP06–449–000, pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations. Kinder Morgan Louisiana is requesting certificates of public convenience and necessity: (i) To construct and operate natural gas pipeline facilities that will originate in Cameron Parish, Louisiana and terminate in Evangeline Parish, Louisiana, and to lease firm capacity on a long-term basis from Natural Gas Pipeline Company of America (Natural) [Docket No. CP06–449–000]; (ii) for the

future construction of facilities pursuant to blanket certificate authority under part 157, subpart F of the Commission's Regulations [Docket No. CP06–450–000], and (iii) for the undertaking of self-implementing interstate transportation service under part 284, subpart G of the Commission's Regulations [Docket No. CP06–451–000]. Kinder Morgan Louisiana seeks approval of proposed recourse rates for transportation service, approval of its *pro forma* tariff and the issuance of a preliminary determination providing for the Commission's early determination on nonenvironmental issues.

Also take notice that on September 8, 2006, Natural, 747 East 22nd Street, Lombard, Illinois 60148, filed an application in Docket No. CP06–448–000 pursuant to section 7(b) of the NGA, and part 157 of the Commission's Regulations for approval to abandon, by lease to Kinder Morgan Louisiana, certain firm capacity on a long-term basis. This application is related to, and is being filed concurrently with the applications being filed by Kinder Morgan Louisiana to construct a new interstate natural gas pipeline system in Louisiana, as listed above.

The details of these proposals are more fully set forth in these applications which are on file with the Commission and open for public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding these applications should be directed to Bruce H. Newsome, Vice President of Certificates and Rates, Kinder Morgan Louisiana Pipeline LLC and Vice President of Certificates and Rates, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148–5072, telephone: (630) 691–3526, e-mail: *bruce_newsome@kindermorgan.com.*

Specifically, Kinder Morgan Louisiana requests authorization to construct its proposed Louisiana Pipeline Project which will consist of: (1) About 132 miles of 42-inch pipeline from the Cheniere Sabine Pass LNG Terminal (Sabine LNG Terminal) in Cameron Parish, Louisiana to a point of interconnection with an existing Columbia Gulf Transmission Company line in Evangeline Parish, Louisiana (Leg 1); (2) about 1 mile of 36-inch pipeline that will extend from the Sabine LNG Terminal to a point of interconnection with Natural's existing interstate pipeline located north of the Terminal (Leg 2); and (3) about 2.3 miles of 24-inch pipeline extending away from Leg 1 (at about milepost 110) to the existing Florida Gas Transmission Company compressor station in Acadia Parish, Louisiana.

Kinder Morgan Louisiana has entered into precedent agreements with Chevron U.S.A. and Total Gas Power North America providing for firm transportation service on its Louisiana Pipeline Project away from the Cheniere Sabine Pass LNG Terminal. To effectuate such transportation service, in part, Kinder Morgan Louisiana proposes to lease firm capacity from Natural. By leasing such capacity, Kinder Morgan Louisiana will reduce the overall cost and improve the efficiency of its Louisiana Pipeline Project, as well as lessen its environmental impact. Thus, Kinder Morgan Louisiana also seeks authorization to lease capacity of 200,000 Dth per day on the facilities of Natural in southern Louisiana. The estimated cost of the Louisiana Pipeline Project is about $517 million, including overhead, contingency, Section 2.55(a) auxiliary installations and reimbursement of facility costs to interconnect pipelines.

On February 17, 2006, the Commission granted Kinder Morgan Louisiana's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–16–000 to staff activities involving its proposed Louisiana Pipeline Project. Now, with the filing of the Louisiana Pipeline Project certificate applications, the NEPA Pre-Filing Process for this Project has ended. From this time forward, all proceedings involving the Louisiana Pipeline Project will be conducted in Docket Nos. CP06–449, *et al.*, as listed above in the caption of this Notice.

As its part of the proposal, Natural seeks authority to abandon 200,000 Dth/d of firm capacity on its system by lease to Kinder Morgan Louisiana on a long-term basis pursuant to the terms of a capacity lease agreement between the parties dated August 31, 2006. The leased capacity will start at a point on Natural's Louisiana Line in Cameron Parish, Louisiana where it will interconnect with the Kinder Morgan Louisiana's Louisiana Pipeline Project. The leased capacity will extend east about 16 miles to a 24-inch lateral of Natural that extends south to Johnson's Bayou, where Kinder Morgan Louisiana proposes two delivery points. The leased capacity (200,000 Dth/d) will also exist in the interconnection facility between the Kinder Morgan Louisiana's Louisiana Pipeline Project and Natural's Louisiana Line, and in each of the two delivery points to be built at Johnson's Bayou.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. However, a person does not have to intervene in order to have comments considered.

The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on October 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15669 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–335–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Amendment to Application for Certificate of Public Convenience and Necessity

September 19, 2006.

Take notice that on September 11, 2006, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), 890 Winter Street, Suite 300, Waltham, Massachusetts 02451, filed in Docket No. CP06–335–001, an amendment to its application filed on May 16, 2006 pursuant to section 7 of the Natural Gas Act (NGA) for authorization for its Phase IV Project. In the instant amended application, Maritimes states that the only change to the project originally proposed in the May 16, 2006 application is to remove the facilities proposed to accommodate 150,000 Dth/day of capacity for Portland Natural Gas Transmission System (PNGTS) on the mainline facilities jointly owned by Maritimes and PNGTS that extend from Westbrook, Maine to Dracut, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection. More specifically, Maritimes states that the only change to the originally proposed facilities is to install a smaller compressor unit at the proposed Eliot Compressor Station in York County, Maine. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Maritimes requests a shortened notice procedure for this filing. Maritimes states that the shortened notice procedure is appropriate because the proposed modification to the original project is minor and the impact associated with the modification on existing customers and affected landowners and communities is minimal.

Any questions concerning this application may be directed to Steven E. Tillman, General Manager, Regulatory Affairs, M&N Management Company, 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5 p.m. Eastern Time on September 29, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15680 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–012]

Rockies Express Pipeline LLC; Notice of Negotiated Rate

September 19, 2006.

Take notice that on September 15, 2006, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 22, and Second Revised Sheet No. 24, to be effective September 16, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15679 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–452–001]

Stingray Pipeline Company, L.L.C.; Notice of Compliance Filing

September 19, 2006.

Take notice that on September 14, 2006, Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be deemed effective August 31 2006:

Third Revised Sheet No. 131;
Original Sheet No. 131A;
Substitute Fourth Revised Sheet No. 309.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15675 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–072]

TransColorado Gas Transmission Company; Notice of Negotiated Rate

September 19, 2006.

Take notice that on September 15, 2006, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 22A, to be effective September 16, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15668 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 19, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12729–000.

c. *Date filed:* August 28, 2006.

d. *Applicant:* Natural Currents Energy Services, LLC.

e. *Name of Project:* Willapa Bay Tidal Power Project.

f. *Location:* The project would be located in the Willapa Bay in Pacific County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, NY 12528, phone: (845) 691–4008.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Proposed tidal in-stream energy conversion generating units having a total installed capacity 2,000 kilowatts, and (2) a proposed transmission line. The proposed project would have an estimated annual generation of 3,000

megawatt-hours and would be sold to a local utility.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15670 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 19, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12730–000.

c. *Date filed:* August 28, 2006.

d. *Applicant:* Natural Currents Energy Services, LLC.

e. *Name of Project:* Knik Arm Tidal Power Project.

f. *Location:* The project would be located in the Knik Arm west and north of Cairn Point, and east and north of Port MacKenzie in Anchorage and the Munatauska-Susitna Borough, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, NY 12528, phone: (845) 691–4008.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Proposed tidal in-stream energy conversion generating units having, a total installed capacity 750 kilowatts, and (2) a proposed transmission line. The proposed project would have an

estimated annual generation of 4,380 megawatt-hours and would be sold to a local utility.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15671 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 19, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12731–000.

c. *Date filed:* August 28, 2006.

d. *Applicant:* Natural Currents Energy Services, LLC.

e. *Name of Project:* Angoon Tidal Power Project.

f. *Location:* The project would be located in the Kootznahoo Inlet in the Skagway-Hoonah-Angoon Census Area, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, NY 12528, phone: (845) 691–4008.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Proposed tidal in-stream energy conversion generating units having, a total installed capacity 2,000 kilowatts, and (2) a proposed transmission line. The proposed project would have an

estimated annual generation of 3,000 megawatt-hours and would be sold to a local utility.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15672 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 19, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12732–000.

c. *Date filed:* August 28, 2006.

d. *Applicant:* Natural Currents Energy Services, LLC.

e. *Name of Project:* Long Island Sound Tidal Power Project.

f. *Location:* The project would be located in Long Island Sound in Suffolk County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, NY 12528, phone: (845) 691–4008.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Proposed tidal in-stream energy conversion generating units having, a total installed capacity 2,000 kilowatts, and (2) a proposed transmission line. The proposed project would have an estimated annual generation of 1,000

gigawatt-hours and would be sold to a local utility.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–15673 Filed 9–25–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8223–1]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in his capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Pub. L. 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The NAC is composed of 12 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 12 members representing state, local, and tribal governments. The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC. The purpose of the meeting is to review the CEC's Draft Operational Plan and Budget. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacgac-page.htm.*

DATES: The National and Governmental Advisory Committees will hold a two day open meeting on Thursday, October 19, from 8:30 a.m. to 4 p.m. and Friday, October 20, from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Camino Real Hotel, 101 South El Paso Street, El Paso, Texas 79901. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, *carrillo.oscar@epa.gov*, 202–233–0072, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Committees should be sent to Oscar Carrillo, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202–233–0072 or *carrillo.oscar@epa.gov*. To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 13, 2006.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. E6–15730 Filed 9–25–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting, Open Commission Meeting, Tuesday, September 26, 2006

September 19, 2006.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, September 26, 2006, which is scheduled to commence at in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Tele-Communications	*Title:* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (WT Docket No. 06–17) and Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services. *Summary:* The Commission will consider an Eleventh Report concerning the annual report on the competitive market conditions with respect to Commercial Mobile Radio Services (CMRS).
2	Media	*Title:* Children's Television Obligations of Digital Television Broadcasters (MM Docket No. 00–167). *Summary:* The Commission will consider a Second Order on Reconsideration and Second Report and Order concerning children's television obligations.
3	Wireline Competition	*Title:* Rural Health Care Support Mechanism (WC Docket No. 02–60). *Summary:* The Commission will consider an Order concerning how the rural health care funding mechanism can be used to enhance public and non-public health care providers' access to advanced telecommunications and information services.
4	Public Safety and Homeland Security	The Public Safety and Homeland Security Bureau will present a report regarding the launch of the new Bureau.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–8293 Filed 9–22–06; 1:14 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 06–09]

Parks International Shipping, Inc., et al., Order of Investigation and Hearing

Parks International Shipping, Inc. (''Parks'') was incorporated in the State of New York on July 28, 1999, and is presently located at 3008/3010 Eastchester Road, Bronx, New York 10469. Parks also has a second location at 4755 White Plains Road, Bronx, NY 10470. Ainsley Lewis a.k.a. Jim Parks (''Ainsley Lewis'') occupies the position of President. Cargo Express International Shipping, Inc. (''Cargo Express'') is similarly located at 3010 Eastchester Road, Bronx, New York 10469 and was incorporated in New York State on January 23, 2003. Based upon available information, Ainsley Lewis appears to be involved in the operation of Cargo Express. Bronx Barrels & Shipping Supplies Shipping Center Inc. (''Bronx Barrels'') was incorporated in the State of New York on November 11, 2005. Its primary location is at 4755A White Plains Road, Bronx, New York 10470. Bronx Barrels also has a second location at 3008 Eastchester Road, Bronx, New York, 10469. Based upon available information, Ainsley Lewis also appears to be involved in the operation of Bronx Barrels. Parks, Cargo Express, and Bronx Barrels appear to be ocean transportation intermediaries (''OTIs'')

operating as unlicensed, unbonded, and untariffed non-vessel-operating common carriers (''NVOCCs'') primarily in the trade between the United States and various Caribbean, Central American, and South American destinations.

Based on evidence available to the Commission, it appears that Parks has knowingly and willfully provided transportation services as an NVOCC with respect to shipments during 2001, 2002, 2004, and 2005 without obtaining an OTI license from the Commission and without providing proof of financial responsibility. Moreover, it appears that Parks knowingly and willfully operated as a common carrier without publishing a tariff showing all of its active rates and charges. Cargo Express also appears to have knowingly and willfully provided transportation services as an NVOCC without obtaining an OTI license from the Commission and without providing proof of financial responsibility with respect to shipments commencing in 2004. It further appears that Cargo Express knowingly and willfully operated as a common carrier without publishing a tariff showing all of its active rates and charges. Bronx Barrels likewise appears to be knowingly and willfully holding itself out to provide transportation services as an NVOCC without obtaining an OTI license from the Commission and without providing proof of financial responsibility in the form of a surety bond. Additionally, Bronx Barrels appears to have been knowingly and willfully operating as a common carrier without publishing a tariff showing all of its active rates and charges. Finally, Ainsley Lewis, individually and through Parks, Cargo Express, and Bronx Barrels, appears to have been providing OTI services in 2001, 2002, 2004, 2005, and 2006 without publishing a tariff, obtaining an OTI license from the Commission, and providing proof of financial responsibility.

Section 19 of the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1718, prohibits any person from providing OTI [1] services prior to being issued a license from the Commission and obtaining a valid bond, proof of insurance, or other surety in a form and amount determined by the Commission to ensure financial responsibility. The Commission's regulations at 46 CFR 515.21 support this obligation by requiring any person operating as an OTI/NVOCC in the United States to provide evidence of financial responsibility in the amount of $75,000. Furthermore, section 8(a) of the 1984 Act, 46 U.S.C. app. 1707(a), requires NVOCCs to publish (open to public inspection in an automated tariff system) tariffs showing all their active rates, charges, classifications, and practices. The Commission's regulations at 46 CFR 520.3 affirm this statutory requirement by directing each NVOCC to notify the Commission, prior to providing transportation services, as to the location of its tariffs, as well as the publisher used to maintain those tariffs by filing a Form FMC–1. Pursuant to section 13 of the 1984 Act, 46 U.S.C. app. 1712, a party is subject to a civil penalty of not more than $30,000 for each violation knowingly and willfully committed, and not more than $6,000 for other violations.[2]

Now therefore, it is ordered, that pursuant to sections 8, 11, 13, and 19 of the 1984 Act, 46 U.S.C. app. 1707, 1710, 1712, and 1718, an investigation is instituted to determine:

(1) Whether Parks International Shipping, Inc., Cargo Express International Shipping, Inc., Bronx Barrels & Shipping Supplies Shipping Center, Inc., and/or Ainsley Lewis a.k.a. Jim Parks violated section 8(a) of the 1984 Act and the Commission's regulations at 46 CFR part 520 by operating as common carriers without publishing tariffs showing all of their active rates and charges;

(2) Whether Parks International Shipping, Inc., Cargo Express International Shipping, Inc., Bronx Barrels & Shipping Supplies Shipping Center Inc., and/or Ainsley Lewis a.k.a. Jim Parks violated section 19 of the 1984 Act and the Commission's regulations at 46 CFR part 515 by operating as non-vessel-operating common carriers in the U.S. trades without obtaining licenses from the Commission and without providing proof of financial responsibility;

(3) Whether, in the event violations of sections 8(a) and 19 of the 1984 Act and/or 46 CFR Parts 515 and 520 are found, civil penalties should be assessed against Parks International Shipping, Inc., Cargo Express International Shipping, Inc., Bronx Barrels & Shipping Supplies Shipping Center Inc., and/or Ainsley Lewis a.k.a. Jim Parks and, if so, the amount of the penalties to be assessed; and

(4) Whether, in the event violations are found, appropriate cease and desist orders should be issued against Parks International Shipping, Inc., Cargo Express International Shipping, Inc., Bronx Barrels & Shipping Supplies Shipping Center Inc., and/or Ainsley Lewis a.k.a. Jim Parks.

It is further ordered, that a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, that Parks International Shipping, Inc., Cargo Express International Shipping, Inc., Bronx Barrels & Shipping Supplies Shipping Center Inc., and Ainsley Lewis a.k.a. Jim Parks are designated as Respondents in this proceeding;

It is further ordered, that the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, that notice of this Order be published in the **Federal Register**, and a copy be served on the parties of record;

It is further ordered, that other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, that all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

[1] According to section 3(17) of the 1984 Act, 46 U.S.C. app. 1702(17), an ocean transportation intermediary is defined as either a freight forwarder or a non-vessel-operating common carrier.

[2] This penalty amount reflects an adjustment for inflation pursuant to the Commission's regulations at 46 CFR part 506.

It is further ordered, that in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by September 19, 2007 and the final decision of the Commission shall be issued by January 17, 2008.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 06–8196 Filed 9–25–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer — Michelle Long— Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer — Mark Menchik — Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or email to mmenchik@omb.eop.gov.

Final Approval Under OMB Delegated Authority to Conduct the Following Survey:

Report title: 2007 Survey of Consumer Finance

Agency form number: FR 3059

OMB control number: 7100–0287

Frequency: One–time survey

Reporters: U.S. families

Annual reporting hours: 7,500 hours

Estimated average hours per response: Pretest and Survey, 75 minutes each

Number of respondents: Pretest, 400 families; Survey 5,600 families

General description of report: This information collection is voluntary. The Federal Reserve's statutory basis for collecting this information is section 2A, 14, and 19 of the Federal Reserve Act (12 U.S.C. 225(a), 353, and 461); the Bank Merger Act (12 U.S.C. 1828(c)); and sections 3 and 4 of the Bank Holding Company Act (12 U.S.C. 1842 and 1843). The names and other characteristics that would permit identification of respondents are deemed confidential by the Board and are exempt from disclosure pursuant to exemption 6 in the Freedom of Information Act (5 U.S.C. 552(b)(6)).

Abstract: For many years, the Board has sponsored consumer surveys to obtain information on the financial behavior of households. The 2007 Survey of Consumer Finance (SCF) will be the latest in a triennial series, which began in 1983, that provides comprehensive data for U.S. families on the distribution of assets and debts, along with related information and other data items necessary for analyzing financial behavior. These are the only surveys conducted in the United States that provide such financial data for a representative sample of households. Data for the SCF are collected by interviewers using a computer program. While some questions may be deleted and others modified, only minimal changes will be made to the questionnaire in order to preserve the time series properties of the data. The pretest would be conducted later this year and the survey would be conducted between May 2007 and January 2008.

Current Actions: On July 11, 2006, the Federal Reserve published a notice in the **Federal Register** (71 FR 39118) requesting public comment for 60 days on the proposal to conduct the FR 3059. The comment period for this notice expired on September 11, 2006. No comments were received.

Board of Governors of the Federal Reserve System, September 20, 2006.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E6–15695 Filed 9–25–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with Southern Bancorp, Inc., Marietta, Georgia, and thereby indirectly acquire voting shares of Southern National Bank, Marietta, Georgia.

Board of Governors of the Federal Reserve System, September 21, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–15750 Filed 9–25–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup

ACTION: Announcement of meeting.

SUMMARY: This notice announces the second meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., app.)

DATES: October 4, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (you will need a photo ID to enter a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/workgroups.html.*

SUPPLEMENTARY INFORMATION: During the meeting, the Workgroup will continue their discussion on a core set of quality measures and an environmental scan.

The meeting will be available via Internet access. Go to *http://www.hhs.gov/healthit/ahic/quality__instruct.html* for additional information on the meeting.

Dated: September 19, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8192 Filed 9–25–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Record Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the tenth meeting of the American Health Information Community Electronic Health Record Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: October 13, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ehr_main.html.*

SUPPLEMENTARY INFORMATION: The workgroup discussion will include, but not be limited to, ''financial incentives'' as one critical component to electronic health records, including cost implications, maintenance and training, etc.

The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: September 20, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–8243 Filed 9–25–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–05BS]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Human Behavior in Fire Study—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project will characterize the behaviors of individuals who were involved in a residential fire and determine which behaviors are associated with injuries sustained in the fire incident. Behaviors related to fire escape planning and practice, smoke alarm installation and maintenance, physical and visual access to escape routes, etc. will be studied.

In the United States each year, there are approximately 400,000 residential fires, with 14,000 non-fatal and 3,000 fatal civilian injuries. In line with ''*Healthy People 2010*'' objectives, NCIPC works to reduce and eliminate non-fatal and fatal injuries from residential fires. In order to develop effective fire-related injury prevention programs, a better understanding of human behavior in fires is needed.

The design of this study will be a matched-pair, case-control study. Cases will be defined as individuals who were injured in a residential fire and controls will be individuals who were involved in a residential fire, but were not injured. Fire incidents involving a fatality will be excluded from this study. Local fire departments throughout the United States will submit fire incident reports to contract personnel, who will select incidents based on geographical location and then screen further for eligibility using a brief telephone interview. For those selected, interviewers will conduct in-depth, computer-assisted face-to-face interviews with participants. The sequence of events surrounding the fire and the behaviors of interviewees will be ascertained using the Behavioral Sequence Interview Technique (BSIT); (Keating & Loftus, 1984). In addition, information on the nature of injuries sustained; characteristics of the fire and home structure; other occupants present; previous fire experiences; safety training; and demographics on the persons interviewed will be collected. The only cost to the respondents is their time. The total annual burden hours are 552.

Estimate of Annualized Burden Hours

Respondents	No. of respondents	No. of responses per respondent	Average burden per response
Adults—screened and eligible	434	1	15/60
Adults—screened but are ineligible or refused	109	1	5/60

Respondents	No. of respondents	No. of responses per respondent	Average burden per response
Adult—cases and controls	434	1	1

Dated: September 20, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–15703 Filed 9–25–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announcement Opportunity for Businesses To Partner With National Institute for Occupational Safety and Health (NIOSH) on a Research Project To Evaluate the Reusability of Disposable Filtering Facepiece Respirators (FFR) Used for Protection Against Infectious Aerosols

Authority: 29 U.S.C. Sections 651 *et seq.*

AGENCY: The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

ACTION: Notice.

SUMMARY: The National Personal Protective Technology Laboratory (NPPTL), NIOSH, is conducting research to determine the reusability of filtering facepiece respirators (FFR) exposed to infectious aerosols. One aim of this research is to address whether NIOSH-certified FFR are suitable for reuse after decontamination. NIOSH proposes to study the effects of decontaminating a diverse array of FFR including NIOSH-certified N95, P100, and N95 filtering facepiece respirator/surgical mask. This project will also study the survivability of a simulant influenza virus on FFR. NIOSH plans to include in the research study some of the respirator models that have been stockpiled by the U.S government to be used in the event of an influenza pandemic. NIOSH also plans to include models that have head straps versus those that do not have head straps, as well as models with and without exhalation valves.

Through this announcement, NIOSH is seeking to identify FFR products or prototypes that possess anti-viral or other novel technologies that disinfect or sterilize infectious aerosols (*e.g.*, viruses) as part of their materials of construction. Program funding constraints may limit the number of candidate respirators that may be included in the research program. NIOSH will give consideration to the incorporation of novel anti-viral technologies into this research study using the following hierarchy for selection of candidate FFR products and prototypes: (1) The FFR proposed for consideration in this study are commercially available and are currently certified to meeting 42 CFR part 84 requirements, (2) the FFR proposed for consideration is in the process of being certified by NIOSH to meet 42 CFR part 84 requirements, (3) the FFR proposed for consideration are either a prototype or a commercially available product that has not been submitted to NIOSH for certification and the manufacturer submitting the letter of interest has received NIOSH certification for other respiratory protection products, and (4) the FFR prototype contains a unique technology for disinfecting or sterilizing infectious aerosol particles trapped on the exterior surface of the FFR and complements the diversity of technologies already considered in the research design.

Candidate companies will be evaluated based on their capability to achieve the identified criteria in sufficient quantities for testing. Candidates selected could be requested to enter into a Cooperative Research and Development Agreement (CRADA). This announcement does not obligate NIOSH to enter into a contractual agreement with any respondents. NIOSH reserves the right to establish a partnership based on scientific analysis and capabilities found by way of this announcement or other searches, if determined to be in the best interest of the government.

DATES: Submit letters of interest within 30 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Interested manufacturers should submit a letter of interest with information about their capabilities to: NIOSH, National Personal Protection Technology Laboratory, P.O. Box 18070, 626 Cochrans Mill Road, *Attn:* Jonathan Szalajda, Pittsburgh, PA 15236, *E-mail address: zfx1@cdc.gov*.

SUPPLEMENTARY INFORMATION: CDC recommends the use of disposable N95, N99, or N100 filtering facepiece particulate respirators (FFR) as the minimum level of respiratory protection against transmission of influenza virus. During a respirator shortage, it is important to consider whether a previously worn FFR can be used again. Reuse guidelines in the NIOSH Guide to the Selection and Use of Particulate Respirators Certified under 42 CFR 84 recommend reuse based on loading of the filter and functioning of the respirator. Hospital settings tend to have relatively low concentrations of particulates, but the potential for infectious agents exists. Thus, reuse is more dependent upon infection control procedures than on respirator loading considerations. Respirators exposed to viruses are considered to be potentially harmful because of the possibility for the respirator to act as a fomite and the potential for the viral particle to become dislodged during a sneeze/cough or from rough handling. Thus, respirators worn in the presence of a potentially infected patient or co-worker should be disposed of as infectious waste, and touching of the outside of the respirator should be avoided.

In January, 2006, the Department of Health and Human Services asked the Institute of Medicine (IOM) to convene a committee to conduct an assessment of measures that can be taken that would permit the reuse of disposable N95 particulate filtering respirators in healthcare settings and to report the status of current knowledge about the need and development of reusable N95 respirators for healthcare providers and the general public. Some of the key recommendations from that study were that research studies should be conducted to (1) understand the efficacy of simple decontamination methods that could be used without negative effects on respirator integrity; and (2) understand the risks associated with handling a respirator that has been used for protection against a viral threat (*e.g.*, study the likelihood that the exterior surface of the respirator might harbor pathogenic microorganisms and thus serve as a fomite).

This research project addresses the major research gaps related to the reusability of filtering facepiece respirators (FFR) during an influenza pandemic. NIOSH/NPPTL plans to conduct a variety of tasks in this research project, including: (1) Determining the effect of decontamination on FFR filtration

performance; (2) Development of a standardized test protocol for measuring the efficacy of a decontamination procedure for FFR; (3) Measure the survivability of a virus simulant trapped on FFR; (4) Measurement of the reaerosolization of a trapped virus simulant on FFR; (5) Assess the efficacy of various decontamination methods suitable for FFR; (6) Determine the effects of decontamination on the FFR fit; and (7) produce a final report that could be used to issue guidance documents on FFR reuse.

FOR FURTHER INFORMATION CONTACT: Jonathan Szalajda, telephone 412–386–6627, or e-mail *zfx1@cdc.gov*.

Dated: September 19, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–15706 Filed 9–25–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Portfolio on the Disability and Health Team of the Division of Human Development and Disability

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Portfolio on the Disability and Health Team of the Division of Human Development and Disability.

Times and Dates:

6 p.m.–8 p.m., October 22, 2006 (Closed).

8 a.m.–5 p.m., October 23, 2006 (Closed).

8 a.m.–3 p.m., October 24, 2006 (Closed).

Place: National Center on Birth Defects and Developmental Disabilities, CDC, 12 Executive Park Drive, Atlanta, Georgia 30329, Telephone Number 404.498.3013.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include expert review of science and programs of the Disability and Health Team.

Contact Person for More Information: Esther Sumartojo, Associate Director for Science, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., Mailstop E–87, Atlanta, GA 30333, Telephone Number 404.498.3072.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 18, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–15719 Filed 9–25–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of annual update of list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990, Public Law 101–336, requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply and to review and update the list annually. The Centers for Disease Control and Prevention (CDC) published a final list on August 16, 1991 (56 FR 40897) and updates on September 8, 1992 (57 FR 40917); January 13, 1994 (59 FR 1949); August 15, 1996 (61 FR 42426); September 22, 1997 (62 FR 49518–9); September 15, 1998 (63 FR 49359), September 21, 1999 (64 FR 51127); September 27, 2000 (65 FR 58088), September 10, 2001 (66 FR 47030), and September 27, 2002 (67 FR 61109). The final list has been reviewed in light of new information and has been revised as set forth below.

EFFECTIVE DATE: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Sharp, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–24, Atlanta, Georgia 30333 Telephone: (404) 639–2213

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;
2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
3. Publish the methods by which such diseases are transmitted; and,
4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Additionally, the list is to be updated annually. Since the last publication of the list on October 4, 2004 (67 FR 61109), new information has been reviewed and added. Norwalk and Norwalk-like viruses, previously listed in Part I, are now identified as Noroviruses so as to conform with current scientific nomenclature. Sapoviruses have been added to Part II.

I. Pathogens Often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and cross-contamination during processing are more prevalent causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by a pathogen that could be transmitted to others through handling the food supply: Diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice. The failure of food-handlers to wash hands (in situations such as after using the toilet, handling raw meat, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also major contributors

in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following:

Noroviruses.
Hepatitis A virus.
Salmonella Typhi.[*]
Shigella species.
Staphylococcus aureus.
Streptococcus pyogenes.

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, But Usually Transmitted by Contamination at the Source or in Food Processing or by Non-foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens:

Campylobacter jejuni.
Cryptosporidium parvum.
Entamoeba histolytica.
Enterohemorrhagic Escherichia coli.
Enterotoxigenic Escherichia coli.
Giardia lamblia.
Nontyphoidal Salmonella.
Sapoviruses.
Taenia solium.
Vibrio cholerae.
Yersinia enterocolitica.

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Dated: September 15, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E6–15712 Filed 9–25–06; 8:45 am]

BILLING CODE 4163–18–P

[*] Kauffmann-White scheme for designation of *Salmonella* serotypes.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D–0044]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry and Food and Drug Administration Staff: Recommendations for Clinical Laboratory Improvement Amendments of 1988 Waiver Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 26, 2006.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry and Food and Drug Administration Staff: Recommendations for Clinical Laboratory Improvement Amendments (CLIA) of 1988 Waiver Applications; Availability

Congress passed the CLIA (Public Law 100–578) in 1988 to establish quality standards for all laboratory testing. The purpose was to ensure the accuracy, reliability, and timeliness of patient test results regardless of where the test took place. CLIA requires that clinical laboratories obtain a certificate from the Secretary of Health and Human Services (the Secretary) before accepting materials derived from human body for laboratory tests (42 U.S.C. 263a(b)).

Laboratories that perform only tests that are ''simple'' and that have an ''insignificant risk of an erroneous result'' may obtain a certificate of waiver (42 U.S.C. 263a (c)(2)). The Secretary has delegated to FDA the authority to determine whether particular tests (waived tests) are '' simple'' and have ''an insignificant risk of an erroneous result'' under CLIA (69 FR 22849, April 27, 2004). This guidance document describes recommendations for device manufacturers submitting to FDA an application for determination that a cleared or approved device meets CLIA standards (CLIA waiver application).

The guidance recommends that CLIA waiver applications include a description of the features of the device that make it ''simple'': A report describing a hazard analysis that identifies potential sources of error, including a summary of the design and results of flex studies and conclusions drawn from the flex studies; a description of fail-safe and failure alert mechanism and a description of the studies validating these mechanisms; a description of clinical tests that demonstrate accuracy of the test in the hands of intended operators; and statistical analysis of clinical study results. The guidance also make recommendations concerning labeling of ''waived tests.'' The burden associated with most of these labeling recommendations is approved under OMB control number 0910–0485.

Only new information collections not already approved, are included in the estimate in this document. Recommendations for quick reference instructions are written in simple language that can be posted. The guidance also notes that ''waived tests'' remain subject to applicable reporting and recordkeeping requirements under 21 CFR part 803. The burden associated

with this provision is approved under OMB control number 0910–0437.

Respondents to this collection of information are manufacturers of in vitro diagnostic devices.

In the **Federal Register** of September 7, 2005 (70 FR 53231), FDA solicited comments on the collection of information requirements. No comments were received in response to this notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
40	1	40	780	31,200	$5,500

[1]There are no capital costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Record	Total Hours	Total Operating & Maintenance Costs
40	1	40	2,800	112,000	$60,700

[1]There are no capital costs associated with this collection of information.

Based on previous years of experience, with CLIA waiver applications, FDA expects 40 manufacturers to apply for one CLIA waiver per year. The annual reporting burden to respondents is estimated to be 31,200 hours and the recordkeeping burden for respondents is estimated to be 112,00 hours. FDA based the reporting and recordkeeping burden on agency analysis of premarket submissions with clinical trials similar to the waived laboratory tests.

The total operating and maintenance costs associated with the implementation of this draft guidance is estimated to be $66,200. The cost consists of specimen collections for the clinical study (estimated at $23,500); laboratory supplies, reference testing, and study oversight (estimated at $26,700); shipping and office supplies (estimated at $6,000); and educational materials, including quick reference instructions (estimated at $10,000).

Dated: September 15, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–15693 Filed 9–25–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0357]

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending OMB approval on the existing reporting and recordkeeping requirements for processors and importers of fish and fishery products.

DATES: Submit written or electronic comments on the collection of information by November 27, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products—21 CFR Part 123 (OMB Control Number 0910–0354)—Extension

FDA regulations in part 123 (21 CFR part 123) mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (a)(4)), and became effective on December 18, 1997.

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (e.g., the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided. HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to be made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry. Costs were estimated for the collection of HACCP data for each type of recordkeeping activity using a labor cost of $15.00 per hour.

The burden estimate in table 1 of this document includes only those collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. The estimate also does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors. Consequently, the estimates in table 1 account only for information collection and recording requirements attributable to part 123.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section[2]	No. of Respondents	Annual Frequency per Response[3]	Total Annual Responses	Hours per Response[4]	Total Hours
123.6(a),(b), and (c)	275	1	275	16.00	4,400
123.6(c)(5)	5,500	4	22,000	0.30	6,600
123.8(a)(1) and (c)	5,500	1	5,500	4.00	22,000
123.12(a)(2)(ii)	1,100	80	88,000	0.20	17,600
123.6(c)(7)	5,500	280	1,540,000	0.30	462,000
123.7(d)	2,200	4	8800	0.10	880
123.8(d)	5,500	47	258,500	0.10	25,850
123.11(c)	5,500	280	1,540,000	0.10	154,000
123.12(c)	1,100	80	88,000	0.10	8,800
123.12(a)(2)	55	1	55	4.00	220
123.10	275	1	275	24.00	6,600
Total					708,950

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

[2]These estimates include the information collection requirements in the following sections:§ 123.16Smoked Fish—process controls (see § 123.6(b))§ 123.28(a)—Source Controls—molluscan shellfish (see § 123.6(b))§ 123.28(c) and (d)—Records—molluscan shellfish (see § 123.6(c)(7))

[3]Based on an estimated 280 working days per year.

[3]Based on an estimated 280 working days per year.

[4]Estimated average time per 8-hour work day unless one-time response.

Dated: September 19, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–15694 Filed 9–25–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0427]

Determination of Regulatory Review Period for Purposes of Patent Extension; KETEK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for KETEK and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product KETEK (telithromycin). KETEK is indicated for treatment of acute bacterial exacerbation of chronic bronchitis due to *Streptococcus (S.) pneumoniae*, *Haemophilus (H.) influenzae*, or *Moraxella (M.) catarrhalis*, acute bacterial sinusitis due to *S. pneumoniae*, *H. influenzae*, *M. catarrhalis*, or *Staphylococcus aureus*, and community-acquired pneumonia due to *S. pneumoniae*, *H. influenzae*, *M. catarrhalis*, *Chlamydophila pneumoniae*, or *Mycoplasma pneumoniae*, for patients 18 years old and above. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for KETEK (U.S. Patent No. 5,635,485) from Aventis S. A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 29, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of KETEK represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for KETEK is 2,206 days. Of this time, 713 days occurred during the testing phase of the regulatory review period, while 1,493 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: March 20, 1998. The applicant claims February 19, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 20, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: March 1, 2000. The applicant claims February 28, 2000, as the date the new drug application (NDA) for Ketek (NDA 21–144) was initially submitted. However, FDA records indicate that NDA 21–144 was submitted on March 1, 2000.

3. *The date the application was approved*: April 1, 2004. FDA has verified the applicant's claim that NDA 21–144 was approved on April 1, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,076 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 27, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 26, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–15690 Filed 9–25–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2006E–0023 and 2006E–0345]

Determination of Regulatory Review Period for Purposes of Patent Extension; MYCAMINE—New Drug Application 21–506

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MYCAMINE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MYCAMINE (micafungin sodium). MYCAMINE is indicated for treatment of patients with esophageal candidiasis and prophylaxis of *Candida* infections in patients undergoing hematopoietic stem cell transplantation. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for MYCAMINE (U.S. Patent Nos. 6,107,458 and 6,265,536) from Astellas Pharma, Inc., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MYCAMINE represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MYCAMINE is 2,546 days. Of this time, 1,493 days occurred during the testing phase of the regulatory review period, while 1,053 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: March 29, 1998. The applicant claims February 26, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 29, 1998, which was 30 days after FDA receipt of the original IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 29, 2002. FDA has verified the applicant's claim that the new drug application (NDA) for MYCAMINE (NDA 21–506) was initially submitted on April 29, 2002.

3. *The date the application was approved*: March 16, 2005. FDA has verified the applicant's claim that NDA 21–506 was approved on March 16, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,192 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 27, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 26, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 9, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–15767 Filed 9–25–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2006M–0161, 2006M–0264, 2006M–0148, 2006M–0200, 2006M–0162, 2006M–0199, 2006M–0193, 2006M–0235]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications

(PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186, ext. 152.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from April 1, 2006, through June 30, 2006. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM APRIL 1, 2006, THROUGH JUNE 30, 2006

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P050021/2006M–0161	QLT, Inc.	CERALAS I LASER & CERALINK SLIT LAMP ADAPTER	December 20, 2005
P040052/2006M–0264	MonoGen, Inc.	MONOPREP PAP TEST (MPPT)	March 3, 2006
P040028/2006M–0148	Medispectra, Inc.	LUMA CERVICAL IMAGING SYSTEM	March 16, 2006
P050012/2006M–0200	Dexcom, Inc.	DEXCOM (STS) CONTINUOUS GLUCOSE MONITORING SYSTEM	March 24, 2006
P050026/2006M–0162	QLT, Inc.	QUALTEL ACTIVIS LASER & ZSL30 ACT, ZSL120 ACT, and HSBMBQ ACT SLIT LAMP ADAPTERS	April 4, 2006
P030008(S4)/2006M–0199	SurgiVision Refractive Consultants	WAVELIGHT ALLEGRETTO WAVE EXCIMER LASER SYSTEM	April 19, 2006
P040033/2006M–0193	Smith & Nephew Orthopaedics	BIRMINGHAM HIP RESURFACING (BHR) SYSTEM	May 9, 2006
P050047/2006M–0235	Inamed Corp.	JUVEDERM 24HV, JUVEDERM 30, and JUVEDERM 30HV GEL IMPLANTS	June 2, 2006

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: September 15, 2006.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E6–15755 Filed 9–25–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0107]

Food and Drug Administration-Regulated Products Containing Nanotechnology Materials; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This is an update to previous notice that the Food and Drug Administration (FDA) will hold a public meeting October 10, 2006, on nanotechnology as it relates to FDA-regulated products. The primary purpose of this update is to notify the public that preregistration to attend or speak at the public meeting will close on September 29, 2006. The purpose of the meeting is to help FDA further its understanding of developments in

nanotechnology materials that pertain to FDA-regulated products. FDA is interested in learning about the kinds of new nanotechnology material products under development in the areas of foods (including dietary supplements), food and color additives, animal feeds, cosmetics, drugs and biologics, and medical devices, whether there are new or emerging scientific issues that should be brought to FDA's attention, and any other scientific issues about which the regulated industry, academia, and the interested public may wish to inform FDA concerning the use of nanotechnology materials in FDA-regulated products.

DATES AND TIMES: The public meeting will be held October 10, 2006, from 9 a.m. to 5 p.m.

REGISTRATION: You may preregister to attend or make a presentation at *http://www.fda.gov/nanotechnology/*. Preregistration to make a presentation will close on September 29, 2006; however, there will be onsite registration to attend on a first-come, first-served basis until the room capacity is reached. Onsite registration will be open at the meeting site at 8:30 a.m. on October 10. Once room capacity is reached, individuals will be offered the opportunity to observe the meeting from an overflow room located at the meeting site.

If time permits, there will be an open public session. Individuals who have not preregistered to make a presentation can register onsite if they wish to present public comments. While every effort will be made to provide an open public session after all preregistered speakers have made presentations, it is recommended that you preregister if you would like to make a presentation. Onsite registration to make a presentation will be taken on a first-come, first-served basis. Individuals who register at the meeting to speak may be allotted less time to speak than preregistered speakers, depending on the number of registrants.

We will post the agenda at *http://www.fda.gov/nanotechnology/* prior to the meeting.

ADDRESSES: The public meeting will be held at the Natcher Auditorium, National Institutes of Health Campus (NIH), 9000 Rockville Pike, bldg. 45, Bethesda, MD. We will also post the address for the meeting at *http://www.fda.gov/nanotechnology/*. Note that parking is limited on the NIH Campus and that security procedures are in effect. For further information on parking and security see *http://www.nih.gov/about/visitorsecurity.htm*.

Written or electronic comments may be submitted by November 10, 2006. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Poppy Kendall, Food and Drug Administration (HF–11), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, FAX: 301–594–6777, e-mail: *poppy.kendall@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Are We Holding a Public Meeting?

Previous **Federal Register** Notices (71 FR 19523, April 14, 2006; 71 FR 46232, August 11, 2006) contain detailed supplemental information regarding the rationale and background for the meeting.

For more information about FDA's role regarding nanotechnology products, see our Web page at *http://www.fda.gov/nanotechnology/*.

II. How Can You Participate?

You can participate through oral presentation at the meeting or through written or electronic material submitted to the docket. The length of the presentations will be determined by the number of speakers who preregister and the time available. Based on the requests received so far, the presentations are likely to be less than 8 minutes long. In order to maximize the number of people who have the opportunity to present their views at this public meeting, each individual or organization will be limited to one opportunity to present views at the meeting. However, written material of any length can be submitted to the docket.

Individuals and organizations with common interests are encouraged to consolidate or coordinate their presentations. FDA will give the registered speakers an estimated timeframe for their presentations by October 4 through email to the address provided during preregistration. Persons should arrive early to make sure that they are present to make their presentation in case we are ahead of schedule.

In a previous notice we indicated the possibility of holding concurrent sessions. However, based on the number of requests for presentation received so far it appears that all can be accommodated by one general session. A final decision on whether there will be concurrent sessions will be made following the cutoff date for registration and will be communicated through the posted agenda at *http://www.fda.gov/nanotechnology/* and e-mail to registered speakers.

We ask that you preregister by September 29 (see **REGISTRATION**) if you intend to provide an oral presentation. If time permits, there will be an open public session at the meeting. However, individuals who register at the meeting to speak may be allotted less time to speak than preregistered speakers, depending on the number of registrants. The information provided during preregistration will help us determine further how to organize the day.

III. Will Meeting Transcripts Be Available?

Following the meeting, transcripts will be available for review at the Division of Dockets Management (see **ADDRESSES**).

IV. How Should You Send Comments on the Issues?

An open public docket has been established. Individuals may submit their comments either in writing or electronically to the docket. All comments should include the docket number found in brackets in the heading of this document (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals have the option of submitting one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 20, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–8242 Filed 9–21–06; 1:22 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Listing of Grants for Research Projects

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Section 52.1(b) of the regulations governing grants for research projects, codified at 42 CFR part 52, authorizes the Secretary of Health and Human Services to publish periodically a list of all of the research project grant programs to which the research project grant regulations apply. This Notice provides the most recent list of the programs covered by the regulations and supersedes the prior Notice published on November 25, 2003 (68 FR 66114–66117).

DATES: *Effective Date:* September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20892, telephone 301–496–4607 (not a toll-free number), fax 301–402–0169, e-mail *jm40z@nih.gov.*

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) published a final rule in the **Federal Register** on October 24, 1996 (61 FR 55102–55106), amending the regulations at 42 CFR part 52, Grants for Research Projects, which govern Public Health Service (PHS) research project grants. We amended the regulations to apply to all research project grant programs administered by PHS and its components, including the programs administered by NIH, except for grants for health services research, demonstrations, and evaluation projects administered by the Agency for Healthcare Research and Quality (AHRQ), to make it unnecessary to include a long list of programs in the regulations or to go through the lengthy process of amending the regulations each time a new program is established. At that time, we provided in the preamble a listing of the applicable programs and indicated that we would publish periodically a list of the research project grant programs to which the regulations apply, and that the applicability of the regulations to new programs would be announced as PHS components initiated new programs.

Subsequently, we published the Notice entitled, ''Notice of Listing of Grants for Research Projects,'' in the **Federal Register** on November 25, 2003. In the Notice we provided an updated list of programs to which the regulations at part 52 apply that reflected the addition of new authorities in sections 317J, 317K, 317L, 330E, 399M, 399N, 409E, 434A, 445I, 447B, and 1261 of the Public Health Service Act (PHS Act), as amended.

We are now publishing a further updated list that reflects the addition of the new authority in subsections (a) and (f) of section 485D of the PHS Act, as amended, concerning research in complementary and alternative medicine. Specifically, the authority in subsection (a) concerns the conduct and support of basic and applied research (including both intramural and extramural research), research training, and dissemination of health information with respect to identifying, investigating, and validating complementary and alternative treatment, diagnostic and prevention modalities, and disciplines and systems of complementary and alternative medicine. Subsection (f) concerns the conduct and support of high quality, rigorous scientific reviewing of complementary and alternative medicine modalities, including outcomes research and investigations, epidemiological studies, health services research, basic sciences research, clinical trials, and other appropriate research and investigational activities.

The regulations codified at 42 CFR part 52 apply to all PHS research project grant programs except for grants for health services research, demonstrations, and evaluation projects administered by the AHRQ. Specifically, the research project grant authorities to which the Grants for Research Projects regulations apply include:

(1) Research into the cause, diagnosis, treatment, control, or prevention of the physical or mental diseases, injuries, or impairments to human life, as authorized by sections 301, 302, and related provisions of the PHS Act (42 U.S.C. 241, 242);

(2) Research into the prevention and control of childhood lead poisoning, as authorized under section 301 of the PHS Act (42 U.S.C. 241);

(3) Epidemiologic studies and State-based research capacity building projects for the prevention of primary and secondary disabilities, as authorized under section 301 of the PHS Act (42 U.S.C. 241);

(4) Ecological and epidemiologic research studies in Lyme disease, including disease surveillance, development and evaluation of prevention and control studies, and development of improved diagnostic tests, as authorized under section 301 of the PHS Act (42 U.S.C. 241);

(5) Research for the development of knowledge and approaches to the epidemiology, eitology, diagnosis, treatment, control, and prevention of narcotic addiction and intravenous (IV)-related AIDS and drug abuse, as authorized under sections 301 and 302 of the PHS Act (42 U.S.C. 241, 242);

(6) Investigations to identify strategies for prevention of childhood deaths from diarrhea, as authorized under sections 301 and 317(k) of the PHS Act (42 U.S.C. 241, 247b(k));

(7) HIV/AIDS surveillance, HIV serosurveillance surveys and studies, and epidemiologic research studies of AIDS and HIV infection, as authorized under sections 301 and 317(k) of the PHS Act (42 U.S.C. 241, 247b(k));

(8) Surveillance and epidemiologic studies for the prevention of infectious diseases and injuries in children in child day care settings, as authorized under sections 301, 317(k), and 391 of the PHS Act (42 U.S.C. 241, 247b(k)(3), 280(b));

(9) Research into prevention and control of tuberculosis, especially research concerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations, as authorized by section 317E of the PHS Act (42 U.S.C. 247b–6);

(10) Research with respect to education and training for health professionals and the general public relating to the effects of folic acid in preventing birth defects, as authorized by section 317J of the PHS Act (42 U.S.C. 247b–11);

(11) Research relating to risk factors, prevention strategies, and the roles of the family, health care providers, and the community in safe motherhood, as authorized by section 317K of the PHS Act, as amended by section 901 of Public Law 106–310 (42 U.S.C. 424b–12);

(12) Epidemiological research on the prevention of prenatal and postnatal smoking, alcohol, and illegal drug use, as authorized by section 317L of the PHS Act, as amended by section 911 of Public Law 106–310 (42 U.S.C. 247b–13);

(13) Research relating to intervention strategies to improve the lives of persons with epilepsy, particularly children, as authorized by section 330E of the PHS Act, as amended by section 801 of Public Law 106–310 (42 U.S.C. 254c–5);

(14) Injury prevention and control research, as authorized by section 391 of the PHS Act (42 U.S.C. 280b);

(15) Research relating to the efficacy of new screening techniques and technology, including clinical studies of screening methods and studies on the efficacy of new interventions regarding hearing loss in infants, as authorized by section 399M of the PHS Act, as

amended by section 702 of Public Law 106–310 (42 U.S.C. 280g–1);

(16) Research relating to improving the outcomes among children with childhood cancers and resultant secondary conditions, as authorized by section 399N of the PHS Act, as amended by section 1101 of Public Law 106–310 (42 U.S.C. 280g–2);

(17) Research on osteoporosis, Paget's disease, and related bone disorders, as authorized by section 409A of the PHS Act (42 U.S.C. 284e);

(18) Research relating to autoimmune diseases, as authorized by section 409E of the PHS Act, as amended by section 1901 of Public Law 106–310 (42 U.S.C. 284i);

(19) Long-term epidemiology studies relating to type 1 or juvenile diabetes, as authorized by section 434A of the PHS Act, as amended by section 402 of Public Law 106–310 (42 U.S.C. 285c–9);

(20) Biomedical research in areas relating to Alzheimer's disease and related dementias, as authorized by section 445B of the PHS Act (42 U.S.C. 285e–4);

(21) Clinical research and training to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care, and treatment of individuals with Alzheimer's disease, as authorized by section 445I of the PHS Act (42 U.S.C. 285e–10a);

(22) Clinical research and training to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care, and treatment of individuals with sexually transmitted diseases, as authorized by section 447B of the PHS Act, as amended by section 901 of Public Law 106–505 (42 U.S.C. 285f–3);

(23) Research relating to medical rehabilitation, as authorized by section 452 of the PHS Act (42 U.S.C. 285g–4);

(24) Research on clinical and health services on eye care and diabetes, as authorized by section 456 of the PHS Act (42 U.S.C. 285i–1);

(25) Research on multiple sclerosis, especially research on the effects of genetics and hormonal changes on the progress of the disease, as authorized by section 460 of the PHS Act (42 U.S.C. 285j–3);

(26) Research on the social, behavioral, and biomedical etiology, the mental and physical health consequences, and the social and economic consequences of alcohol abuse and alcoholism, as authorized by 464H of the PHS Act (42 U.S.C. 285n);

(27) Health services research activities with respect to the prevention of alcohol abuse and treatment of alcoholism, as authorized by section 464H of the PHS Act (42 U.S.C. 285n) and as defined in section 409 of the PHS Act (42 U.S.C. 284d);

(28) Research under the Medication Development Program to encourage and promote the development and use of medications to treat drug addiction; and to collect, analyze, and disseminate data, as authorized by section 464P of the PHS Act (42 U.S.C. 285o–4);

(29) Research on health-related educational technologies, on medical library science and related activities, and for the development or dissemination of new knowledge, techniques, systems, and equipment for processing, storing, retrieving, and distributing information pertaining to health sciences, as authorized by section 473 of the PHS Act (42 U.S.C. 286b–4);

(30) Research with respect to identifying, investigating, and validating complementary and alternative treatment, diagnostic and prevention modalities, disciplines and systems of complementary and alternative medicine, as authorized by section 485D (a) and (f) of the PHS Act, as amended (42 U.S.C. 287c–21(a), (f));

(31) Research in the biomedical, contraceptive, development, behavioral and program implementation fields related to family planning and population, as authorized by section 1004 of the PHS Act (42 U.S.C. 300a–2);

(32) Basic and applied research regarding traumatic brain injury, including the development, modification, and evaluation of therapies and programs of rehabilitation toward reaching or restoring normal capabilities, as authorized by section 1261 of the PHS Act, as amended by section 1301 of Public Law 106–310 (42 U.S.C. 300d–61);

(33) Research on the causes, consequences, and approaches of coping with adolescent sexual relations, contraceptive use, pregnancy, and parenthood, as authorized by section 2008 of the PHS Act (42 U.S.C. 300z–7);

(34) Research relating to the evaluation of drug treatments for AIDS not approved by the Commissioner of Food and Drugs, as authorized by section 2314 of the PHS Act (42 U.S.C. 300cc–14);

(35) International research relating to the development and evaluation of vaccines and treatments for AIDS, as authorized by section 2315 of the PHS Act (42 U.S.C. 300cc–15);

(36) Long-term research into treatments for AIDS, as authorized by section 2320 of the PHS Act (42 U.S.C. 300cc–20);

(37) Research relating to AIDS conducted outside the United States by qualified foreign professionals and collaborative research involving American and foreign participants, as authorized by section 2354 of the PHS Act (42 U.S.C. 300cc–41);

(38) Basic research to identify, characterize, and quantify risks to human health from air pollutants, as authorized by section 103 of the Clean Air Act, as amended (42 U.S.C. 7403);

(39) Electronic product radiation control research programs designed to protect the public health and safety from electronic product radiation, as authorized by section 532 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 360ii);

(40) Research into areas where a microgravity environment may contribute to significant progress in the understanding and treatment of diseases and other medical conditions, as authorized by section 603 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (42 U.S.C. 2487b);

(41) Support for radiation studies and research, as authorized under section 301 of the PHS Act (42 U.S.C. 241) and by section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a));

(42) Research on occupational safety and health problems in industry, as authorized by section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and section 501 of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 951); and

(43) Research to stimulate health-related technological innovation especially through the use of small business, minority, and disadvantaged firms and increased private sector commercialization of innovations derived from Federal research and development, as authorized under section 301 of the PHS Act (42 U.S.C. 241), in accordance with the procedures prescribed pursuant to section 2[9] of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638).

The Catalog of Federal Domestic Assistance (CFDA) numbered programs affected by title 42 of the Code of Federal regulations, part 52, are:

93.113—Biological Response to Environmental Health Hazards

93.114—Applied Toxicological Research and Testing

93.115—Biometry and Risk Estimation—Health Risks from Environmental Exposures

93.118—Acquired Immunodeficiency Syndrome (AIDS) Activity

93.121—Oral Diseases and Disorders Research

93.135—Centers for Research and Demonstration for Health Promotion and Disease Prevention
93.136—Injury Prevention and Control Research and State and Community Based Programs
93.172—Human Genome Research
93.173—Research Related to Deafness and Communication Disorders
93.184—Disabilities Prevention
93.213—Research and Training in Complementary and Alternative Medicine
93.242—Mental Health Research Grants
93.262—Occupational Safety and Health Program
93.271—Alcohol Research Career Development Awards for Scientists and Clinicians
93.273—Alcohol Research Programs
93.279—Drug Abuse and Addiction Research Programs
93.281—Mental Health Research Career/Scientist Development Awards
93.283—Centers for Disease Control and Prevention—Investigations and Technical Assistance
93.361—Nursing Research
93.389—National Center for Research Resources
93.390—Academic Research Enhancement Award
93.393—Cancer Cause and Prevention Research
93.394—Cancer Detection and Diagnosis Research
93.395—Cancer Treatment Research
93.396—Cancer Biology Research
93.821—Biophysics and Physiological Sciences Research
93.837—Heart and Vascular Diseases Research
93.838—Lung Diseases Research
93.839—Blood Diseases and Resources Research
93.846—Arthritis, Musculoskeletal and Skin Diseases Research
93.847—Diabetes, Endocrinology and Metabolic Research
93.848—Digestive Diseases and Nutrition Research
93.849—Kidney Diseases, Urology and Hematology Research
93.853—Clinical Research Related to Neurological Disorders
93.855—Allergy, Immunology, and Transplantation Research
93.856—Microbiology and Infectious Diseases Research
93.859—Biomedical Research and Research Training
93.865—Child Health and Human Development Extramural Research
93.866—Aging Research
93.867—Vision Research
93.879—Medical Library Assistance
93.941—HIV Demonstration, Research, Public and Professional Education Projects
93.942—Research, Treatment and Education Programs on Lyme Disease in the United States
93.943—Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups
93.947—Tuberculosis Demonstration, Research, Public and Professional Education

Dated: September 19, 2006.

Elias A. Zerhouni,

Director, National Institutes of Health.

Approved: September 19, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. E6–15729 Filed 9–25–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Evaluation of the Project Rehabilitation and Restitution Program (OMB No. 0930–0248)—Revision

The Rehabilitation and Restitution initiative of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment seeks to reduce recidivism and increase psychosocial functioning and pro-social lifestyle among substance abusing offenders that have pled to or been convicted of a single felony. Hypotheses of the study are that providing intensive, long-term case management services will facilitate a pro-social lifestyle leading to higher rates of sealing or expunging of criminal records and that the prospect of stigma reduction provided by a sealed criminal record will motivate offenders to remain crime and drug free in order to achieve a felony-free criminal record.

The project consists of (1) providing technical assistance to develop and implement an enhanced model for case management services, and (2) evaluating of the effectiveness of the case management model in increasing the number of people that have their records sealed or maintain eligibility to have their records sealed. The study is confined to jurisdictions with statutes permitting records to be sealed within the remaining three-year parameters of the study. Two counties in Ohio, one involving an urban setting (Cuyahoga county which includes the city of Cleveland) and the other a rural setting (Clermont county adjacent to Northern Kentucky) were awarded by SAMHSA in 2002 in response to the original SAMHSA Request for Applications (RFA).

Target populations, drawn from Cuyahoga and Clermont County Court of Common Pleas Probation Departments, are first-time felons that are eligible to have their felony records sealed, have a diagnosis of substance dependence or abuse, and will receive case management services, including treatment referral, through each County's Treatment Accountability for Safer Communities (TASC) agency.

Technical assistance to participating counties is provided to (1) develop a strengths-based case management model designed to increase the proportion of offenders that achieve record expungement or maintain eligibility to have their felony records sealed, and (2) involve the various stake holders, such as case managers, probation officers and administrators, prosecutors, public defenders, judges, and treatment providers in the implementation of the case management model. A formative evaluation provides feedback on the implementation of the program. A systems evaluation examines the services offered to the felons, and changes in attitudes towards sealing records on the part of critical stakeholders, such as prosecutors, judges and service providers, and criminal justice systemic evolution. An outcomes evaluation examines the effect of the case management model on maintaining eligibility to have records sealed, and social, psychological and health status, HIV risk behavior, and the proportion of subjects who have their records sealed.

In Cuyahoga County a longitudinal study examines two groups of randomly assigned subjects: An intent-to-treat, experimental group participates in a strengths-based case management model during the first six months of a one-year period of judicial supervision followed by three years of outreach services availability through a faith-based community organization; and a control group receives treatment as usual, consisting of the regular TASC case management model now in place with no outreach service availability. Each group is stratified by Standard Court Referral (SCR), *i.e.*, convicted first-time felons that must remain crime-free for three years after release from probation to maintain eligibility to apply for expungement; and Felony Diversion

Referral (FDR), *i.e.*, first-time felons whose guilty pleas are held for one year pending successful completion of treatment and probation when the case may be expunged. The evaluation procedures consist of a baseline interview and follow-up interviews over a 4-year period that track outcomes to the point at which most subjects would be eligible to apply for sealing of records. Follow-up interviews and file studies test for a wide array of possible effects, including recidivism, employment, education, drug use, family relationships, support of children, mental and physical health, HIV/AIDS risk factors, assumption of personal responsibility, life adjustment factors, and program costs.

In Cuyahoga the evaluation has recruited 645 participants who have volunteered to participate for the four-year period. Evaluation interviews take place at baseline, 6 months, 12 months, 24 months, and 36 months.

The 24-month interview is an additional interview point to the original OMB approval because it enriches the study by providing data covering the critical first year an offender is off supervision. The additional interview does not increase the burden because the original OMB approval provided for 150 more participants in Cuyahoga and also did not provide for attrition at follow-up. Because a 36-month interview point provides a final interview for all participants before project end date, it replaces the 42-month interview point. The PRR baseline interview included 997 variables. Six-month and twelve-month follow-ups were increased to 1100 variables in order to collect client clinical experience data. Twenty-four and thirty-six month interviews are further increased to 1184 variables in order to measure perception and effect on participants of stigma reduction provided through the elimination of felony records.

Each interview lasts 1 to 2 hours depending on the memory and speed of the respondents. The interview goal is a minimum 80% follow-up completion rate. During the first two years of follow-up both 6- and 12-month rates exceeded 85%. Interview data is supplemented by file studies of arrest records, including the number of participants maintaining sealing eligibility, and the number of criminal records expunged. Additionally, two focus groups of clients receiving strengths-based services will be conducted in each county at 3, 6, 12, 18, 24, and 30 months to provide feedback on client perceptions. Groups will consist of clients both in compliance and not in compliance and of case managers for both experimental and control groups. Groups will consist of 8 to 12 participants chosen at random. Additional file study data will be gathered on the number of case management sessions and the number and frequency of other interventions in the intent-to-treat and control groups. In Clermont County the first-time felon pool is of insufficient size to support an evaluation design with experimental and control groups; however, because the first-time felony substance-abusing population presents unique demographics for analysis, *e.g.* rural, Caucasian, and greater percentage of females, examining the relationship of case management and motivation for stigma reduction is important. In Clermont, 150 first-time felons will participate in a strengths-based case management model and complete the evaluation instrument at baseline, 6-, 12-, and 24-month points. Because the recruitment window was wider than in Cuyahoga, Clermont participants will not complete a 36-month instrument. A case study, including client, key informant, focus group and file data, will report the Clermont experience.

This OMB revision provides for conclusion of data collection by way of 24- and 36-month participant interviews, 24- and 30-month participant focus groups, case manager focus groups, and electronic files that will inform the Program Restitution and Rehabilitation Evaluation.

Data collection	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Cuyahoga Follow-up Battery: 24- & 36-month	874	1	1.85	1,617
Clermont Follow-up Battery: 24-month	90	1	1.85	167
Client Focus Groups: Cuyahoga @ 24- & 30-month	120	1	1.50	180
Electronic File Data: MCSIS (1) Probation (2) CISAI (1), TASC (1),	5	2	4.00	40
Quality Assurance (Tx Staff) Multimodality Quality Assurance (MQA)	6	1	.75	5
Stakeholders:				
Attitudes Towards Sealing Records	18	2	.08	3
Cuyahoga and Clermont Focus Groups	18	2	1.50	45
Case Manager Focus Groups	15	6	1.50	135
Total Burden	1,046			2,192
3-Year Annual Average	349			731

Written comments and recommendations concerning the proposed information collection should be sent by October 26, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: September 18, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–15714 Filed 9–25–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission

will be held on Thursday, November 2, 2006.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on November 2, 2006 at 8 a.m. at Mass. Audubon Society at Broadmeadow Brook Wildlife Sanctuary, 414 Massasoit Road, Worcester, MA 01604.

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Larry Gall, Interim Executive Director, John H. Chafee Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Larry Gall, Interim Executive Director of the Commission at the aforementioned address.

Larry Gall,

Interim Executive Director, BRVNHCC.

[FR Doc. E6–15713 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before October 26, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address, (telephone: 503–231–2063; fax: 503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–132849

Applicant: Thomas R. Payne & Associates, Arcata, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–744878

Applicant: Institute for Wildlife Studies, Arcata, California

The permittee requests an amendment to take (conduct diagnostic tests) the Santa Cruz Island fox (*Urocyon littoralis santacruzae*) and the Santa Catalina Island fox (*Urocyon littoralis catalinae*) in conjunction with allergen testing for the purpose of enhancing their survival throughout the range of the species in California.

Permit No. TE–134367

Applicant: Loren R. Hays, Huntington Beach, California

The applicant requests a permit to take (harass by survey, locate and monitor nests) the light-footed clapper rail (*Rallus longirostris levipes*), the California least tern (*Sternula antillarum browni*), the southwestern willow flycatcher (*Empidonax traillii extimus*), and the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and monitoring throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–134332

Applicant: Andrew S. Drummond, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–134333

Applicant: California State University, Chico, California

The applicant requests a permit to take (capture, handle, release, and harass by survey) the California tiger salamander (*Ambystoma californiense*) in conjunction with population monitoring in Sonoma and Santa Barbara Counties, California, for the purpose of enhancing its survival.

Permit No. TE–134334

Applicant: Lincoln Hulse, Mission Viejo, California

The applicant requests a permit to take (capture and release) the Stephens' kangaroo rat (*Dipodomys stephensi*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and the Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–134337

Applicant: Christopher M. Powers, Carlsbad, California

The applicant requests a permit to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–134338

Applicant: Brenna A. Ogg, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–134370

Applicant: Brant C. Primrose, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas*

editha quino) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–134347

Applicant: California Department of Parks and Recreation, Mendocino, California

The applicant requests a permit to take (harm, harass) the Point Arena mountain beaver (*Aplodontia rufa nigra*) and the Behren's silverspot butterfly (*Speyeria zerene behrensii*) in conjunction with habitat restoration activities in Mendocino County, California, for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the 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, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: September 7, 2006.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6–15704 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before October 26, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address (telephone: 503–231–2063; fax: 503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–129577

Applicant: Bureau of Land Management, Arcata, California

The applicant requests a permit to remove/reduce to possession *Layia carnosa* (beach layia) in conjunction with ecological research in Humboldt County, California, for the purpose of enhancing its survival.

Permit No. TE–816204

Applicant: University of California, Davis, California

The permittee requests an amendment to take (capture, mark, collect tissue samples and voucher specimens, and release) the Buena Vista lake shrew (*Sorex ornatus relictus*), the giant kangaroo rat (*Dipodomys ingens*), the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and the Riparian woodrat (*Neotoma fuscipes riparia*) in conjunction with scientific research in San Joaquin, Merced, Stanislaus, Tulare, and Kern Counties, California, for the purpose of enhancing their survival.

Permit No. TE–046262

Applicant: Blake A. Claypool, Encinitas, California

The permittee requests an amendment to take (capture, and collect and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–128256

Applicant: Steven Kramer, Arcata, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the 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, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: August 23, 2006.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6–15707 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Safe Harbor Agreement With Assurances and Application for an Enhancement of Survival Permit for the Houston Toad on the Lower Colorado River Authority (LCRA)/Lost Pines Scout Reservation in Bastrop County, TX

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: Boy Scouts of America/Capital Area Council (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The requested permit, which is for a period of 15 years, includes a draft Safe Harbor Agreement (SHA) for the endangered Houston toad (*Bufo houstonensis*) in Bastrop County, Texas. We invite public comment.

DATES: To ensure consideration, written comments must be received on or before October 26, 2006.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the draft SHA or other related documents may obtain a copy by written or telephone request to Paige Najvar, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512–490–0057; Fax 512–490–0974). The documents will also be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Service's Austin office. Comments concerning the draft SHA or other related documents should be submitted in writing to the Field Supervisor at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Please refer to permit number TE–133115–0 when submitting comments. All comments received will become a part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Paige Najvar at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512–490–0057; Fax 512–490–0974), or *Paige_Najvar@fws.gov.*

SUPPLEMENTARY INFORMATION: The Applicant has applied to the Service for a section 10(a)(1)(A) enhancement of survival permit for the endangered Houston toad in Bastrop County, Texas for a period of 15 years.

The Service has worked with the Applicant to design and implement conservation activities that are expected to have a net conservation benefit to the Houston toad in Bastrop County, Texas. Conservation activities the Applicant will undertake according to the SHA include: (1) Prescribed burning in every management area on the LCRA/Lost Pines Scout Reservation in order to control invasive woody understory species and decrease existing fuel load; (2) brush thinning activities in forested areas in the eastern, south, and southeastern areas of the property to control invasive woody understory species and to evaluate trends in forest floor plant diversity under different brush control management approaches; (3) restoring and replanting native vegetation in the eastern, south, and southeastern areas of the property to help facilitate Houston toad movement; (4) creating shallow, ephemeral ponds to facilitate and enhance Houston toad breeding success; and (5) treating red imported fire ant (*Solenopsis invicta*) mounds at newly constructed ponds. These conservation activities are expected to (1) facilitate the establishment of native, herbaceous vegetation as well as expand and enhance potential breeding, foraging, and hibernating habitats for the Houston toad currently on adjacent and nearby properties; (2) protect and preserve habitat to enhance the movement of Houston toads among existing foraging and breeding areas to the south and southeast of the LCRA/Lost Pines Scout Reservation; (3) create Houston toad breeding habitat through pond creation; and (4) collect research data related to the effects of the conservation activities and planned enhancements to help design future management strategies for the Houston toad.

The incidental take of Houston toads may occur from (1) habitat management actions conducted in accordance with the conservation activities in the Agreement, (2) on-going Boy Scout camp activities that may have an increased chance of taking the species if toad numbers increase, as expected, and (3) cessation of the conservation activities, at some point in the future, if the Applicant exercises their authorization to do so under the permit.

We provide this notice pursuant to section 10(c) of the Act, the National Environmental Policy Act (42 U.S.C 4371 *et seq.*), and its implementing regulations (40 CFR 1506.6).

Christopher Todd Jones,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E6–15708 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW173097]

Notice of Invitation for Coal Exploration License Application, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License Application, Ark Land Company, WYW173097, Wyoming.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 Code of Federal Regulations (CFR) 3410, all interested qualified parties, as provided in 43 CFR 3472.1, are hereby invited to participate with Ark Land Company on a pro rata cost sharing basis in a program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, Wyoming:

T. 46 N., R. 70 W., 6th P.M., Wyoming
Sec. 18: Lots 7 through 10, 14 through17;
Sec. 19: Lots 7 through 10, 15 through18;
Sec. 30: Lots 5 through 20;
Sec. 31: Lots 1, 5 through 19;
Sec. 32: Lots 5 through 8, 11 through 14.
Containing 2,274.14 acres, more or less.

DATES: Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Ark Land Company, as provided in the **ADDRESSES** section below, which must be received within 30 days after publication of this Notice of Invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW173097): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604. The written notice should be sent to the following addresses: Ark

Land Company, Attn: Mike Lincoln, P.O. Box 460, Hanna, WY 82327, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

SUPPLEMENTARY INFORMATION: All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to gain additional knowledge of the coal underlying the exploration area for the purpose of assessing the reserves contained in a potential lease.

This notice of invitation will be published in The News-Record of Gillette, WY, once each week for two consecutive weeks beginning the week of August 28, 2006, and in the **Federal Register**.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: August 14, 2006.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. E6–15717 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–5101–ER–F345; N–78803]

Notice To Extend Public Comment Period for Reopened Public Scoping Process for the Proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice to Extend Public Comment Period for Reopened Public Scoping Process for the Proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project.

SUMMARY: Public comment period is being extended on the Proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project. The comment period is being extended due to extensive public comment and a high level of public interest.

DATES: The public comment period is being extended to October 17, 2006. Submissions should be in writing or by Fax (*see* **ADDRESSES** below).

ADDRESSES: Comments should be submitted in writing to: Penny Woods, Bureau of Land Management, Nevada State Office, 1340 Financial Boulevard, P.O. Box 12000, Reno, Nevada 89520–0006 or by Fax to: 775–861–6466. Comments submitted during this EIS process, including names and street addresses of respondents will be available for public review at the Nevada State Office during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to/removed from the EIS mailing list, contact Penny Woods at the Nevada State Office (*see* **ADDRESSES** above), telephone 775–861–6466.

SUPPLEMENTARY INFORMATION: The Notice to Reopen the Public Scoping Process for the Proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project was originally published in the **Federal Register** on July 19, 2006 (71 FR 138). Information concerning the reopening of scoping can also be found on the Nevada BLM Web site at *http://www.nv.blm.gov.*

Amy Lueders,

Associate State Director.

[FR Doc. E6–15725 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Public Hearings on the Draft Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2007–2012

AGENCY: Minerals Management Service (MMS), Interior.

SUMMARY: Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), the Minerals Management Service (MMS) will hold Public Hearings to solicit comments on the Draft EIS for the Proposed 2007–2012 OCS Oil and Gas 5-Year Leasing Program, as announced in the **Federal Register** notifying the availability of the Draft EIS on August 25, 2006.

Statements, both oral and written, will be received at the venues listed below. Persons wishing to speak may be put on the speakers' list by the MMS contacts in advance of the specific public hearing or may sign up at the hearing. Time limits may be set on oral testimony to allow time for all speakers to participate.

The following Public Hearings are planned for the DEIS.

Dates Locations for Public Hearings:

September 25, 2006—Unalaska City Council Chambers, Unalaska, Alaska, 6:30 p.m., contact: Mr. Albert Barros, (907) 334–5209.

September 26, 2006—Cold Bay Community Center, Cold Bay, Alaska, 7 p.m., contact: Mr. Albert Barros, (907) 334–5209.

September 27, 2006—Allan Nelson Community Building, Nelson Lagoon, Alaska, 4:30 p.m., contact: Mr. Albert Barros, (907) 334–5209.

September 28, 2006—Centerpoint Building, 1st Floor Conference Room, 3801 Centerpoint Drive, Anchorage, Alaska, 5 p.m., contact: Mr. Fred King, (907) 334–5271.

September 28, 2006—Sand Point City Council Chambers, Sand Point, Alaska, 7 p.m., contact: Mr. Albert Barros, (907) 334–5209.

October 9, 2006—City of Goodnews Bay Council Chambers, Goodnews Bay, Alaska, 5 p.m., contact: Mr. Albert Barros, (907) 334–5209.

October 10, 2006—Bristol Bay Borough Building, Naknek, Alaska, 6:30 p.m., contact: Mr. Albert Barros, (907) 334–5209.

October 11, 2006—Dillingham City Council Chambers, Dillingham, Alaska, 6:30 p.m., contact: Mr. Albert Barros, (907) 334–5209.

October 30, 2006—Marriott Houston Intercontinental at George Bush Intercontinental Airport, 18700 John F. Kennedy Blvd., Houston, Texas, 1 p.m., contact: Mr. Dennis Chew, (504) 736–2793.

October 31, 2006—Hampton Inn and Suites New Orleans-Elmwood, 5150 Mounes Street, Harahan, Louisiana, 1 p.m., contact: Mr. Dennis Chew, (504) 736–2793.

November 1, 2006—Riverview Plaza Hotel, 64 South Water Street, Mobile, Alabama, 1 p.m., contact: Mr. Dennis Chew, (504) 736–2793.

November 8, 2006—Nuiqsut Community Center, Nuiqsut, Alaska, 7 p.m., contact: Mr. Albert Barros, (907) 334–5209.

November 10, 2006—Kaktovik Community Center, Kaktovik, Alaska, 7 p.m., contact: Mr. Albert Barros, (907) 334–5209.

November 13, 2006—Robert James Community Center, Wainwright, Alaska, 7 p.m., contact: Mr. Albert Barros, (907) 334–5209.

November 14, 2006—Norfolk, Virginia (exact venue will be announced in a subsequent **Federal Register** Notice, please also check our Web site at *http://www.mms.gov/5-year/*), contact: Dr. Norman Froomer, (703) 787–1644.

November 14, 2006—Point Lay Community Center, Point Lay, Alaska, 7 p.m., contact: Mr. Albert Barros, (907) 334–5209.

November 15, 2006—Marriott Bay Point Resort, 4000 Marriott Drive, Panama City

Beach, Florida, 1 p.m., contact: Mr. Dennis Chew, (504) 736–2793.

November 15, 2006—Kalgi Center, Point Hope, Alaska, 7 p.m., contact: Mr. Albert Barros, (907) 334–5209.

November 16, 2006—Inupiat Heritage Center, Barrow, Alaska, 7 p.m., contact: Mr. Albert Barros, (907) 334–5209.

Information concerning the Draft Environmental Impact Statement for the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for 2007–2012 can be accessed at *http://www.mms.gov/5-year/*.

We would also like to correct an error in our August 25, 2006, **Federal Register** Notice of Availability of the DEIS. The correct address and phone number for the Alaska Region Office is: Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska, 99503–5823, (907) 334–5206/5207,

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Mr. James Bennett, Chief, Branch of Environmental Assessment, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170, (703) 787–1660.

Dated: September 19, 2006.

Francis Hodsoll,

Acting Director, Minerals Management Service.

[FR Doc. 06–8267 Filed 9–21–06; 4:40 pm]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service Benefits-Sharing Draft Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Servicewide Benefits-Sharing Draft Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. (2), 4332(C), the National Park Service announces the availability of the Benefits-Sharing Draft Environmental Impact Statement covering all units of the National Park System.

DATES: The National Park Service will accept comments on the Draft Environmental Impact Statement from the public. Comments will be accepted through December 15, 2006. No public meetings are scheduled at this time.

ADDRESSES: Information will be available for public review and comment on the Internet at *http://parkplanning.nps.gov* (select ''Washington Office'' from the park menu and then follow the link for benefits-sharing), in the office of the National Park Service Associate Director for Natural Resource Stewardship and Science, 1849 C Street, NW., Washington, DC, and in the office of the Superintendent, Yellowstone National Park, Wyoming.

FOR FURTHER INFORMATION CONTACT: Susan Mills, Benefits-Sharing EIS Team, Center for Resources, P.O. Box 168, Yellowstone National Park, Wyoming 82190, (307) 344–2203, *benefitseis@nps.gov*.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Benefits-Sharing EIS Team, Center for Resources, P.O. Box 168, Yellowstone National Park, Wyoming 82190. You may also comment via the Internet at *http://parkplanning.nps.gov*. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the Yellowstone Center for Resources 307–344–2203. Finally, you may hand-deliver comments to the Yellowstone Center for Resources in Yellowstone National Park, Wyoming. Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 28, 2006.

Michael A. Soukup,

Associate Director, Natural Resource Stewardship and Science, National Park Service.

[FR Doc. 06–7440 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–TD–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 8–06]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Wednesday, October 4, 2006, at 10 a.m.

SUBJECT MATTER: Issuance of Proposed Decisions and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 06–8283 Filed 9–22–06; 12:06 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,637]

America's Finance Organization; A Subdivision of Lenovo USA; Research Triangle Park, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Americas Finance Organization, A Subdivision of Lenovo USA, Research Triangle Park, North Carolina. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,637; Americas Finance Organization, A Subdivision of

Lenovo USA, Research Triangle Park, North Carolina, (September 15, 2006).

Signed at Washington, DC, this 18th day of September 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15744 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,463]

Ash Grove Cement Company Rivergate Lime Plant; Portland, OR; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 24, 2006, a company official requested administrative reconsideration of the Department's Notice of negative determination regarding the subject worker group's eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The Department's determination was issued on June 12, 2006. The Department's Notice of determination was published in the **Federal Register** on July 14, 2006 (71 FR 40158).

In the request for reconsideration, the company official alleges that the subject firm supplied calcium oxide to a TAA-certified company.

The determination did not state whether the subject worker group is eligible to apply for TAA as workers of a secondarily-affected firm (a firm which supplied component parts for articles produced by a firm with a currently TAA-certified worker group).

The Department has carefully reviewed the request for reconsideration and has determined that the Department will conduct further investigation based on new information provided.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 7th day of August 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15743 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 6, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 6, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 13th day of September 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions Instituted Between 9/4/06 and 9/8/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60001	Butts Manufacturing (Comp)	Garden Grove, CA	09/05/06	08/24/06
60002	Pfizer Global Manufacturing (Comp)	Augusta, GA	09/05/06	09/01/06
60003	Central Products Company (Comp)	Brighton, CO	09/05/06	09/01/06
60004	Hughes Manufacturing (State)	Farmington Hills, MI	09/05/06	09/01/06
60005	Johnson Controls, Inc. (State)	Holland, MI	09/05/06	09/01/06
60006	Bosch (Comp)	Sumter, SC	09/05/06	09/05/06
60007	GKN Sinter Metals (State)	Salem, IN	09/05/06	09/01/06
60008	BBA Fiberweb (WPPW)	Washougal, WA	09/06/06	09/01/06
60009	Joan Fabrics Corporation (Comp)	Tyngsboro, MA	09/06/06	09/05/06
60010	Manpower (State)	Carbondale, IL	09/06/06	09/05/06
60011	OSRAM Sylvania, Inc. (Comp)	Central Falls, RI	09/06/06	09/05/06
60012	Federal Mogul Corporation (State)	Sparta, TN	09/06/06	09/05/06
60013	Hutchinson Fts., Inc. (State)	Byrdstown, TN	09/06/06	09/05/06
60014	Cornice (State)	Longmont, CO	09/06/06	09/05/06
60015	Laird Technologies (Wkrs)	Schaumburg, IL	09/06/06	09/06/06
60016	Wachovia Bank (Wkrs)	Philadelphia, PA	09/06/06	09/06/06
60017	Kimberly-Clark Corporation (Comp)	Neenah, WI	09/07/06	09/06/06
60018	Great Western Malting (Wkrs)	Vancouver, WA	09/07/06	09/06/06
60019	Artesyn Technologies (Comp)	Framingham, MA	09/07/06	09/06/06
60020	Venus Accessories, Ltd. (Wkrs)	Long Island City, NY	09/07/06	08/14/06
60021	Elite Cushions, Inc. (Wkrs)	Granite Falls, NC	09/07/06	09/07/06

APPENDIX—Continued

[TAA Petitions Instituted Between 9/4/06 and 9/8/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60022	Ingram Micro, Inc. (Comp)	Williamsville, NY	09/07/06	09/06/06
60023	Benchmark Electronics (Comp)	Loveland, CO	09/07/06	09/06/06
60024	Agilent Technologies, Inc. (Comp)	Loveland, CO	09/07/06	09/05/06
60025	Modine Manufacturing (Union)	Logansport, IN	09/07/06	09/06/06
60026	BSN-Jobst, Inc. (Comp)	Rutherford College, NC	09/07/06	09/06/06
60027	Opelika Greige Plant (Comp)	Opelika, AL	09/07/06	09/07/06
60028	WestPoint Home (Comp)	Lanett, AL	09/07/06	09/07/06
60029	Standard Register (Wkrs)	Terre Haute, IN	09/07/06	08/29/06
60030	Rector Sportswear Corp. (State)	Rector, AR	09/07/06	09/07/06
60031	Velcorex—DMC Corp. (Wkrs)	Orangeburg, SC	09/07/06	08/31/06
60032	Ford Motor Company (Wkrs)	Dearborn, MI	09/07/06	09/06/06
60033	Northern Hardwoods (State)	South Range, MI	09/08/06	09/07/06
60034	Visteon Systems, LLC (UAW)	Lansdale, PA	09/08/06	09/07/06
60035	Rawlings Sporting Goods, Inc. (Comp)	St. Louis, MO	09/08/06	09/07/06
60036	Crane Plumbing (Comp)	Monroe, GA	09/08/06	09/07/06
60037	Ethan Allen Operations, Inc. (Comp)	Spruce Pine, NC	09/08/06	09/07/06
60038	Carbone Kirkwood, LLC (Comp)	Farmville, VA	09/08/06	08/31/06
60039	Hamilton Sundstrand (UAW)	Rockford, IL	09/08/06	08/31/06
60040	ADVO (Comp)	Milwaukee, WI	09/08/06	09/01/06
60041	Delphi Energy and Chassis Needmore Rd. (Union)	Dayton, OH	09/08/06	08/24/06
60042	Mattel, Inc. (State)	El Segundo, CA	09/08/06	08/30/06
60043	P.S.W., Inc. (State)	Chino, CA	09/08/06	08/31/06
60044	Degussa Engineered Carbons, LP (Union)	Belpre, OH	09/08/06	09/01/06

[FR Doc. E6–15749 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,900]

Eaton Corporation Torque Control Products Division; Marshall, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 25, 2006, applicable to workers of Eaton Corporation, Torque Control Products Division, Marshall, Michigan. The notice was published in the **Federal Register** on September 13, 2006 (71 FR 54095).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive differential gears and are not separately identifiable by product line.

New findings show that there was a previous certification, TA–W–54,067, issued on February 17, 2004, covering the identical worker group as the subject firm, who were engaged in employment related to the production of automotive differential gears. That certification expired on February 17, 2006. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from August 14, 2005 to February 18, 2006, for workers of the subject firm.

The amended notice applicable to TA–W–59,900 is hereby issued as follows:

All workers of Eaton Corporation, Torque Control Products Division, Marshall, Michigan, who became totally or partially separated from employment on or after February 18, 2006, through August 25, 2008, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of September 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15745 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of September 11 through September 15, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA-W–59,931; Flex-O-Lite, Inc., Low Index Department, Paris, TX: August 15, 2005.

TA–W–59,855A; Reliance Trading Company of America, Blue Island, IL: August 7, 2005.

TA–W–59,888; Oakwood Custom Coating, Oakwood Plastic Division, Taylor, MI: August 10, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

T*TA–W–59,837; Stapleton, Inc., Including Leased Workers of TEC Employment, Van Buren, AR: August 2, 2005.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,913; Feldman Manufacturing Corp., Long Island City, NY:August 10, 2005.

TA–W–59,914; Sudden Swimwear LLC, Long Island City, NY: August 10, 2005.

TA–W–59,946; International Textile Group, New York Sales Office, New York, NY: August 16, 2005.

TA–W–59,947; Hamrick's, Inc., Plant 1, Gaffney, SC: August 1, 2005.

TA–W–59,947A; Hamrick's, Inc., Plant 2, Gaffney, SC: August 1, 2005.

TA–W–59,949; Thermo Electron Corp, Thermo Elemental, Scientific Instruments Division, Fitchburg, WI: August 23, 2005.

TA–W–59,955; Lawrence Hardware, LLC, Rock Falls, IL: August 25, 2006.

TA–W–59,991; Sparta Manufacturing, Sparta, WI:August 29, 2005.

TA–W–59,997; Whirlpool Corporation, LaVergne Division, Lavergne, TN: August 18, 2005.

TA–W–60,012; Federal Mogul Corporation, Lighting Division, Sparta, TN: September 5, 2005.

TA–W–59,855; Reliance Trading Company of America, Bennettsville, SC: August 7, 2005.

TA–W–59,803; Irving Tanning Co., Hartland, ME: December 12, 2005.

TA–W–59,851; B. A. Ballou and Co., Inc., East Providence, RI: July 28, 2005.

TA–W–59,852; Sekisui TA Industries, LLC, Formerly J.P. Prada, Cranston, RI: August 3, 2005.

TA–W–59,926; TRW Automotive Holdings, Braking Division, Fowlerville, MI: August 17, 2005.

TA–W–59,939; Newco, Inc., Newton, NJ: August 11, 2005

TA–W–59,904; Hartz And Company, Frederick, MD: August 14, 2005.

TA–W–59,964; Gerald Smith Hosiery, Fort Payne, AL: August 25, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,827; Ansell Protective Clothing, Thomasville, NC: July 28, 2005.

TA–W–59,877; BIC Corporation, BIC Consumer Products Mfg. Co., BIC USA, Milford, CT: September 10, 2006.

TA–W–59,935; Moll Industries, Tucson, AZ: August 18, 2005.

TA–W–59,999; Paxar Corporation, Graphics Division, Huger Heights, OH: August 31, 2005.

TA–W–59,943; Lee's Shipping, A Subdivision of Arlee Home Fashions, Thayer, MO: August 22, 2005.

TA–W–59,976; Briggs and Stratton Corp., Engine Power Products Group, Rolla, MO: August 28, 2005.

TA–W–59,983; Ruggiero Seafood, Inc., Newark, NJ: August 24, 2005.

TA–W–59,994; Yushin, D/B/A Ortech, A Division of U-Shin, Kirksville, MO: August 30, 2005.

TA–W–60,024; Agilent Technologies, Inc., Memory Test Solutions, Loveland, CO: September 5, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,950; Stanley Fastening Systems, LLP, A Division of Stanley Works, Clinton, CT: August 23, 2005.

TA–W–60,005; Johnson Controls, Inc., ASG Interiors, Interior Tech. and Cottonwood Plants, Holland, MI: April 20, 2006.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–59,888; Oakwood Custom Coating, Oakwood Plastic Division, Taylor, MI.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–59,931; Flex-O-Lite, Inc., Low Index Department, Paris, TX.

TA–W–59,855A; Reliance Trading Company of America, Blue Island, IL.

TA–W–59,837; Stapleton, Inc., Including Leased Workers of TEC Employment, Van Buren, AR.

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–59,816; Ingenix, United Health Group, Eden Prairie, MN.

TA–W–59,854; Esselte Corporation, Americas Division, Union, MO.

TA–W–59,932; Dun and Bradstreet, Bethlehem, PA.

TA–W–60,022; Ingram Micro, Inc., Williamsville, NY.

TA–W–60,046; Skip's Cutting, Inc., Ephrata, PA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,788; Ace Products, LLC, Newport, TN.

TA–W–59,874; Ahlstrom Air Media LLC, New Windsor, NY.

TA–W–59,977; Central Penn Sewing Machine Co., Inc., Bloomsburg, PA.

TA–W–59,973; Camel Manufacturing, Pioneer, TN.

TA–W–59,973A; Camel Manufacturing, Jamestown, TN.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

TA–W–59,741; Eaton Corporation, Golf Pride Division, Laurinburg, NC.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–59,836; McGraw-Hill Companies (The), Helpdesk Department, Hightstown, NJ.

TA–W–59,850; W–C Designs, Anaheim, CA.

TA–W–59,861; Bayer Pharmaceuticals Corp., A Division of Bayer Healthcare AG, West Haven, CT.

TA–W–59,897; Interior Alternative (The), A Division of F. Schumacher and Co., Dallas, TX.

TA–W–59,897A; Interior Alternative (The), A Division of F. Schumacher and Co., Dalton, GA.

TA–W–59,897B; Interior Alternative (The), A Division of F. Schumacher and Co., Adams, MA.

TA–W–59,979; Vital Performance, LLC, A Subsidiary of Vital Apparel Group, Beaverton, OR.

TA–W–60,031; Velcorex, Inc., A Division of Dollus Mieg Co., Orangeburg, SC.

TA–W–60,050; Five Star Food Service, Klopman Cafeteria, On-Site At Burlington Industries, Hurt, VA.

TA–W–60,059, Hoover Precision Products, Inc., Washington, IN.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued from September 11 through September 15, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 19, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15741 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,032]

Ford Motor Company Product Development; Dearborn, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 7, 2006 in response to a petition filed on behalf of workers at Ford Motor Company, Product Development, Dearborn, Michigan.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of September, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15747 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,052]

Labrie Equipment; Leach Company, Incorporated; Appleton, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 11, 2006 in response to a petition filed by a company official on behalf of workers at Labrie Equipment, Leach Company, Incorporated, Appleton, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 14th day of September 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15748 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,951]

Northern Hardwoods, a Division of Hardwood Lumber Manufacturing, South Range, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 24, 2006 in response to a petition filed by a state official on behalf of workers of Northern Hardwoods, a division of Hardwood Lumber Manufacturing, South Ridge, Michigan.

The petitioning worker is covered by a previously certified petition (TA–W–57,091) that does not expire until June 8, 2007. All workers at the South Range, Michigan location are covered under the previous certification. Consequently, the investigation under this petition has been terminated.

Signed at Washington, DC this 25th day of August 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15746 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,181; TA–W–58,181A]

Stimson Lumber Company Atlas Division; Coeur d'Alene, ID; Including an Employee of Stimson Lumber Company Atlas Division Coeur D'alene, ID Located in Portland, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 21, 2005, applicable to workers of Stimson Lumber Company, Atlas Division, Coeur d'Alene, Idaho. The notice was published in the **Federal Register** on November 21, 2005 (70 FR 74368).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information provided by a company official shows that a member of the worker group, Gregory O'Neal, working off-site in Portland, Oregon, was separated from employment when the Coeur d'Alene, Idaho plant closed. Mr. O'Neal provided marketing support services related to the pine and cedar boards produced by Stimson Lumber Company, Atlas Division, Coeur d'Alene, Idaho.

The intent of the Department's certification is to include all workers of Stimson Lumber Company, Atlas Division, Coeur d'Alene, Idaho, who were adversely affected by increased company imports.

Accordingly, the Department is amending this certification to include the employee of Stimson Lumber Company, Atlas Division, Coeur d'Alene, Idaho, working in Portland, Oregon.

The amended notice applicable to TA–W–58,181 is hereby issued as follows:

All workers of Stimson Lumber Company, Atlas Division, Coeur d'Alene, Idaho, including an employee of Stimson Lumber Company, Atlas Division, Coeur d'Alene, Idaho located in Portland, Oregon, who became totally or partially separated from employment on or after October 20, 2004 through November 21, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 12th day of September 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–15742 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired

format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Pharmacy Billing Requirements. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 27, 2006.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, FAX (202) 693–1451, E-mail *Bell.Hazel@dol.gov.* Please use only one method of transmission for comments (mail, FAX, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP pay for covered medical treatment provided to beneficiaries; this medical treatment can include medicinal drugs dispensed by pharmacies. In order to determine whether amounts billed for drugs are appropriate, OWCP must receive 19 data elements, including the name of the patient/beneficiary, the National Drug Code (NDC) number of the drugs prescribed the prescription number and the date the prescription was filled. The regulations implementing these statutes require the collection of information needed to enable OWCP to determine if bills for drugs submitted directly by pharmacies, or as reimbursement requests submitted by claimants, should be paid. There is no standardized paper form for submission of the billing information collected in this ICR. Over the past several years, the majority of pharmacy bills submitted to OWCP have been submitted electronically using one of the industry-wide standard formats for the electronic transmission of billing data through nationwide data clearinghouses devised by the National Council for Prescription Drug Programs (NCPDP). However, since some pharmacy bills are still submitted using a paper-based bill format, OWCP will continue to accept any of the many paper-based bill formats still used by some providers so long as they contain the data elements needed for processing the bill. None of the paper-based or electronic billing formats have been designed by or provided by OWCP; they are billing formats commonly accepted by other Federal programs and in the private health insurance industry for drugs. Nonetheless, the three programs (FECA, BLBA and EEOICPA) provide instructions for the submission of necessary pharmacy bill data elements in the provider manuals distributed or made available to all pharmacies enrolled in the program. This information collection is currently approved for use through March 31, 2007.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide payment for pharmaceuticals covered under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Pharmacy Billing Requirements.

OMB Number: 1215–0194.

Affected Public: Business or other for-profit.

Total Respondents: 28,150.

Total Responses: 1,463,792.

Time per Response: 5 minutes.

Frequency: On Occassion.

Estimated Total Burden Hours: 121,494.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 21, 2006.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–15738 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Representative Fee Request. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 27, 2006.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* Individuals filing for compensation benefits with the Office of Workers' Compensation Programs

(OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under the Federal Employees' Compensation Act (FECA) and under the Longshore and Harbor Workers' Compensation Act (LHWCA). The fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection request sets forth the criteria for the information, which must be presented by the respondent in order to have the fee approved by the OWCP. The information collection does not have a particular form or format; the respondent must present the information in any format which is convenient and which meets all the required information criteria. This information collection is currently approved for use through March 31, 2007.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to approve representative fees under the two Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Representative Fee Requests.

OMB Number: 1215–0078.

Affected Public: Business or other for-profit; individuals or households.

Total Respondents: 12,340.

Total Responses: 12,340.

Frequency: On occasion.

Estimated Total Burden Hours: 7,670.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $17,363.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 21, 2006.

Ruben Wiley,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E6–15740 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44.

1. Wabash Mine Holding Company

[Docket No. M–2006–043–C]

Wabash Mine Holding Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Wabash Mine, Old B–1/Fault Crossing Area of the Mine (MSHA I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner requests a modification of the existing standard to permit an alternative method of complying with the examination requirement due to deteriorating roof conditions in the abandoned old B1 panel area. The petitioner proposes to: (1) Establish an inlet evaluation point in the affected area of the mine as ''Intake EP,'' which will be evaluated by a certified person on a weekly basis; (2) establish an outlet evaluation point in the affected area as ''Outlet EP,'' which will be evaluated by a certified person on a weekly basis; and (3) within 60 days submit revisions of its Part 48 training plan to the District Manager that includes initial and refresher training to comply with the final order. The petitioner states that the proposed alternative method of compliance provides a measure of protection equal to that of the standard. The petitioner also states that traveling the affected area of the air courses in their entirety would present a hazard to the miners because of exposure to the deteriorating roof conditions and limited access and result in a diminution of safety.

2. Wabash Mine Holding Company

[Docket No. M–2006–044–C]

Wabash Mine Holding Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Wabash Mine, 1N/3W Area of the Mine (MSHA I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for examination of the 1N/3W Area of the Mine due to roof falls shortly after mining at the entrance of the abandoned 1N/3W panel area petitioner avers that this activity has made sealing the panel virtually impossible, and to construct seals to close off the entire area from the 1W3B tail area to the mouth of the 1N/3W would expose workers to hazardous conditions. The petitioner states that to examine the 1N/3W air course from the 1W3B tail area to the west side of the existing 1N/3W seals would be hazardous. The petitioner proposes to: (1) Establish an inlet evaluation point in the affected area of the mine as ''Intake EP,'' which will be evaluated by a certified person on a weekly basis; (2) establish two (2) outlet evaluation points in the affected area as ''Permanent Outlet EP,'' which will be evaluated by a certified person on a weekly basis; and (3) within 60 days submit revisions of its Part 48 training plan to the District Manager that includes initial and refresher training to comply with the final order. The petitioner states that the proposed alternative method of compliance provides a measure of protection equal to that of the standard. The petitioner also states that traveling the affected area of the air courses in their entirety would present a hazard to the miners because of exposure to the deteriorating roof conditions and limited access and result in a diminution of safety.

3. Wabash Mine Holding Company

[Docket No. M–2006–045–C]

Wabash Mine Holding Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.364(b)(1) and (b)(4) (Weekly examination) to its Wabash Mine, Main East Seals Area of the Mine (MSHA I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for examination of the certain areas of the Mine that have been

sealed off, known as the Main East Seals, due to roof falls. The petitioner states that the air that passes by these seals do not ventilate any working section but rather it flows to a nearby return air shaft. Further, petitioner states that roof falls have occurred in several of the airways that formerly provided access to the seals, and the remaining entries that provided access to the seals have deteriorating roof conditions and hinders safe access to the seals. The petitioner proposes to: (1) Establish a permanent monitoring station to permit monitoring of the air for oxygen and methane after it passes through the hazardous roof areas at the Main East. The monitoring stations will be linked to the mine's approved mine-wide monitoring system and located in the area of the ''Permanent Outby EP''; (2) evaluate the air that passes the seals by a certified person on a weekly basis before it reaches the seals in the area of the location shown as ''Intake EP'' on the attached map; and (3) within 60 days submit revisions of its Part 48 training plan to the District Manager that includes initial and refresher training to comply with the final order. The petitioner asserts that inspection of the air course would result in a diminution of safety to the miners and that the proposed alternative method of compliance provides a measure of protection equal to that of the standard.

4. Wabash Mine Holding Company

[Docket No. M–2006–046–C]

Wabash Mine Holding Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Wabash Mine, Main West and 2 South/3 West Areas of the Mine (MSHA I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for examination of the Main West Returns and 2 South/3 West Returns. The petitioner states that roof falls in conjunction with deteriorating roof conditions have made examining the air courses known as the Main West Returns and 2 South/3 West Returns a hazard to travel in their entirety due to the deteriorated roof conditions and limited access. The petitioner proposes to: (1) Establish evaluation points in the affected area which will be evaluated by a certified person on a weekly basis, and (2) within 60 days submit revisions of its Part 48 training plan to the District Manager that includes initial and refresher training to comply with the final order. The petitioner asserts that the proposed alternative method of compliance provides a measure of protection equal to that of the standard and application of the standard results in a diminution of safety.

5. FKZ Coal Company

[Docket No. M–2006–047–C]

FKZ Coal Company, P.O. Box 62, Locust Gap, Pennsylvania 17840 has filed a petition to modify the application of 30 CFR 75.1714–2(c) (Self-rescue devices; use requirements) to its No. 1 Slope Mine (MSHA I.D. No. 36–08637) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit self-contained self-rescue (SCSR) devices to be stored within 200 feet of the working face. The petitioner states that in steeply pitching, conventional anthracite mines, entries are advanced as far as 200 feet vertically, which exposes the miner to trip and fall hazards. The petitioner further states that the necessity of carrying supplies up narrow entries while wearing the SCSRs, may result in damage to the SCSR and also may result in a diminution of safety to the miner. The petitioner also states that the method proposed would in no way provide less than the same measure of protection than that afforded miners under the existing standard.

6. FKZ Coal Company

[Docket No. M–2006–049–C]

FKZ Coal Company, P.O. Box 62, Locust Gap, Pennsylvania 17840 has filed a petition to modify the application of 30 CFR 75.381(c)(5) (Escapeways; anthracite mines) to its No. 1 Slope Mine (MSHA I.D. No. 36–08637) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to eliminate the requirement to use a continuous directional lifeline at the Orchard Slope Mine. The petitioner states that: (1) The pitching seams in the anthracite coal mines are inherently directional; (2) the entries are either driven horizontal in one direction or vertical with the pitching geology; (3) when entering the mine if the mine roof is on your right side, it is basic knowledge to know that when leaving the mine, the mine roof is on your left side; and (4) even if vision is impaired, it is impossible to lose your sense of direction, simply by the location of the roof and rib. The petitioner asserts that application of the existing standard would cause a diminution of safety to the miners because to stretch any type of line across the opening of a vertical entry could result in a tripping hazard with a fall potential in excess of 30 to 60 feet.

7. Tito Coal Company

[Docket No. M–2005–050–C]

Tito Coal Company, 118 Fairview Lane, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.381(c)(5) (Escapeways; anthracite mines) to its No. 2 Slope Mine (MSHA I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to eliminate the requirement to use a continuous directional lifeline at the No. 2 Slope Mine. The petitioner states that: (1) The pitching seams in the anthracite coal mines are inherently directional; (2) the entries are either driven horizontal in one direction or vertical with the pitching geology; (3) when entering the mine if the mine roof is on your right side, it is basic knowledge to know that when leaving the mine, the mine roof is on your left side; and (4) even if vision is impaired, it is impossible to lose your sense of direction, simply by the location of the roof and rib. The petitioner asserts that application of the existing standard would cause a diminution of safety to the miners because to stretch any type of line across the opening of a vertical entry could result in a tripping hazard with a fall potential in excess of 30 to 60 feet.

8. Tito Coal Company

[Docket No. M–2006–051–C]

Tito Coal Company, 118 Fairview Lane, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1714–2(c) (Self-rescue devices; use requirements) to its No. 2 Slope Mine (MSHA I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit self-contained self-rescue (SCSR) devices to be stored within 200 feet of the working face. The petitioner states that in steeply pitching, conventional anthracite mines, entries are advanced as far as 200 feet vertically. The petitioner states that the miner is exposed to trip and fall hazards and the necessity of carrying supplies up these narrow entries while wearing the SCSRs, may result in damage to the SCSR and in a diminution of safety to the miner.

9. D & D Coal Company

[Docket No. M–2006–053–C]

D & D Coal Company, 409 W. Centre Street, Donaldson, Pennsylvania 17981

has filed a petition to modify the application of 30 CFR 75.381(c)(5) (Escapeways; anthracite mines) to its Primrose Slope Mine (MSHA I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to eliminate the requirement to use a continuous directional lifeline at the Primrose Slope Mine. The petitioner states that: (1) The pitching seams in the anthracite coal mines are inherently directional; (2) the entries are either driven horizontal in one direction or vertical with the pitching geology; (3) when entering the mine if the mine roof is on your right side, it is basic knowledge to know that when leaving the mine, the mine roof is on your left side; and (4) even if vision is impaired, it is impossible to lose your sense of direction, simply by the location of the roof and rib. The petitioner asserts that application of the existing standard would cause a diminution of safety to the miners because to stretch any type of line across the opening of a vertical entry could result in a tripping hazard with a fall potential in excess of 30 to 60 feet.

10. D & D Coal Company

[Docket No. M–2006–054–C]

D & D Coal Company, 409 W. Centre Street, Donaldson, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1714–2(c) (Self-rescue devices; use requirements) to its Primrose Slope Mine (MSHA I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit self-contained self-rescue (SCSR) devices to be stored within 200 feet of the working face. The petitioner states that in steeply pitching, conventional anthracite mines, entries are advanced as far as 200 feet vertically. The petitioner states that the miner is exposed to trip and fall hazards and the necessity of carrying supplies up these narrow entries while wearing the SCSRs, may result in damage to the SCSR and in a diminution of safety to the miner.

11. Usibelli Coal Mine, Inc.

[Docket No. M–2006–056–C]

Usibelli Coal Mine, Inc., P.O. Box 1000, Healy, Alaska 99743 has filed a petition to modify the application of 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems) to its Usibelli Mine (MSHA I.D. No. 50–00030) located in Yukon-Koyukuk County, Alaska. The petitioner requests a modification of the existing standard to permit an alternative method of compliance when the boom/mast is raised or lowered during construction and repairs/maintenance on a Bucyrus 1300W dragline machine. The petitioner proposes to disable the ground monitoring while lowering and raising the boom as a safer alternative in case it loses power which would cause the boom to fall. The petitioner proposes to use the boom raising/lowering the boom procedures during construction and maintenance while the machine is not in mining operations. The petitioner states that major maintenance requiring the raising/lowering of the boom/mast would only be performed as needed. Petitioner further avers that it will provide review, training, and retraining of the procedures to all persons involved before the boom is raised or lowered because boom lowering/raising is done infrequently with long intervals of time between each occurrence. The petitioner proposes to use the following guidelines to minimize the potential for electrical power loss during the boom lowering/raising procedure: (1) A written procedure will be developed and implemented by the mine operator/contractor that will: (a) Limit the number of persons needed on board the machine during the boom-mast raising/lowering, and only those persons critical to performing necessary functions will be permitted on board the machine; (b) rope off or guard the area around the machine and explain the methods that will be used to prevent off-board persons from contacting the frame or cable of the machine; and (c) prohibit other work activities in close proximity to the machine during the boom/mast operation. The petitioner would establish a responsible person at the work site, and provide enumerated electrical safety precautions. The petitioner asserts that these procedures for raising/lowering the boom will not result in a diminution of safety to the miners.

12. Lane Mountain Silica Company

[Docket No. M–2006–004–M]

Lane Mountain Silica Company, 500 Union Street, Suite 847, Seattle, Washington 98101 has filed a petition to modify the application of 30 CFR 56.9300 (Berms and guardrails) to its Lane Mountain Silica Mine (MSHA I.D. No. 45–00983) located in Stevens County, Washington. The petitioner requests a modification of the existing standard for berms on elevated roadways to and from quarries of the Lane Mountain Silica Mine where drop-offs of sufficient grad exist to cause a vehicle to overturn or endanger individuals operating equipment. The petitioner proposes to enhance its longstanding safety program as an alternate method. The petitioner states that mining and hauling operations are seasonal and no hauling occurs from approximately November through April when the weather conditions are severe. Petitioner also asserts that the roadway is typically clear and dry from May through October when hauling occurs and the equipment operator by the petitioner is street legal and inspected on a daily basis. Petitioner states that it enhanced its safety program by: (1) Installing delineates at approximately 100 feet intervals along the outboard side of the entire roadway; (2) establishing reduced speed limits; and (3) updated its driver safety program. Petitioner states that the existing and enhanced safety requirements for use of the roadway equals or surpasses the existing standard. The petitioner further states that erection of berms would narrow the roadway to a point where safety is detrimentally impacted. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and that application of the standard would result in a diminution of safety to the miners.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via E-mail to *Standards-Petitions@dol.gov* Include ''petitions for modification'' in the subject line of the e-mail. Comments can also be submitted by fax, regular mail, or hand-delivery. If faxing your comments, include ''petitions for modification'' on the subject line of the fax. Comments by regular mail or hand-delivery should be submitted to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. If hand-delivered, you are required to stop by the 21st floor to check in with the receptionist. All comments must be postmarked or received by the Office of Standards, Regulations, and Variances on or before October 26, 2006. Copies of the petitions are available for inspection at that address.

Dated at Arlington, Virginia this 19th day of September 2006.

Ria Moore Benedict,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. 06–8246 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44.

1. Orchard Coal Company

[Docket No. M–2006–033–C]

Orchard Coal Company, 214 Vaux Road, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.381(c)(5) (Escapeways; anthracite mines) to its Orchard Slope Mine (MSHA I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to eliminate the requirement to use a continuous directional lifeline at the Orchard Slope Mine. The petitioner states that: (1) The pitching seams in the anthracite coal mines are inherently directional; (2) the entries are either driven horizontal in one direction or vertical with the pitching geology; (3) when entering the mine if the mine roof is on your right side, it is basic knowledge to know that when leaving the mine, the mine roof is on your left side; and (4) even if vision is impaired, it is impossible to lose your sense of direction, simply by the location of the roof and rib. The petitioner asserts that application of the existing standard would cause a diminution of safety to the miners because to stretch any type of line across the opening of a vertical entry could result in a tripping hazard with a fall potential in excess of 30 to 60 feet.

2. R S & W Coal Company

[Docket No. M–2006–034–C]

R S & W Coal Company, 207 Creek Road, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.381(c)(5) (Escapeways; anthracite Mines) to its R S & W Slope Mine (MSHA I.D. No. 36–01818) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to eliminate the requirement to use a continuous directional lifeline at the R S & W Slope Mine. The petitioner states that: (1) The pitching seams in the anthracite coal mines are inherently directional; (2) the entries are either driven horizontal in one direction or vertical with the pitching geology; (3) when entering the mine if the mine roof is on your right side, it is basic knowledge to know that when leaving the mine, the mine roof is on your left side; and (4) even if vision is impaired, it is impossible to lose your sense of direction, simply by the location of the roof and rib. The petitioner asserts that application of the existing standard would cause a diminution of safety to the miners because to stretch any type of line across the opening of a vertical entry could result in a tripping hazard with a fall potential in excess of 30 to 60 feet.

3. R & D Coal Company

[Docket No. M–2006–035-C]

R & D Coal Company, 214 Vaux Road, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1714–2(c) (Self-rescue devices; use and location requirements) to its R & D Slope Mine (MSHA I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit self-contained self-rescue (SCSR) devices to be stored within 200 feet of the working face which is less than 1 minute travel time. The petitioner states that in steeply pitching, conventional anthracite mines, entries are advanced as far as 200 feet vertically, which exposes the miner to trip and fall hazards and the necessity of carrying supplies up narrow entries while wearing the SCSRs may result in damage to the SCSR and also may result in a diminution of safety to the miner.

4. R & D Coal Company, Inc.

[Docket No. M–2006–036–C]

R & D Coal Company, 214 Vaux Road, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.381(c)(5) (Escapeways; anthracite mines) to its R & D Slope Mine (MSHA I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to eliminate the requirement to use a continuous directional lifeline at the R & D Slope Mine. The petitioner states that: (1) The pitching seams in the anthracite coal mines are inherently directional; (2) the entries are either driven horizontal in one direction or vertical with the pitching geology; (3) when entering the mine if the mine roof is on your right side, it is basic knowledge to know that when leaving the mine, the mine roof is on your left side; and (4) even if vision is impaired, it is impossible to lose your sense of direction, simply by the location of the roof and rib. The petitioner asserts that application of the existing standard would cause a diminution of safety to the miners because to stretch any type of line across the opening of a vertical entry could result in a tripping hazard with a fall potential in excess of 30 to 60 feet.

5. Ohio County Coal Company

[Docket No. M–2006–037–C]

Ohio County Coal Company, 19050 Highway 1078 South, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Deluge-type water spray systems) to its Freedom Mine (MSHA I.D. No. 15–17587) located in Henderson County, Kentucky. In lieu of providing nozzles with blow-off dust covers, the petitioner proposes to: (1) Conduct a weekly visual examination of each deluge-type water spray fire suppression system; (2) conduct a weekly functional test of the deluge-type water spray fire suppression systems by actuating the system and observing its performance; and (3) record the results of the examination and functional test in a book maintained on the surface and made available to authorized representatives of the Secretary and retained at the mine for one year by a person trained in the testing procedures specific to the deluge-type water spray fire suppression systems at each belt drive. The petitioner states that if any malfunction or clogged nozzle is detected, corrections will be made immediately, and the procedures used to perform the functional test will be posted at or near each belt drive that uses a deluge-type water spray fire suppression system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. S & M Coal Company

[Docket No. M–2006–038–C]

S & M Coal Company, 1744 E. Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.381(c)(5) (Escapeways; anthracite mines) to its S & M Slope Mine (MSHA I.D. No. 36–02022) located in Dauphin County, Pennsylvania. The petitioner requests a modification of the existing standard to eliminate the requirement to use the continuous directional lifeline at the S & M Slope Mine. The petitioner states that: (1) The pitching seams in the anthracite coal mines are inherently directional; (2) the entries are either driven horizontal in one direction or vertical with the pitching geology; (3) when entering the mine if the mine roof is on your right side, it is basic knowledge to know that when leaving the mine, the mine roof is on your left side; and (4) even if vision is impaired,

it is impossible to lose your sense of direction, simply by the location of the roof and rib. The petitioner asserts that application of the existing standard would cause a diminution of safety to the miners because to stretch any type of line across the opening of a vertical entry could result in a tripping hazard with a fall potential in excess of 30 to 60 feet.

7. S & M Coal Company

[Docket No. M–2006–039–C]

S & M Coal Company, 1744 E. Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1714–2(c) (Self-rescue devices; use and location requirements) to its S & M Slope Mine (MSHA I.D. No. 36–02022) located in Dauphin County, Pennsylvania. The petitioner requests a modification of the existing standard to permit self-contained self-rescue (SCSR) devices to be stored within 200 feet of the working face. The petitioner states that in a steep pitch mine, the passageways are very thin and have a 3-foot ceiling clearance. The petitioner further states that the necessity of carrying supplies up narrow entries while wearing the SCSRs, may result in damage to the SCSR and also may result in a diminution of safety to the miner.

8. Orchard Coal Company

[Docket No. M–2006–041–C]

Orchard Coal Company, 214 Vaux Road, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.360 (Preshift examination at fixed intervals) to its Orchard Slope Mine (MSHA I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to: (1) Conduct an examination and evaluation, including a visual examination of each seal for physical damage, from the slope gunboat during the pre-shift examination after an air quantity reading is taken just inby the intake portal; (2) take an additional air reading and gas test for methane and oxygen deficiency at the intake air split location(s) just off the slope in the gangway portion of the working section; and (3) have the examiner place the date, time and his/her initials at locations where air readings and gas test are taken, with the results properly recorded prior to anyone entering the mine. The petitioner states that regardless of conditions found at the section evaluation point, the slope will be traveled and physically examined for its entire length on a monthly basis with dates, times, and initials placed at sufficient locations throughout and results of the examination recorded on the surface, and any hazards will be corrected prior to transporting personnel in the slope. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard for the following reasons: (1) Miners would have to climb around platform ladder obstructions increasing the risk of falling; (2) when a platform is not provided, a significant injury or fall exists when a miner gets in and out of the gunboat when conducting examinations; (3) accurate readings cannot be obtained with the gunboat blocking a major portion of the intake slope and platforms installed across the intake would almost totally restrict the mine's only intake; (4) the intake slope is also the location for electrical conductors and discharge piping the pump system located in the sump area and since the intake haulage slope is the only intake for the mine, oxygen deficiency is highly unlikely; and (5) thorough examination of the intake haulage slope on a monthly basis will ensure the safety of miners traveling the intake escapeway and would minimize the fall hazard potential of miners conducting examinations.

9. Drummond Company, Inc.

[Docket No. M–2006–042–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) to its Shoal Creek Mine (MSHA I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner requests modification of the existing standard which pertains to ''all power-connection points outby the last open crosscut shall be in intake air.'' The petitioner proposes to use three-phase, alternating current deep-well submersible pumps in boreholes or shafts in the Shoal Creek Mine. Petitioner states that the three-phase alternative significantly reduces the exposure of employees to travel in remote areas and significantly improves the de-watering process at the Shoal Creek Mine. Thus, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. Hanson Aggregates Pma, Inc.

[Docket No. M–2006–003–M]

Hanson Aggregates Pma Inc., 394 Quarry Road, Latrobe, Pennsylvania 15650 has filed a petition to modify the application of 30 CFR 57.4461 (Gasoline use restrictions underground) to its Whitney Plant (MSHA I.D. No. 36–08284) located in Westmoreland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of gasoline-powered trucks to transport personnel into and out of the mine as an equivalent safe method of evacuating the mine in the event that certain passageways could not be used in an emergency. The petitioner proposes to provide an escape and evacuation plan that will: (1) Notify all underground personnel of an emergency by means of strobe light; (2) instruct all personnel to evacuate the mine in an emergency; and (3) instruct all mine personnel to follow the primary evacuation route, or follow the secondary escape route if the primary route is not passable. The petitioner states that if the mine portal is considered to be unsafe, the mine personnel will meet at the clock office. The petitioner further states that: (1) The proposed alternative method of compliance provides equivalent or superior safety to the application of the existing standard because it reduces the potential health risk; (2) the mine design that permits ready evacuation in under an hour from all points, even where some passageways may be bermed or barricaded off due to inactive status or because ground conditions may require remediation; and (3) application of the existing standard is infeasible and impractical at the Whitney Plant due to the historical use of gasoline-powered trucks to transport personnel into and out of the mine and the potential health risk from diesel particulate matter associated with diesel-powered trucks.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *Standards-Petitions@dol.gov*. Include ''petitions for modification'' in the subject line of the e-mail. Comments can also be submitted by fax, regular mail, or hand-delivery. If faxing your comments, include ''petitions for modification'' on the subject line of the fax. Comments by regular mail or hand-delivery should be submitted to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. If hand-delivered, you are required to stop by the 21st floor to check in with the receptionist. All comments must be postmarked or received by the Office of Standards, Regulations, and Variances on or before October 26, 2006. Copies of the petitions are available for inspection at that address.

Dated at Arlington, Virginia this 19th day of September 2006.

Ria Moore Benedict,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. 06–8247 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44.

1. Excel Coal Company

[Docket No. M–2006–057–C]

Excel Coal Company, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its Three S. Slope Mine (MSHA I.D. No. 36–09309) located in Northumberland County, Pennsylvania. The petitioner proposes to use the slope (gunboat) to transport persons in shafts and slopes using an increased rope strength/safety factor and secondary safety rope connection instead of using safety catches or other no less effective devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Excel Coal Company

[Docket No. M–2005–058–C]

Excel Coal Company, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (Quantity and location of firefighting equipment) to its Three S. Slope Mine (MSHA I.D. No. 36–09309) located in Northumberland County, Pennsylvania. The petitioner proposes to use portable fire extinguishers only to replace existing requirements where rock dust, water cars, and other water storage equipped with three, 10 quart pails is not practical. The petitioner asserts that equivalent fire protection will be provided for the mine with two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Excel Coal Company

[Docket No. M–2006–059–C]

Excel Coal Company, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (Mine map) to its Three S. Slope Mine (MSHA I.D. No. 36–09309) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope. In addition, the petitioner proposes to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner states that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further states that use of cross-sections in lieu of contour lines has been practiced since the late 1800's and provides critical information about the spacing between veins and proximity to other mine workings, which fluctuate considerably. Additionally, they state that the mine workings above and below are usually inactive and abandoned, and therefore, are not subject to changes during the life of the mine. Petitioner asserts that when evidence indicates that prior mining was conducted on a vein above or below and research exhausts the availability of mine mapping, the vein will be considered to be mined and flooded and appropriate precautions will be taken under 30 CFR 75.388, when possible. Thus, when potential hazards exist and mine drilling capabilities limit penetration, petitioner will drill surface boreholes to intercept the mine workings and will analyze the results prior to mining in the affected area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Excel Coal Company

[Docket No. M–2006–060–C]

Excel Coal Company, RD #2 Box 665, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 49.2(b) (Availability of mine rescue teams) to its Three S. Slope Mine (MSHA I.D. No. 36–09309) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner states that the mine is small and an attempt to utilize five or more rescue team members in the mine's confined working places would result in a diminution of safety to both the miners at the mine and the members of the rescue team. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Big River Mining, LLC

[Docket No. M–2006–061–C]

Big River Mining, LLC, P.O. Box 186, New Haven, West Virginia 25626 has filed a petition to modify the application of 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Broad Run Mine (MSHA I.D. No. 46–09136) located in Mason County, West Virginia. The petitioner proposes to use a contactor in certain locations in series with the circuit breaker. The petitioner states that: (1) The contactors are designed and rated for switching and will switch a great number of times more than a circuit breaker without failure and are more reliable than circuit breakers for switching when used within their rating; (2) many of the installations use a circuit breaker in series with a contactor, but Big River Mining would like to use the circuit breaker for short circuit; (3) the contactor may be equipped to provide undervoltage, grounded phase protection, overload protection, and other protective functions normally provided by the circuit breaker; and (4) the contactors would provide undervoltage, grounded phase, overload, and monitor the grounding conductors for low- and medium-voltage power circuits serving three-phase alternating current equipment using the following special terms and conditions: (a) The nominal voltage of the power circuits(s) will not exceed 995 volts; (b) the nominal voltage of the control circuit(s) and audible alarms units will not exceed 120 volts; and (c) the contactor will be built into the same enclosure as the circuit breakers. Further details of the terms and conditions are listed in the petition for modification and are available upon request. The petitioner further states that the proposed alternative method would not be implemented until all qualified persons who perform work on the equipment and the circuits have received training in the safe

maintenance procedures and terms and conditions of the Proposed Decision and Order. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Round Mountain Gold Corporation

[Docket No. M–2006–005–M]

Round Mountain Gold Corporation, P.O. Box 480, Round Mountain, Nevada 89045 has filed a petition to modify the application of 30 CFR 56.6309(b) (Fuel oil requirements for ANFO) to its Smoke Valley Common Operation (MSHA I.D. No. 26–00594) located in Nye County, Nevada. The petitioner proposes to install a commercially manufactured system (a Doerschneider oil blender) specifically engineered to blend recycled oil with diesel fuel in the manufacturing process for ANFO. The resulting blend of recycled oils and diesel fuel will be used to manufacture ammonium nitrate-fuel oil (ANFO) for blasting. Further details of the terms and conditions are listed in the petition for modification and are available upon request. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *Standards-Petitions@dol.gov.* Include ''petitions for modification'' in the subject line of the e-mail. Comments can also be submitted by fax, regular mail, or hand-delivery. If faxing your comments, include ''petitions for modification'' on the subject line of the fax. Comments by regular mail or hand-delivery should be submitted to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. If hand-delivered, you are required to stop by the 21st floor to check in with the receptionist. All comments must be postmarked or received by the Office of Standards, Regulations, and Variances on or before October 26, 2006. Copies of the petitions are available for inspection at that address.

Dated at Arlington, Virginia this 19th day of September 2006.

Ria Moore Benedict,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. 06–8248 Filed 9–25–06; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06-075)]

National Environmental Policy Act; Advanced Radioisotope Power Systems

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Availability of Final Programmatic Environmental Impact Statement (FPEIS) for the Development of Advanced Radioisotope Power Systems.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has prepared and issued an FPEIS for the proposed development of two new types of advanced Radioisotope Power Systems (RPSs), the Multi-Mission Radioisotope Thermoelectric Generator (MMRTG) and the Stirling Radioisotope Generator (SRG).

The purpose of this Proposed Action is to develop advanced power systems, specifically the MMRTG and the SRG, that would be able to function in the environments encountered in space and on the surfaces of planets, moons, and other solar system bodies that have an atmosphere thus enabling a broad range of long-term space exploration missions. Included in this Proposed Action are NASA's long-term research and development (R&D) activities focused on alternative radioisotope power systems and power conversion technologies. The long-term R&D activities could include, but not necessarily be limited to, improvements to further increase the versatility of future RPS designs, expanding their capability and the environments in which they can operate.

The long-term R&D activities are also expected to include activities to develop RPS designs with smaller electrical outputs and efforts to reduce the mass of power conversion systems to further improve specific power (watts of electrical power per unit of mass). Such long-term R&D activities do not involve the use of radioactive material.

The only alternative to the Proposed Action considered in detail is the No Action Alternative, where NASA would discontinue development efforts for the production of the MMRTG and the SRG and would continue to consider the use of currently available RPSs, such as the General Purpose Heat Source—Radioisotope Thermoelectric Generator (GPHS–RTG), for future exploration missions. As with the Proposed Action, NASA's long-term R&D activities on alternative radioisotope power systems and power conversion technologies would continue. The Proposed Action is NASA's preferred alternative.

DATES: NASA will take no final action on the proposed development of advanced RPSs on or before October 30, 2006, or 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency (EPA) notice of availability (NOA) of the FPEIS for the Development of Advanced Radioisotope Power Systems, whichever is later.

ADDRESSES: The FPEIS may be viewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW., Washington, DC 20546.

(b) NASA, NASA Information Center, Glenn Research Center, 21000 Brookpark Road, Cleveland, OH 44135 after contacting the Freedom of Information Officer (866–404–3642).

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109.

In addition, hard copies of the FPEIS may be examined at other NASA Centers (see **SUPPLEMENTARY INFORMATION** below).

Limited hard copies of the FPEIS are available for distribution by contacting Mr. David Lavery at the address, telephone number, or electronic mail address indicated below. The FPEIS also is available in Acrobat® portable document format at *http://spacescience.nasa.gov/admin/pubs/rps/.* NASA's Record of Decision (ROD) will also be placed on that Web site when it is issued.

FOR FURTHER INFORMATION CONTACT: Mr. David Lavery, Planetary Science Division, Science Mission Directorate, Mail Suite 3T82, NASA Headquarters, 300 E Street SW., Washington, DC 20546–0001, telephone 202–358–4800, or electronic mail *rpseis@nasa.gov.*

SUPPLEMENTARY INFORMATION: NASA, in cooperation with the U.S. Department of Energy (DOE), proposes to:

(1) Develop in the near-term and qualify for flight two advanced RPSs, the MMRTG and the SRG. The MMRTG and the SRG would be able to satisfy a broader range of future space exploration missions than are currently possible with existing radioisotope power technologies specifically, the GPHS–RTG used on the Galileo, Ulysses, Cassini, and New Horizons missions. The GPHS–RTG generates

heat from the radioactive decay of plutonium-238 dioxide, a non-weapons isotope of plutonium, for conversion to electricity. The advanced RPSs would be capable of providing long-term, reliable electrical power to spacecraft and function in the environments encountered in space and on the surfaces of planets, moons and other solar system bodies that have an atmosphere (*e.g.*, Mars, Venus, Pluto, and two moons of Saturn (Titan and Enceladus)). The advanced RPS designs would generate power from the heat given off by an enhanced version of the GPHS module used for the GPHS–RTG; and

(2) Continue NASA's long-term R&D of alternative radioisotope power systems and power converter technologies. The above efforts collectively constitute the Proposed Action, which is NASA's preferred alternative. The long-term R&D efforts are addressed under both the Proposed Action and the No Action Alternative since these efforts will continue irrespective of the alternative selected by NASA. Such R&D activities will not involve use of radioactive material.

The MMRTG would build upon spaceflight-proven passive thermoelectric power conversion technology while incorporating improvements to allow extended operation on solar system bodies that have an atmosphere. Both the MMRTG and the SRG configurations, as proposed, would consist of three basic elements: the enhanced GPHS heat source, a converter, and an outer case with a heat radiator. The converter thermocouple that would be employed in the MMRTG has a history of use in diverse environments. The converter thermocouple design is based on the Systems for Nuclear Auxiliary Power (SNAP)–19 RTG, which was used successfully on the Viking Mars Landers and the Pioneer spacecraft in the 1970's. For the SRG, NASA, in cooperation with DOE, would develop a new dynamic power conversion system based on the Stirling engine. The Stirling conversion system would convert the heat from the decay of plutonium into electrical power much more efficiently than the MMRTG and therefore use considerably less plutonium dioxide to generate comparable amounts of electrical power. Because the SRG would use less plutonium dioxide than the MMRTG, the SRG would generate less waste (excess) heat. Therefore, an SRG also may be beneficial for missions where excess heat would adversely impact spacecraft operation, but perhaps undesirable for missions where excess heat from the RPS is needed for warming spacecraft components.

First used in space by the U.S. in 1961, RPSs have consistently demonstrated unique capabilities over other types of space power systems for certain applications requiring up to several hundred watts of electric power. Radioisotopes can also serve as a versatile energy source for heating and maintaining the temperature of sensitive electronics in space. A key advantage of using RPSs is their ability to operate continuously, both further away from and closer to the Sun than other existing space power technologies, such as batteries, solar arrays, and fuel cells. RPSs are long-lived, rugged, compact, highly reliable, and relatively insensitive to radiation and other environmental effects. The GPHS–RTG, used on the ongoing Cassini mission to Saturn and New Horizons mission to Pluto, is an RPS that is capable of operating in the vacuum of space; however, it has limited capabilities for operating on surface missions where an atmosphere is present. The GPHS–RTG, which was designed to operate unsealed in space vacuum, degrades in most atmospheres and does not provide the long-term operating capabilities desired for surface missions. With the appropriate design, such as the SNAP–19 RTG for the Viking missions, an RPS would have the capability to function in a wider range of surface conditions than the GPHS–RTG.

The GPHS–RTG provides power in the upper 200's watts of electricity (W_e). NASA envisions the need for lower levels of electric power (approximately 100 W_e), and physically smaller power systems, enabling NASA to more efficiently fly smaller missions that require less power than that provided by the GPHS–RTG. The advanced RPS designs are considered modular units. Thus more than one of these devices could be fitted to a spacecraft for a mission requiring higher levels of electric power.

The advanced RPSs would enable missions with substantial longevity, flexibility, and greater scientific exploration capability. Some possibilities are:

(1) Comprehensive and detailed planetary investigations creating comparative data sets of the outer planets—Jupiter, Saturn, Uranus, Neptune and Pluto and their moons. The knowledge gained from these data sets would be vital to understanding other recently discovered planetary systems and general principles of planetary formation.

(2) Comprehensive exploration of the surfaces and interiors of comets, possibly including returning samples to Earth to better understand the building blocks of our solar system and ingredients contributing to the origin of life.

(3) Expanded capabilities for surface and on-orbit exploration, and potential sample return missions to Mars and other planetary bodies to greatly improve our understanding of planetary processes, particularly those affecting the potential for life.

NASA's long-term R&D efforts involving alternative radioisotope power systems and power converter technologies are on-going activities. These ongoing R&D activities focus on longer-term improvements to RPSs that are less technologically developed than the MMRTG and SRG. Included are technologies that increase specific power (electrical power output per unit mass); increase efficiencies for power conversion technologies; improve modularity; increase reliability, lifetime, and operability; and provide improved capability to operate in harsh environments. These advancements would provide for greater power system flexibility enabling use in more places in space and on certain solar system bodies. The R&D efforts directed at power conversion technologies have applicability to both radioisotope and non-radioisotope power systems. The results of this R&D could be applied to improve the MMRTG or SRG design, to facilitate evolutionary RPS designs including designs with smaller electrical outputs using GPHSs or radioisotope heater units, and to improve non-radiological power systems. Final decisions to fabricate fueled RPSs (*i.e.*, qualification units (used to demonstrate the readiness of a design for flight applications) and flight units)) stemming from this long-term R&D would be preceded by future NEPA documentation. The long-term R&D activities are addressed under both the Proposed Action and the No Action Alternative, as these efforts would continue independent of the alternative selected by NASA. In addition, NASA will continue to evaluate power systems developed independently by other organizations for their viability in space-based applications.

It is anticipated that development and test activities involving the use of radioisotopes would be performed at existing DOE sites that routinely perform similar activities. DOE currently imports plutonium dioxide needed to support NASA activities from Russia. Radioisotope fuel processing and fabrication would likely occur at existing facilities at Los Alamos National Laboratory in Los Alamos,

New Mexico, which are currently used for the fabrication of the fuel for the GPHS modules. The advanced RPS assembly and testing would likely be performed at Idaho National Laboratory, west of Idaho Falls, Idaho. Any required additional safety testing (using a non-radioactive fuel substitute to simulate the mechanical properties of the plutonium dioxide fuel) of an advanced RPS could be performed at one or more of several existing facilities; including DOE facilities such as LANL and Sandia National Laboratory (SNL) in Albuquerque, New Mexico, or U.S. Army facilities at Aberdeen Proving Ground (APG) in Aberdeen, Maryland. Currently, DOE is considering plans to consolidate operations for the domestic production of plutonium at its INL facility; the NEPA process for this action is on-going (70 FR 38132). NASA holds no stake in the decision ultimately taken by DOE related to consolidation of its long-term production of plutonium-238. NASA's Proposed Action or implementation of the No Action Alternative is independent of the DOE decision that will be made by DOE after its NEPA process is completed.

Activities not requiring the use of radioisotopes and associated with the development, testing, and verification of the power conversion systems could be performed at several existing facilities including NASA facilities (such as the Glenn Research Center at Lewis Field, Cleveland, Ohio and the Jet Propulsion Laboratory, Pasadena, California) and several commercial facilities (Pratt & Whitney Rocketdyne, Canoga Park, California; Teledyne Energy Systems, Hunt Valley, Maryland; and Lockheed Martin Space Systems Company, Denver, Colorado, and King of Prussia, Pennsylvania).

The only alternative to the Proposed Action considered in detail, the No Action Alternative, is to discontinue MMRTG and SRG development efforts. NASA would continue to consider the use of available RPSs, such as the GPHS–RTG, for future solar system exploration missions. While well suited to use in space, the GPHS–RTG would have substantially limited application on missions to the surface of solar system bodies where an atmosphere is present. In addition, DOE's GPHS–RTG production line is no longer operative, including the Silicon/Germanium thermocouple manufacturing operations. It may be possible to construct a limited number of GPHS–RTGs (one or two) from existing parts inventories, but longer term reliance on this technology would require the reactivation of these production capabilities, including reestablishing vendors for GPHS–RTG components, which could involve a substantial financial investment.

The principal near and mid-term activities associated with the Proposed Action and potential environmental impacts include: development of 100 We capable MMRTG and SRG units and demonstration of performance in flight qualified, fueled systems. Development of these systems requires component and integrated systems testing of unfueled units, acquisition of plutonium dioxide, fabrication of fuel, assembly of fueled test RPSs and safety and acceptance testing of that fueled RPS. Impacts from similar past activities associated with the GPHS–RTG used for the Galileo, Ulysses, Cassini, and New Horizons mission to Pluto are well understood and have been documented in past NEPA documents. Potential environmental impacts associated with development of the flight-qualified MMRTG and the SRG would be similar to those associated with the GPHS–RTG and are expected to be within the envelope of previously-prepared DOE NEPA documentation for the facilities that are involved in this effort.

NASA's ongoing long-term R&D activities for alternative power systems and advanced power conversion technologies are small-scale, laboratory activities. No radioisotopes are involved and only small quantities of hazardous materials might be involved. The potential for impacts on worker health, public health, and the environment from these R&D activities is small.

Actual use of an MMRTG or SRG on a specific spacecraft proposed for launch from any U.S. launch site (*e.g.*, Kennedy Space Center /Cape Canaveral Air Force Station, Vandenberg Air Force Station) would be subject to mission-specific NEPA documentation. Potential integrated system development (*i.e.*, full system development requiring the integration of the RPS converter with a radioisotope fuel source) and production of any new generation of space-qualified RPSs (beyond the MMRTG and SRG) that result from the related long-term R&D technologies (*e.g.*, more efficient systems or systems producing smaller electrical power output), are beyond the scope of this FPEIS, and would be subject to separate NEPA documentation.

The FPEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(a) NASA, Ames Research Center, Moffett Field, CA 94035 (650–604–3273).

(b) NASA, Dryden Flight Research Center, P.O. Box 273, Edwards, CA 93523 (661–276–2704).

(c) NASA, Goddard Space Flight Center, Greenbelt Road, Greenbelt, MD 20771 (301–286–4721).

(d) NASA, Johnson Space Center, Houston, TX 77058 (281–483–8612).

(e) NASA, Kennedy Space Center, FL 32899 (321–867–9280).

(f) NASA, Langley Research Center, Hampton, VA 23681 (757–864–2497).

(g) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–1837).

(h) NASA, Stennis Space Center, MS 39529 (228–688–2118).

NASA formally released the Draft Programmatic Environmental Impact Statement (DPEIS) for the Development of Advanced Radioisotope Power Systems for public review via publication of the EPA NOA in the **Federal Register** on January 6, 2006 (71 FR 928) and NASA's NOA in the **Federal Register** on January 5, 2006 (71 FR 625). The DPEIS was distributed in hardcopy and also made available electronically via the Worldwide Web at the address noted in the NASA NOA of the DPEIS. The DPEIS was made available to interested agencies, organizations, and individuals for review and comment. NASA received 52 written comment submissions, both in hard copy and electronic form, during the comment period ending on February 21, 2006. The comments are addressed in the FPEIS.

Any person, organization, or governmental body or agency interested in receiving a hard copy of NASA's ROD after it is rendered should so indicate by mail or electronic mail to Mr. Lavery at the addresses provided above.

Olga M. Dominguez,

Assistant Administrator for Infrastructure and Administration.

[FR Doc. E6–15764 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–074)]

National Environmental Policy Act; Constellation Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare a Programmatic Environmental Impact Statement (EIS) and to conduct scoping for the Constellation Program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as

amended (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), NASA's NEPA policy and procedures (14 CFR part 1216, subpart 1216.3), and Executive Order 12114, NASA intends to prepare a Programmatic EIS for the implementation of the Constellation Program. The Constellation Program encompasses NASA's initial efforts to extend a human presence throughout the Solar System as President George W. Bush outlined in his *Vision for Space Exploration*. Major elements of the Constellation Program are currently focused on providing the capability to transport humans and cargo first to the International Space Station (ISS), and then at a later date to the Moon in support of lunar exploration missions. These activities would provide the framework for future human exploration of the Moon, Mars and other destinations in the Solar System in the decades to come.

The design, development, test, and production of the vehicles needed to transport humans and cargo, the design and development of the infrastructure necessary to support their use in missions, and the early mission applications of these vehicles form the basis of the Proposed Action and alternatives to be analyzed in the Constellation Programmatic EIS. The No Action Alternative is to not implement the Constellation Program. Present plans call for operational missions to the ISS no later than 2014 and human missions to the Moon no later than 2020. Launches are proposed to take place from John F. Kennedy Space Center (KSC), Florida. Analysis of potential landing areas for returning spacecraft is at a very early stage.

NASA will hold public scoping meetings as part of the NEPA process associated with development of the Programmatic EIS. Public meeting locations and dates identified at this time are provided under **SUPPLEMENTARY INFORMATION** below.

DATES: Interested parties are invited to submit comments on environmental issues and concerns, preferably in writing, on or before November 13, 2006, to assure full consideration during the scoping process.

ADDRESSES: Comments submitted by mail should be addressed to ZA/Environmental Manager, Constellation Program, NASA Lyndon B. Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058. Comments may be submitted via e-mail to *nasa-cxeis@mail.nasa.gov.* Comments may also be submitted via telephone at (toll free) 1–866–662–7243.

FOR FURTHER INFORMATION CONTACT: Constellation Programmatic EIS by e-mail addressed to *nasa-cxeis@mail.nasa.gov*, by telephone at (toll free) 1–866–662–7243, or by mail addressed to ZA/Environmental Manager, Constellation Program, NASA Lyndon B. Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058. Additional Constellation Program information may also be found on the internet at NASA Web sites including *http://www.nasa.gov/constellation*. Information specific to the Constellation Program NEPA process may be found at *http://www.nasa.gov/mission_pages/exploration/main/eis.html*.

SUPPLEMENTARY INFORMATION: On January 14, 2004, President George W. Bush announced a new *Vision for Space Exploration* setting the long-term goals and objectives for the Nation's space exploration efforts. The underlying objective of the President's vision is to advance the Nation's scientific, security, and economic interests through a robust space exploration program. The President identified three goals as needed to meet this objective. First, the Nation will fulfill its obligation to support the ISS. Secondly, a new spacecraft capable of transporting humans, the Crew Exploration Vehicle (CEV) (recently named ''Orion'' by NASA), will be developed, tested, and deployed. Finally, the Nation will undertake a human mission to the Moon by 2020.

The President tasked NASA as the lead agency in developing the plans, programs, and activities required to implement the *Vision for Space Exploration*. To achieve these goals, NASA intends to pursue the following initiatives:

—Implement a sustained and affordable human and robotic program to explore the Moon, Mars, and other destinations in the Solar System,
—Extend a human presence across the Solar System, starting with a return of humans to the Moon by 2020 in preparation for human exploration of Mars and other Solar System destinations,
—Develop innovative technologies, knowledge, and infrastructures both to explore and to support decisions about the destinations for human exploration, and
—Promote international and commercial participation in this new space exploration program.

NASA has formulated a comprehensive program directed at accomplishing the key actions in pursuit of human exploration activities, the Constellation Program. The proposed framework for implementation of the Constellation Program has been established through studies addressed in NASA's *Exploration Systems Architecture Study* (ESAS) released in November of 2005. The ESAS identified the key technologies required to enable NASA to continue to support the ISS, to undertake human exploration missions to the Moon, and to prepare for human missions to Mars and ultimately to other destinations in the Solar System. The ESAS also outlined the specific actions NASA proposes to take in implementing the President's *Vision for Space Exploration*.

The ESAS recommended the development of two Space Shuttle-derived launch vehicles capable of supporting Orion operations to the ISS, the Moon, and Mars. The Proposed Action would use a Space Shuttle-derived set of launch vehicles. The first of these vehicles, the Crew Launch Vehicle (recently designated by NASA as ''Ares-I'') would carry human explorers and/or cargo aboard Orion to low-Earth orbit. Ares-I would be a two-stage rocket configuration topped by the Orion: The first stage would be a modified version of a Space Shuttle reusable solid rocket motor, and the upper stage would use a liquid oxygen/liquid hydrogen fueled engine derived from the upper stage engine used on the Saturn V during the Apollo Program. Orion would consist of an Apollo-like capsule which includes a crew module, a service module, and a launch abort system. Orion launched aboard the Ares-I would be able to dock with the ISS. Orion would also be able to dock with the cargo launched aboard the second vehicle, the Cargo Launch Vehicle (recently designated as ''Ares-V'' by NASA). Ares-V would also be a two-stage rocket configuration. The first stage would consist of two of the solid rocket motors used on Ares-I and a single core liquid propulsion stage. The core propulsion stage would consist of a central booster tank, derived from the Space Shuttle external tank, which provides fuel for five liquid oxygen/liquid hydrogen fueled engines. The upper stage, called the Earth Departure Stage, would be powered by the same engine used on the upper stage of the Ares-I and would provide the capability to propel a human mission from Earth orbit to the Moon and later to Mars. Ares-V would be capable of delivering large-scale hardware and materials to Earth orbit. Items delivered could range from materials for establishing a permanent Moon base to food, fresh

water, and other staples needed to extend a human presence beyond Earth orbit. It is the development and testing of these vehicles, the infrastructure necessary to support their use in missions, and the early mission applications of these vehicles that form the basis of the Proposed Action. More complete descriptions of the planned Orion, Ares-I, and Ares-V are available via the internet at *http://www.nasa.gov/mission_pages/exploration/spacecraft/index.html*.

As the Proposed Action to accomplish the President's *Vision for Space Exploration*, NASA proposes to continue planning for and to implement major elements of the Constellation Program focused on providing for transport of humans and cargo first to the ISS and then at a later date to the Moon in support of lunar exploration missions. These activities would also provide the framework for future human exploration of Mars and other destinations in the Solar System in the decades to come.

NASA's Proposed Action would consist of six major projects: Project Orion, Launch Vehicle (*i.e.*, Ares-I and Ares-V) Projects, Ground Operations Project, Mission Operations Project, Extravehicular Vehicle Activity (EVA) Project, and Advanced Projects. For Project Orion this Programmatic EIS will focus on production, flight testing, and mission operation of Orion. For the Launch Vehicle Projects, the focus will be on design, development, production, testing (including flight tests), and mission operations of the new Ares-I and Ares-V launch vehicles. The Ground Operations Project discussion will focus on launch processing and launch operations for each of the two launch vehicles including potential launch site modifications and new construction associated with launch site modifications at KSC, recovery of Orion and her crew after missions. The Missions Operations Project discussion will focus on the infrastructure necessary to accomplish missions: astronaut and flight controller training facilities, control centers, and communication centers. The EVA Project discussion will focus on the development of spacesuits and EVA related tools and equipment. The Advanced Projects discussion will focus on the requirements and early design of future Constellation program systems. These systems would support lunar landers and surface applications as well as Mars transportation, landers, and surface operations. The EVA Project and Advanced Projects are at a very early stage of planning and development. As a result they will be discussed only generally in this Programmatic EIS, and NASA will consider the need for additional NEPA documentation as such systems are considered for implementation and more specific information becomes available.

Orion and Ares-I would be used on missions to support the ISS once the Space Shuttle has been retired. It is anticipated that they would be used to ferry human and cargo to the ISS no later than 2014 with missions continuing throughout the life of the ISS. Orion, Ares-I, and Ares-V would be used for lunar missions to be undertaken no later than 2020. The Programmatic EIS will address only the ISS support missions and early human lunar missions through the early 2020s. While additional human missions to the Moon and, later, to Mars are envisioned for the Constellation Program, the nature and scope of these missions and resources needed to support them are speculative at this time. NASA anticipates that tiered NEPA documentation may need to be prepared for specific activities and specific missions as planning matures.

To satisfy the objective that Ares-I and Orion be able to support ISS no later than 2014, a limited number of long lead-time activities that could affect the environment need to be initiated before it is likely that the Constellation Programmatic EIS process will be completed. Such activities have been or will be the subject of separate NEPA documentation before final decisions are reached as to whether to proceed with them. These include a Finding of No Significant Impact for the Development of the Crew Exploration Vehicle signed on August 29, 2006 (published in the **Federal Register** on September 1, 2006 (71 FR 52169)), the proposed NASA Launch Abort System Test Program, and proposed limited new construction and modification to existing facilities to support early testing of Ares-I and Orion at KSC.

The Constellation Program is a large endeavor that would require NASA to make use of personnel and resources at several NASA locations. Under NASA's Proposed Action, Constellation Program activities would be expected to occur at the following NASA sites:

—Ames Research Center; Santa Clara County, California,
—Dryden Flight Research Center; Edwards Air Force Base, California,
—Glenn Research Center; Cleveland, Ohio,
—Goddard Space Flight Center; Greenbelt, Maryland,
—Jet Propulsion Laboratory; Pasadena, California,
—Johnson Space Center; Houston, Texas,
—Kennedy Space Center; Brevard County, Florida,
—Langley Research Center; Hampton, Virginia,
—Marshall Space Flight Center; Huntsville, Alabama,
—Michoud Assembly Facility; New Orleans, Louisiana,
—Stennis Space Center; Bay St. Louis, Mississippi, and
—White Sands Test Facility (and the U.S. Army White Sands Missile Range), New Mexico.

Development activities would also be expected to occur at contractor facilities, including, but not necessarily limited to, potential rocket motor development, manufacturing and testing at Pratt & Whitney Rocketdyne; Canoga Park, California and ATK Thiokol, Brigham City, Utah.

Alternatives to be considered in this Programmatic EIS will include, but not necessarily be limited to other launch vehicle systems, other means to support the ISS, alternative Orion landing regimes and sites, and the No Action Alternative (*i.e.*, NASA would not implement the Constellation Program).

NASA anticipates that the areas of potential environmental impact of most interest to the public would be: air quality; water quality; plant and animal life (including endangered species); noise and vibration related to, but not limited to, launch vehicle production, engine and motor tests, launch tests, and mission launches; potential impacts on cultural and historical resources at the involved NASA facilities; socioeconomic impacts associated with the potential increase and decrease of the workforce at various locations throughout the country; and sonic booms and other impacts associated with the return of Orion to Earth.

NASA also plans on holding a series of public meetings to provide information on the Constellation Programmatic EIS and to solicit public comments. The meetings that have been scheduled to date are:

—October 18, 2006, 1 p.m. and 6 p.m. at the Florida Solar Energy Center (1679 Clearlake Road, Cocoa, Florida—University of Central Florida).
—October 20, 2006, 1 p.m. in the Everglades/Yellowstone Rooms at the Hyatt Regency Washington on Capitol Hill (400 New Jersey Avenue, NW., Washington DC).
—October 24, 2006, 6 p.m. at the Little America Hotel (500 South Main Street, Salt Lake City, Utah).

The Programmatic EIS will analyze the potential environmental impacts

associated with landing Orion at a general open ocean or terrestrial site in the Western continental U.S. However, at this time NASA is still conducting early technical analyses of the relative feasibility and desirability of returning Orion to Earth in the open ocean or at terrestrial landing sites in the Western continental U.S. As a result, the number of potential landing sites is so large that it is not practical to address specific sites during the present scoping period. However, NASA welcomes any public comments or concerns related to potential environmental impacts of ocean landings or landings in the Western continental U.S. At such time as the technical analyses of landing alternatives become more mature, NASA may reopen the public scoping period as it relates to landing sites. Alternatively, if such results are not available during the Programmatic EIS process, NASA will prepare tiered NEPA documentation that will involve a public scoping process.

Written public input on alternatives and environmental issues and concerns associated with the Constellation Program that should be addressed in the Programmatic EIS are hereby requested.

Olga M. Dominguez,

Assistant Administrator for Infrastructure and Administration.

[FR Doc. E6–15766 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–073)]

Government-Owned Inventions Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Linda B. Blackburn, Patent Counsel, Langley Research Center, Mail Code 141, Hampton, VA 23681–2199; telephone (757) 864–9260; fax (757) 864–9190.

NASA Case No. LAR–17151–1: Thin Metal Film System to Include Flexible Substrate And Method of Making Same;

NASA Case No. LAR–17149–1: Mechanically Strong, Thermally Stable, and Electrically Conductive Nanocomposite Structure and Method of Fabricating Same; NASA Case No. LAR–17073–1: Tunable Optical Assembly With Vibration Dampening;

NASA Case No. LAR–16571–2: Magnetic Field Response Sensor for Conductive Media;

NASA Case No. LAR–17154–1: Sol-Gel Based Oxidation Catalyst and Coating System Using Same;

NASA Case No. LAR–16736–1: Self-Contained Avionics Sensing and Flight Control System for Small Unmanned Aerial Vehicle;

NASA Case No. LAR–17163–1: Positioning System for Single or Multi-Axis Sensitive Instrument Calibration and Calibration System for Use Therewith.

Dated: September 18, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–15681 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–068)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, Houston, TX 77058–8452; telephone (281) 483–4871; fax (281) 483–6936.

NASA Case No. MSC–24042–1: Integrator Circuitry for Single Channel Radiation Detector;

NASA Case No. MSC–24228–1: Processing Circuitry for Single Channel Radiation Detector;

NASA Case No. MSC–22939–2: Externally Triggered Microcapsules.

Dated: September 19, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–15683 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–069)]

Government-Owned Inventions Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, are the subject of a patent application that has been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No. NPO–41757–1: A Readout Scheme for Squid High Resolution Thermometry;

NASA Case No. NPO–42312–1: Slow Light in Chains of Vertically Coupled Whispering Gallery Mode Resonators;

NASA Case No. NPO–42188–1: WGM Resonators for Studying Orbital Angular Momentum of a Photon, and Methods;

NASA Case No. DRC–006–002: Improved RAM Booster.

Dated: September 19, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–15684 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–070)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: David Walker, Patent Counsel, Goddard

Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14480–2: Gear Bearings;

NASA Case No. GSC–15027–1: Interferometric Polarization Control;

NASA Case No. GSC–14979–1: Modular Gear Bearings;

NASA Case No. GSC–15038–1: System and Method of Self-Properties for An Autonomous and Automatic Computer Environment.

Dated: September 19, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–15686 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–071)]

Government-Owned Inventions Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of iInventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855; fax (216) 433–6790.

NASA Case No. LEW–17345–2: Temporal Laser Pulse Manipulation Using Multiple Optical Ring Cavities;

NASA Case No. LEW–17786–1: Fully-Premixed Low-Emissions High-Pressure Multi-Fuel Burner;

NASA Case No. LEW–17826–1: Method and System for Fiber Optic Determination of Nitrogen and Oxygen Concentrations in Ullage of Liquid Fuel Tanks;

NASA Case No. LEW–17814–1: Multi-Wavelength Time-Coincident Optical Communications System;

NASA Case No. LEW–17859–1: Miniaturized Metal (Metal Alloy)/PdOx/SiC Schottky Diode Gas Sensors for Hydrogen and Hydrocarbons Detection at High Temperatures.

Dated: September 19, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–15688 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–072)]

Government-Owned Inventions Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No. ARC–14743–3: Compensation for Thermal Expansion Differences and Thermal Shock Effects in a Thermal Protection System;

NASA Case No. ARC–15566–2: Coated or Doped Carbon Nanotube Network Sensors as Affected by Environmental Parameters And Elapsed Time;

NASA Case No. ARC–15684–1: Interactive Inventory Monitoring;

NASA Case No. ARC–15792–1: Control of Diameter and Chirality of Nanostructures;

NASA Case No. ARC–15820–1: Resistive Switching Memory Element Using a Phase Change Nanomaterial;

NASA Case No. ARC–15314–2: Carbon Nanotube Growth Density Control.

Dated: September 19, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–15689 Filed 9–25–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–011]

Southern Nuclear Operating Company; Notice of Acceptance for Docketing of Application for Early Site Permit (ESP) for the Vogtle ESP Site

On August 15, 2006, the Nuclear Regulatory Commission (NRC, the Commission) received an application from Southern Nuclear Operating Company, dated August 14, 2006, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, for an early site permit (ESP) for a location in eastern Georgia (near Waynesboro, Georgia) identified as the Vogtle ESP site. A notice of receipt and availability of this application was previously published in the **Federal Register** (71 FR 51222: August 29, 2006). The applicant supplemented the application by letters dated September 6 (two letters), 2006, and September 13, 2006. An applicant may seek an ESP in accordance with Subpart A of 10 CFR Part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the duration of an ESP (up to 20 years), the permit holder may reference the permit in a CP or COL application.

The NRC staff has determined that Southern Nuclear Operating Company has submitted information in accordance with 10 CFR Parts 2 and 52 that is sufficiently complete and acceptable for docketing. The Docket No. established for this application is 52–011. The NRC staff will perform a detailed technical review of the application, and docketing of the ESP application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with 10 CFR 52.21 and will receive a report on the application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.23. If the Commission then finds that the application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue an ESP, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR Part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce, in a future **Federal Register** notice, the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 52.21.

A copy of the Southern Nuclear Operating Company ESP application is available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and at the Burke County Library in Waynesboro, Georgia. It is also accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML062290246). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 19th day of September, 2006.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 06–8221 Filed 9–25–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company; Turkey Point Nuclear Plant, Unit Nos. 3 and 4 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, Appendix R, Subsection III.G.3, for Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Nuclear Plant, Units 3 and 4, respectively, located in Miami-Dade County, approximately 25 miles south of Miami, Florida. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR part 50, Appendix R, Subsection III.G.3 for fixed suppression in the Mechanical Equipment Room and for detection and fixed suppression in the subsection of the Control Building that contains the Control Room Roof at the Turkey Point Nuclear Plant.

The proposed action is in accordance with the licensee's application dated December 27, 2004, as supplemented by letters dated May 23, 2005, January 13, 2006, and July 12, 2006.

The Need for the Proposed Action

Fire protection features for assuring alternative or dedicated shutdown capability in the event of a fire are addressed in 10 CFR, part 50, Appendix R, Subsection III.G.3, which requires that fire detection and a fixed fire suppression system be installed in the area, room, or zone where equipment or components are relied on for the assured shutdown capability.

The NRC approved the alternate shutdown capability proposed by the licensee for Turkey Point, Units 3 and 4, for compliance with the requirements of III.G.3, in a safety evaluation dated April 16, 1984. The Control Room was one of the areas approved. However, the Mechanical Equipment Room and Control Room Roof, which are identified in the plant fire protection program report as part of the Control Room fire area, were not included. In February 2004, during an NRC triennial fire inspection at Turkey Point, the inspection team reviewed fire protection systems, features, and equipment, and found that all fire zones supporting the alternate safe shutdown function for the Control Room do not provide fire detection and a fixed suppression system in accordance with the requirements of III.G.3, for both Turkey Point units. Specifically, the Mechanical Equipment Room does not have full area detection and fixed suppression. In response to this inspection finding, the licensee declared the detection and suppression inoperable for the Mechanical Equipment Room (and the Control Room Roof, which also fails to provide detection and fixed suppression) and established an hourly fire watch. The licensee proposed to install a fire detection system in the Mechanical Equipment Room and requested exemption from the requirements for fixed suppression in the Mechanical Equipment Room and for detection and fixed suppression on the Control Room Roof. The proposed action would restore system operability and eliminate the need to institute compensatory measures.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that, based on the existing fire protection features, the proposed installation of new detection equipment in the Mechanical Equipment Room, low combustible loading, existing administrative controls for combustibles, and availability of nearby suppression equipment, there is reasonable assurance of adequate suppression capability in the affected fire zones. Also, in the event of a fire-induced failure of safety-related equipment resulting in a loss of Control Room heating, ventilation and air conditioning equipment, there is reasonable assurance that there would be adequate time to evacuate the Control Room, if necessary, and shut down the plant from the Alternate Shutdown Panel. Therefore, assurance of alternative or dedicated shutdown capability in the event of a fire is achieved.

The proposed action is contingent upon installation of new area fire detection equipment in the Mechanical Equipment Room, maintaining existing or comparable separation and protection for redundant safe shutdown equipment on the Control Room Roof, the availability of manual fire fighting and associated fire fighting equipment, and maintaining existing or comparable administrative controls for combustibles. The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents because the exemption is based on the existing fire barriers at Turkey Point, fire protection measures, availability of nearby suppression equipment, low combustible loading, existing administrative controls for combustibles, and installation of new fire detection equipment in the Mechanical Equipment Room. No new accident precursors are created by the proposed exemption and the consequences of postulated accidents are not increased. No changes are being

made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Turkey Point Units 3 and 4, dated January 1972, and Final Supplemental Environmental Impact Statement (NUREG–1437 Supplement 5) dated January 2002.

Agencies and Persons Consulted

In accordance with its stated policy, on August 7, 2006, the staff consulted with the Florida State official, William Passetti of the Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 27, 2004, as supplemented by letters dated May 23, 2005, January 13, 2006, and July 12, 2006. 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 System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of September 2006.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 06–8220 Filed 9–25–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 1, 2006, to September 14, 2006. The last biweekly notice was published on September 12, 2006 (71 FR 53715).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: July 20, 2006.

Description of amendments request: The proposed amendments would revise Technical Specification 3.1.6, ''Shutdown Control Element Assembly (CEA) Insertion Limits.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Safety analyses require that the shutdown CEAs insert into the core at least 90% within 4 seconds of the safety signal initiating the shutdown sequence with the assumption that the shutdown CEAs' starting positions are at 150 inches withdrawn. This assumption will not be altered with the new proposed withdrawal limit.

The positioning of control rods (shutdown CEAs) to a new limit of ≥147.75 inches withdrawn is not a precursor to any accident analyzed at Palo Verde nor do these conditions affect any accident precursor; thus, initial control rod position does not change the probability of an accident previously evaluated.

To assess the effect control rod position would have on the safety analyses with the rods positioned at the new limit, several events and specific parameters were analyzed. The events were chosen because of their sensitivity to rod position. The specific parameters were analyzed to determine if, with the rods positioned at the new limit, the power distribution in the core was still within the assumptions made in the safety analyses.

Since none of the related safety analyses resulted in a significant change in the previously calculated values and the limiting parameters associated for those analyses were not exceeded, the consequences of these accidents remain unchanged. Therefore, the new insertion limit for the shutdown CEAs will not increase the consequences of any accident analyzed in our licensing bases documents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

PVNGS [Palo Verde Nuclear Generating Station] licensing bases documents describe the design function of the control rods as components that include a positive means (gravity) for inserting the control rods and are capable of reliably controlling the nuclear reactor to assure that under conditions of normal operation, including anticipated accidents, fuel design limits are not exceeded. The proposed amendment, new control rod (shutdown CEA) insertion limit, does not create the possibility of a new or different kind of accident from any accident previously evaluated nor does it affect the control rods ability to perform its design function.

Control rods placed at the new insertion limit will not cause fuel design limits to be exceeded during normal operations or accidents. Placing the control rods at the new insertion limit in no way impedes their insertion due to gravity. These CEAs are tested to ensure that they will insert greater than 90% into the core in less than 4 seconds from a completely withdrawn position (150 inches) and this requirement will continue to be met.

Establishing a new insertion limit for the control rods does not modify any of the existing components or systems used to position the control rods. The new insertion limit will also satisfy the assumptions made in the safety analyses.

In conclusion, the new insertion limit stills [sic] allows the control rods to fulfill their design function and does not create a new or different accident than is already described in the licensing bases documents. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment, new shutdown CEA insertion limit, does not involve a reduction in the margin of safety. The new shutdown CEA insertion limit does not affect any of the limits used to determine the acceptability of newly designed cores. The safety analyses in the licensing bases documents remain acceptable when this new (more restrictive) shutdown CEA insertion limit is applied. Additionally, the design basis of the control rods is unaffected by the new insertion limit. The design function of the control rods is to provide a positive means (gravity) for inserting the control rods and is capable of reliably controlling the nuclear reactor to assure that under conditions of normal operation, including anticipated accidents, fuel design limits are not exceeded. Since the bounding safety analyses limits used remain the same and the control rod design basis is unaffected, the fuel design limits associated with the clad material; which houses the fuel; and the design limits of the coolant system; which houses the fuel assemblies; remain unchanged. Therefore, the margin of safety is not reduced.

In conclusion, since the bounding limits used for safety analyses are unaffected by the new shutdown CEA insertion limit, the safety limits associated with the fuel and the coolant system remain unchanged. The design basis on the control rods is to ensure the fuel safety limits are not exceeded and since they remain unchanged, the design basis is still achieved. Therefore, there is no reduction in the margin of safety.

Therefore, APS [Arizona Public Service] has concluded that the proposed license amendment request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Janet S. Mueller, Director, Law Department, Arizona Public Service Company, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: David Terao.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 2, 2006.

Description of amendment request: The proposed change would delete Waterford 3 Technical Specification Surveillance Requirement (SR) 4.6.1.7.2. This SR is the augmented testing requirement for containment purge supply and exhaust isolation valves with resilient seal materials and allows the surveillance intervals to be set in accordance with the Containment Leakage Rate Testing Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change deletes the augmented testing requirement for these containment isolation valves and allows the surveillance intervals to be set in accordance with the Containment Leakage Rate Testing Program. This change does not affect the system function or design. The purge valves are not an initiator of any previously analyzed accident. Leakage rates do not affect the probability of the occurrence of any accident. Operating history has demonstrated that the valves do not degrade and cause leakage as previously anticipated. Because these valves have been demonstrated to be reliable, these valves can be expected to perform the containment isolation function as assumed in the accident analyses. Therefore, there is no significant increase in the consequences of any previously evaluated accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Extending the test intervals has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. No change has been made to the design, function or method of performing leakage testing. Leakage acceptance criteria have not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The only margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to the containment leakage rate. The proposed change does not alter the method of performing the tests nor does it change the leakage acceptance criteria. Sufficient data has been collected to demonstrate these resilient seals do not degrade at an accelerated rate.

Because of this demonstrated reliability, this change will provide sufficient surveillance to determine an increase in the unfiltered leakage prior to the leakage exceeding that assumed in the accident analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of amendment request: May 11, 2006.

Description of amendment request: The proposed change would revise Technical Specification (TS) 3.1.7, ''Standby Liquid Control (SLC) System,'' to change the minimum required SLC pump discharge pressure specified in surveillance requirement (SR) SR 3.1.7.7 from 1235 psig to 1320 psig. This change is in response to Nuclear Regulatory Commission Information Notice 2001–13, ''Inadequate Standby Liquid Control System Relief Valve Margin.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the surveillance requirements for the SLC system to correspond to the maximum expected pressure in the reactor pressure vessel for an ATWS [anticipated transient without scram] event. This proposed increase in the specified SLC pump discharge pressure involves only the SLC system. No other NMP2 structures, systems, or components are affected. The SLC system is provided to mitigate ATWS events and, as such, is not considered to be an initiator of an ATWS event or any other analyzed accident. The revised TS surveillance requirement, and the associated change to the SLC pump discharge relief valve set pressure (not described in the TS), neither reduce the ability of the SLC system to respond to and mitigate an ATWS event nor increase the likelihood of a system malfunction that could increase the consequences of an accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the SLC pump TS surveillance requirement, and the associated change to the SLC pump discharge relief valve set pressure (not described in the TS), are consistent with the functional requirements of the ATWS rule (10 CFR 50.62). The proposed change does not involve the installation of any new or different type of equipment, does not introduce any new modes of plant operation, and does not change any methods governing normal plant operation. The proposed change does not introduce any new accident initiators, and therefore does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter any assumptions, initial conditions or results from any accident analyses. The proposed change to the SLC pump TS surveillance requirement, and the associated changes to the SLC pump discharge relief valve set pressure (not described in the TS), are consistent with the functional requirements of the ATWS rule (10 CFR 50.62). The ability of the SLC system to respond to and mitigate an ATWS event is not affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Richard J. Laufer.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of amendment request: August 11, 2006.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.3.2.1, ''Control Rod Block Instrumentation,'' to revise the number of startups allowed with the rod worth minimizer (RWM) inoperable from one per calendar year to two per operating cycle (approximately 2 years).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change redefines the frequency at which plant startup is permitted without using the RWM. The relevant design basis accident is the control rod drop accident (CRDA), which involves multiple failures to initiate the event. This administrative change does not increase the probability of occurrence of any of the failures that are necessary for a CRDA to occur. Use of the RWM or the alternate use of a qualified human checker to ensure the correct control rod withdrawal sequence is not in itself an accident initiator, and redefining the startup allowance frequency does not involve any plant hardware changes or new operator actions that could serve to initiate a CRDA. The proposed change will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. Also, since the banked position withdrawal sequence (BPWS) will continue to be enforced by either the RWM or verification by a second qualified individual, the initial conditions of the CRDA radiological consequence analysis presented in the U[F]SAR [Updated Final Safety Analysis Report] are not affected.

Therefore, there will be no increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any new modes of plant operation and will not result in a change to the design function or operation of any structure, system, or component that is used for accident mitigation. The proposed redefinition of the frequency at which plant startup is permitted without using the RWM does not result in any credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing basis. This administrative change does not affect the ability of safety-related systems and components to perform their intended safety functions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change redefines the frequency at which plant startup is permitted without using the RWM. This administrative change does not affect the overall frequency of use of the allowance. The proposed change will have no adverse affect on plant operation or equipment important to safety. The relevant design basis accident is the control rod drop accident (CRDA), which involves multiple failures to initiate the event. The CRDA analysis consequences and related initial conditions remain unchanged when invoking the proposed change. The plant response to the CRDA will not be affected and the accident mitigation equipment will continue to function as assumed in the accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Richard J. Laufer.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 5, 2006.

Description of amendment request: The proposed change would revise the main control room (MCR) and emergency switchgear room (ESGR) air conditioning system (ACS) Technical Specifications (TSs) to reflect the completion of permanent modifications to the equipment and associated power supply configuration. The revisions include the addition of requirements and/or action statements addressing the inoperability of two or more air handling units (AHUs) on a unit, as well as AHUs powered from an H emergency bus. The proposed change, paralleling requirements in the Improved Technical Specifications (ITS), also adds MCR and ESGR ACS requirements during refueling operations and irradiated fuel movement in the fuel building. In addition, the proposed change clarifies the service water (SW) requirements for the ACS chillers that serve the MCR and ESGRs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not impact the condition or performance of any plant structure, system, or component. The proposed change does not affect the initiators of analyzed events or the assumed mitigation of accident or transient events. No physical changes to the ACS or SW System are involved, and accident operation of the ACS will not change. As a result, the proposed change to the Surry Technical Specifications does not involve any significant increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities nor consequences are being affected by this proposed change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant or a change in the methods used to respond to plant transients. No new or different equipment is being installed, and no installed equipment is being removed. There is no alteration to the parameters with which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions. The ACS will continue to perform its required function. Consequently, no new failure modes are introduced by the proposed change. Therefore, the proposed change to the Surry Technical Specifications does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed TS change does not impact any plant structure, system, or component that is relied upon for accident mitigation. Margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. Since ACS performance is not affected by the proposed change, the ACS will continue to be available to perform its required function. Furthermore, the change does not affect the condition or performance of structures, systems, or components relied upon the accident mitigation or any safety analysis assumptions. Therefore, the proposed change to the Surry Technical Specifications does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Branch Chief: Evangelos C. Marinos.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: July 20, 2006.

Brief description of amendment request: The proposed amendment would revise the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Technical Specifications (TS) 5.5.9,

''Steam Generator (SG) Tube Surveillance Program,'' to incorporate changes in the SG inspection scope for VEGP, Unit 1 during Refueling Outage 13 and the subsequent operating cycle, and VEGP Unit 2 during Refueling Outage 12 and the subsequent operating cycle. The proposed changes modify the inspection requirements for portions of SG tubes within the tubesheet region of the SGs.

Date of publication of individual notice in ***Federal Register:*** *July 31, 2006 (71 FR 43225).*

Expiration date of individual notice: 30-day August 30, 2006; 60-day, September 29, 2006.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 18, 2005, as supplemented by letter dated May 26, 2006.

Brief description of amendment: The amendment revised the Oyster Creek Nuclear Generating Station Technical Specifications (TSs) Surveillance Requirement (SR) 4.4.B.1 to provide an alternative means for testing the electromatic relief valves located on the main steam system. The revised SR allows demonstration of the capability of the valves to perform their function without requiring that the valves be cycled with steam pressure while installed.

Date of Issuance: September 1, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 260.

Facility Operating License No. DPR–16: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** December 20, 2005 (70 FR 75490). The May 26, 2006, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 1, 2006.

No significant hazards consideration comments received: No.

Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 27, 2004.

Brief description of amendments: The amendments revised the facility operating licenses by removal of Section 2.E, that lists reporting requirements with regard to Maximum Power Level, Updated, Fire Protection, Protection of the Environment (Unit 2 only) and Physical Protection.

Date of issuance: September 7, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 233 and 215.

Renewed Facility Operating License Nos. NPF 9 and NPF–17: Amendments revised the licenses.

Date of initial notice in ***Federal Register:*** July 5, 2005 (70 FR 38717).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 7, 2006.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 27, 2005, as supplemented by letters dated November 22, 2005, and August 1, 2006. The August 1, 2006, submittal reduced the scope of the changes to only revise Technical Specification Limiting Condition for Operation 3.8.4, ''DC Sources-Operating.''

Brief description of amendment: The amendment revises the Technical Specifications to allow a battery charger to be out of service for up to 7 days.

Date of issuance: September 14, 2006.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 286.

Facility Operating License No. DPR–59: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 19, 2005 (70 FR 41444). The November 22, 2005, and August 1, 2006, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2

Will County, Illinois

Date of application for amendment: February 15, 2005, as supplemented by

letters dated November 28 and December 9, 2005 (two letters), and January 27, February 13, March 17 and July 14, 2006.

Brief description of amendment: The amendments fully implement an alternative source term.

Date of issuance: September 8, 2006.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 147, 147, 140 and 140.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** May 10, 2005 (70 FR 24650). The November 28 and December 9, 2005 (two letters), and January 27, February 13, March 17 and July 14, 2006 supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC and MidAmerican Energy Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 10, 2002, as supplemented by letters dated March 21, March 28, August 4, September 15 and October 31, 2003, and June 30, August 6, September 3, September 10, September 22, November 2 and November 5, 2004, and March 3, August 22, September 3 and September 27, 2005, and February 17 and May 25, 2006.

Brief description of amendments: The amendments adopt the alternative source term methodology as prescribed in Title 10 to the Code of Federal Regulations Section 50.67.

Date of issuance: September 11, 2006.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 221/212, 233/229.

Renewed Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revised the Technical Specifications, Surveillance Requirements and Licenses.

Date of initial notice in ***Federal Register:*** August 19, 2003 (68 FR 49816). The supplements dated March 21, March 28, August 4, September 15 and October 31, 2003, and June 30, August 6, September 3, September 10, September 22, November 2, and November 5, 2004, and March 3, August 22, September 3 and September 27, 2005, and February 17 and May 25, 2006, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 2006.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: April 10, 2006, as supplemented by letters dated April 12, 13 (2 letters), and June 27, 2006.

Brief description of amendment: The amendment revised Surveillance Requirement 3.8.1.11 of the DCCNP–1 Technical Specifications, raising the diesel generator load rejection voltage test limit from 5000 volts to 5350 volts.

Date of issuance: September 1, 2006.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 295.

Facility Operating License No. DPR–58: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 1, 2006 (71 FR 43534). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 2006.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 29, 2005, as supplemented by letters dated January 16, and April 7, 2006.

Brief description of amendment: The amendment eliminated operability requirements for secondary containment, secondary containment isolation valves, the standby gas treatment system, and secondary containment isolation instrumentation when handling irradiated fuel that has decayed for 24 hours since critical reactor operations, and when performing core alterations. Similar technical specification relaxations are granted for the Control Room Emergency Filter System and its initiation instrumentation after a decay period of 7 days.

Date of issuance: September 5, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 222.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 3, 2006 (71 FR 149). The supplements dated January 16 and April 17, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 2006.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 7, 2006, as supplemented by letter dated May 10, 2006.

Brief description of amendment: The amendment revised Technical Specification (TS) Section 5.5.6, ''Inservice Testing Program,'' by replacing references to Section Xl of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code with ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). Section 50.55a of Title 10 of the Code of Federal Regulations (CFR) requires that the Inservice Testing (IST) Program be updated to the latest Edition and Addenda of the Code incorporated by reference in 10 CFR 50.55a(b) 12 months before the start of the applicable 10-year interval. Section Xl of the ASME Boiler and Pressure Vessel Code has been replaced with the ASME OM Code as the code of reference for IST programs. Thus, the ASME OM Code is the code of reference for the IST Program for the 10-year interval that began March 1, 2006. In addition, the amendment expanded the scope of frequencies specified to be within the applicability

of Surveillance Requirement (SR) 3.0.2 by adding mention of other normal and accelerated frequencies specified in the IST Program. This will eliminate any confusion regarding the applicability of SR 3.0.2 to IST Program Frequencies.

Date of issuance: September 6, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 223.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 5, 2006 (71 FR 38184).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 2006.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 1, 2005, as supplemented on September 16, 2005, November 15, 2005, December 14, 2005, February 16, 2006, and July 6, 2006.

Brief description of amendment: The amendment revises the Updated Safety Analysis Report, Section 14.10, ''Malfunctions of the Feedwater System,'' to describe an existing Emergency Operating Procedure operator action to isolate the steam generator blowdown within 15 minutes of a reactor trip during a loss-of-main feedwater event.

Date of issuance: September 11, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 242.

Renewed Facility Operating License No. DPR–40: The amendment revised the Updated Safety Analysis Report.

Date of initial notice in ***Federal Register****:* August 2, 2005 (70 FR 44403). The September 16, 2005, November 15, 2005, December 14, 2005, February 16, 2006, and July 6, 2006, supplemental letters provided information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated September 11, 2006.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 26, 2005, as supplemented by letter dated June 28, 2006.

Brief description of amendments: The proposed amendments revised the Salem Technical Specifications (TSs) to eliminate certain Surveillance Requirements (SRs) for containment isolation valves. The changes deleted SR 4.6.3.1.1 and SR 4.6.3.1 for Salem Unit Nos. 1 and 2, respectively. These SRs require a complete valve stroke and stroke time measurement when a valve is returned to service after maintenance, repair, or replacement work. The changes are intended to minimize unnecessary testing and plant transients. Other Salem TS containment isolation valve SRs ensure that the valves remain operable.

Date of issuance: August 31, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 274 and 255.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register****:* July 18, 2006 (71 FR 40739).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 2006.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: January 27, 2005, as supplemented by letters dated September 30, 2005, and January 25 and May 5, 2006.

Brief description of amendments: The amendments revised the Technical Specifications by extending the surveillance test interval for components of the reactor protection system.

Date of issuance: September 1, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 145 and 125

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register****:* November 8, 2005 (70 FR 67751). The supplements dated September 30, 2005, and January 25 and May 5, 2006, provided clarifying information that did not change the scope of the January 27, 2005, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 1, 2006.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: July 20, 2006, as supplemented by letter dated August 4, 2006.

Brief description of amendments: The amendments revised Technical Specification 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' regarding the required SG inspection scope for Vogtle, Unit 1, during Refueling Outage 13 and the subsequent operating cycle and Vogtle, Unit 2, during Refueling Outage 12, and the subsequent operating cycle. The proposed changes modify the inspection requirements for portions of the SG tubes within the hot leg tubesheet region of the SGs.

Date of issuance: September 12, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 146 and 126.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register****:* July 31, 2006 (71 FR 43225). The supplement dated August 4, 2006, provided clarifying information that did not expand the scope of the July 20, 2006, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: January 10, 2006 as supplemented by letters April 14, August 1, September 5 and 14, 2006.

Description of amendment request: The amendments revised Technical Specifications 3.3.1.1 and 3.3.5.1 to specify the methodology used for determining, setting, and evaluating as-found setpoints for drift-susceptible instruments that are necessary to ensure compliance with a Safety Limit or are critical in ensuring the fuel peak cladding temperature acceptance criterion are met.

Date of issuance: September 14, 2006.

Effective date: Date of issuance, to be implemented within 90 days.

Amendment Nos.: 257, 296 and 254.

Renewed Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* March 28, 2006 (71 FR 15487). The supplements dated April 14, August 1, September 5 and 14, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2006.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendments request: December 16, 2005, as supplemented by letter dated June 7, 2006.

Brief description of amendments: The amendments revised the steam generator tube surveillance program technical specifications (TSs) to be consistent with TS Task Force (TSTF) traveler TSTF–449, Revision 4, ''Steam Generator Tube Integrity.''

Date of issuance: September 12, 2006.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 128/128.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* March 14, 2006 (71 FR 13181). The supplement dated June 7, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 2006.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209,

(301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1 (FCS), Washington County, Nebraska

Date of amendment request: June 2, 2006.

Description of amendment request: The amendment deleted Technical

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

Specifications (TSs) 4.3.1.2b and TS 4.3.1.2c of the FCS TSs. The amendment also made an administrative change to TS 4.3.1.2 to correct the current wording of TS 4.3.1.2 and TS 4.3.1.2d. TS 4.3.1.2 implied that more than one new fuel storage rack at FCS is installed when there is actually only one new fuel storage rack. In addition, Omaha Public Power District (OPPD) will complete additional procedural enhancements of administrative controls for compliance with 10 CFR 50.68(b)(2) and (b)(3) prior to receipt of new fuel for the 2006 Refueling.

Date of issuance: June 27, 2006.

Effective date: The license amendment is effective as of its date of issuance and shall be implemented within 7 days of issuance. OPPD will complete additional enhancements of administrative controls for compliance with 10 CFR 50.68(b)(2) and (b)(3) prior to receipt of new fuel for the 2006 Refueling.

Amendment No.: 240.

Renewed Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC):

Yes. Omaha World-Herald on June 11, 2006. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated August 31, 2006.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: David Terao.

Dated at Rockville, Maryland, this 18th Day of September 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 06–8014 Filed 9–25–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27494 ; 812–13209]

Quaker Investment Trust and Quaker Funds, Inc.; Notice of Application

September 20, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Quaker Investment Trust (the ''Trust'') and Quaker Funds, Inc. (the ''Adviser'').

Filing Dates: The application was filed on July 6, 2005, and amended on September 5, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 16, 2006, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities & Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 309 Technology Drive, Malvern, PA 19355.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Stacy L. Fuller, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently is comprised of eight series (each a ''Fund'' and collectively, the ''Funds''), each with a separate investment objective, policy and restrictions.[1] The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Funds pursuant to an investment advisory agreement (''Advisory Agreement'') with the Trust. The Advisory Agreement has been approved by the Trust's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees''), as well as by each Fund's shareholders.

2. Under the terms of the Advisory Agreement, the Adviser provides investment advisory services to each Fund, supervises the investment program for each Fund, and has the authority, subject to Board approval, to enter into investment subadvisory agreements (''Subadvisory Agreements'') with one or more investment subadvisers (''Subadvisers''). The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, retention or termination. Subadvisers recommended to the Board by the Adviser must be selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser to a Fund is, and any future Subadviser to a Fund will be, an investment adviser registered under the Advisers Act. The Adviser compensates each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

[1] Applicants request that any relief granted pursuant to the application also apply to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Adviser; (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the application (included in the term ''Funds''). The Trust is the only existing registered open-end management investment company that currently intends to rely on the order. All references to the term ''Adviser'' include (a) the Adviser and (b) an entity controlling, controlled by, or under common control with the Adviser. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser that serves as primary adviser to the Fund will precede the name of the Subadviser.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or of the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser''). None of the current Subadvisers is an Affiliated Subadviser.

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Fund to disclose fees paid by the Adviser to each Subadviser. An exemption is requested to permit each Fund to disclose (as both a dollar amount and as a percentage of each Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (''Aggregate Fee Disclosure''). For any Fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires registered investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require registered investment companies to include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on the Adviser's experience to select one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many Subadvisers charge their customers for advisory services according to a ''posted'' fee schedule. Applicants state that while Subadvisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will allow the Adviser to negotiate more effectively with each Subadviser.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering that Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Subadviser, the affected Fund shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Subadviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that

such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

8. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies, (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets, (c) allocate and, when appropriate, reallocate a Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Fund's investment objective, policies and restrictions.

9. No trustee or officer of the Trust or a Fund, or director or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

10. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

11. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

12. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

13. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–15709 Filed 9–25–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54469; File No. SR–BSE–2006–38]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Effective Date of the Previously Approved Rule Relating to Information Contained in a Directed Order

September 19, 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 September 11, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to extend the effective date of the Exchange's Directed Order process on the Boston Options Exchange (''BOX'') from September 30, 2006 to January 31, 2007.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 20, 2006, the BSE proposed an amendment to its rules governing its Directed Order process on the BOX.[5] The rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant (''EP'') the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006, while the Commission considered a corresponding Exchange proposal [6] to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

On June 30, 2006, the Exchange proposed extending the effective date of the rule governing its Directed Order process on the BOX from June 30, 2006 to September 30, 2006 [7] while the Commission continued to consider the corresponding Exchange proposal to amend its rules to permit EPs to choose the firms from whom they would accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

The Exchange now proposes another extension of the effective date of the amended rule governing its Directed Order process on BOX from September 30, 2006 to January 31, 2007. In the event the Commission reaches a decision with respect to the corresponding Exchange proposal to amend its rules before January 31, 2007, the amended rule governing the Exchange's Directed Order process on the BOX will cease to be effective at the time of that decision.

This filing proposes to extend the effective date of the approved amended rule governing the Exchange's Directed Order process on the BOX from September 30, 2006 to January 31, 2007.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 53516 (Mar. 20, 2006), 71 FR 15232 (Mar. 27, 2006) (Notice of Filing and Immediate Effectiveness of SR–BSE–2006–14).

[6] *See* Securities Exchange Act Release No. 53357 (Feb. 23, 2006), 71 FR 10730 (March 2, 2006) (Notice of Filing of SR–BSE–2005–52).

[7] *See* Securities Exchange Act Release No. 54082 (June 30, 2006), 71 FR 38913 (July 10, 2006) (Notice of Filing and Immediate Effectiveness of SR–BSE–2006–29).

[8] In the event that the issue of anonymity in the Directed Order process is not resolved by January

Continued

2. Statutory Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from September 30, 2006 to January 31, 2007. This extension will afford the Commission the necessary time to consider the Exchange's corresponding proposal to amend its rule to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[9] in general, and Section 6(b)(5) of the Act,[10] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for 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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of such 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.

Under Rule 19b–4(f)(6)(iii) of the Act,[13] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five day pre-filing requirement and the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission, consistent with the protection of investors and the public interest, has determined to waive the five day pre-filing requirement and the 30-day operative delay because such waiver would continue to conform the BOX rules with BOX's current practice and clarify that Directed Orders on BOX are not anonymous.[14] Accordingly, the Commission designates the proposed rule change effective and operative upon filing with the Commission.

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–BSE–2006–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–38 and should be submitted on or before October 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. 06–8244 Filed 9–25–06; 8:45 am]

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31, 2007, the Exchange intends to submit another filing under Rule 19b–4(f)(6) extending this rule and system process.

[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] For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54471; File No. SR–NASD–2006–081]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Adopt New NASD Rule 5150 Relating to Trade-Throughs

September 19, 2006.

On July 11, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the

Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new NASD rule relating to trade-throughs. The proposed rule change was published for comment in the **Federal Register** on July 27, 2006.[3] The Commission received no comment letters on the proposal.

Proposed rule NASD Rule 5150 would require an NASD member that is registered as a market maker with the Nasdaq Stock Market LLC (''Nasdaq Exchange'') in an ITS Security[4] to comply with the provisions of NASD Rule 5262 relating to trade-throughs with respect to that security for trades reported to the NASD. Accordingly, the NASD's proposed rule will not take effect until the Nasdaq Exchange begins operations as an exchange in such securities.[5] The proposed rule further defines the term ''block transaction'' for purposes of the rule.

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A of the Act,[6] in general, and with Section 15A(b)(6) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. Proposed NASD Rule 5150 will maintain, after the Nasdaq Exchange begins operations as a national securities exchange for ITS Securities, the application of the NASD's trade-through rule, Rule 5162, to NASD members that are also Nasdaq market makers in ITS Securities to the extent such market makers report transactions in ITS Securities to the NASD.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2006–081) be, and hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54186 (July 20, 2006), 71 FR 42698.

[4] The term ''ITS Security'' is defined in NASD Rule 5210(c) as ''any security which may be traded through the [ITS] System by an ITS/CAES Market Maker.''

[5] *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006); and 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006). Currently, the Nasdaq Exchange operates as a national securities exchange for securities listed on the Nasdaq Exchange and reported to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq-Listed Securities'').

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. 06–8238 Filed 9–25–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54456; File No. SR–NASD–2006–064]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Extension of Time Requests

September 15, 2006.

I. Introduction

On May 15, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change seeking to adopt new Rule 3160 (''Extensions of Time under Regulation T and SEC Rule 15c3–3''). NASD filed Amendment Nos. 1 and 2 to the proposed rule change on May 25, 2006 and July 25, 2006, respectively.[3] The proposed rule change, as amended, was published in the **Federal Register** on August 10, 2006.[4] The Commission received one comment letter in response to the proposal.[5] On September 13, 2006, the NASD filed a response to the comment letter.[6] This order approves the proposed rule change, as amended.

II. Description

NASD is proposing to adopt new Rule 3160 to require (1) All clearing firm members for which NASD is the designated examining authority (''DEA'') pursuant to Rule 17d–1 under the Act to submit to NASD requests for extensions of time under Regulation T[7] promulgated by the Federal Reserve Board, or pursuant to Rule 15c3–3(n) under the Act; and (2) each clearing firm member for which NASD is the DEA to file a monthly report with NASD indicating all broker-dealers for which it clears that have overall ratios of requested extensions of time to total transactions for the month that exceed a percentage specified by NASD.

Extension of Time Requests

As stated above, proposed NASD Rule 3160(a) would require all clearing firm members for which NASD is DEA to submit to NASD requests for extensions of time under Regulation T and Exchange Act Rule 15c3–3(n). The Commission previously approved NYSE Rule 434 requiring each carrying firm for which the NYSE is the DEA to submit extensions requests to the NYSE.[8] The SRO designated as a member's DEA has responsibility for examining its members that are also members of another SRO for compliance with applicable financial responsibility rules such as Regulation T and Exchange Act Rule 15c3–3. NASD believes that requiring a member to submit extension requests to its DEA helps to ensure that the DEA receives complete extension information to assist it in performing this function and would ensure uniform application of standards to all customers of firms for which NASD is the DEA.

Monthly Reporting Requirement

Proposed NASD Rule 3160(b) would require each clearing firm member for which NASD is the DEA to file a monthly report with NASD, in such format as NASD may require, indicating all broker-dealers for which it clears that have overall ratios of requests for extensions of time under Regulation T and Rule 15c3–3(m) to total transactions for the month that exceed a percentage specified by NASD. The monthly report would require clearing firms subject to proposed NASD Rule 3160(b) to identify, among other things: (1) The broker-dealer's name; (2) the number of transactions by the broker-dealer for the month; (3) the number of extension requests for the month; and (4) the ratio of the number of extensions requested to total transactions. The rule proposal would require that the reports be submitted no later than five business days following the end of each reporting month. The requirements of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1 and Amendment No. 2. Amendment No. 2 replaced and superceded the original rule filing and Amendment No. 1 in their entirety.

[4] Exchange Act Release No. 54265 (August 2, 2006), 71 FR 45879 (August 10, 2006).

[5] *See* letter from Dennis A. Young, Vice President, Treasurer, Cosse International Securities, Inc., to Nancy Morris, Secretary, Commission, dated August 31, 2006.

[6] *See* letter from Kathryn M. Moore, Assistant General Counsel, Regulatory Policy and Oversight, to Nancy M. Morris, Secretary, Commission, dated September 13, 2006.

[7] *See* 12 CFR 220.1, *et. seq.*

[8] *See* Exchange Act Release No. 34073 (May 17, 1994), 59 FR 26826 (May 24, 1994) (SR–NYSE–88–35); *see also* NYSE Information Memo 94–22 (June 10, 1994).

proposed NASD monthly reporting requirement are consistent with the NYSE's current program.[9]

III. Summary of Comment Received and NASD Response

The Commission received one comment letter to the proposed rule change.[10] The commenter stated that the proposed monthly reporting requirement would place an undue burden on self-clearing firms and requested that NASD amend the proposed rule to clarify that the monthly reporting requirement applies solely to clearing firms which clear for other broker-dealers. In its response, NASD stated that it did not intend for the proposed monthly reporting requirement to apply to self-clearing firms that do not clear for other broker-dealers, and that the proposed rule would not require these self-clearing firms to file the monthly report. [11] Finally, NASD stated that it will reiterate this position in the *Notice to Members* announcing Commission approval of the proposed rule.

IV. Discussion and Commission Findings

The Commission has reviewed the proposed rule filing, as amended, and finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act, and, in particular, Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will further assist NASD in ensuring that firms are complying with financial responsibility rules and preventing the excessive use of credit for the purchase or carrying of securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NASD–2006–064), as amended, be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. 06–8239 Filed 9–25–06; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* Exchange Act Release No. 28726 (December 28, 1990), 56 FR 540 (January 7, 1991) (SR–NYSE–89–24); and NYSE Information Memoranda 98–09 (March 5, 1998) and 94–22 (June 10, 1994); *see also* NYSE Information Memorandum 05–78 (October 12, 2005).

[10] *See supra* note 5.

[11] *See supra* note 6.

[12] 15 U.S.C. 78o–3(b)(6). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54473; File No. SR–NYSEArca–2006–60]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Trading Shares of iShares® S&P Global Index Funds Pursuant to Unlisted Trading Privileges

September 20, 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 September 14, 2006, NYSE Arca, Inc. (''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade shares (''Shares'') of the following five funds of the iShares® Trust (the ''Trust''): iShares S&P Global Consumer Discretionary Sector Index Fund, iShares S&P Global Consumer Staples Sector Index Fund, iShares S&P Global Industrials Sector Index Fund, iShares S&P Global Utilities Sector Index Fund and iShares S&P Global Materials Sector Index Fund (the ''Funds'') pursuant to unlisted trading privileges (''UTP'') under NYSE Arca Equities Rule 5.2(j)(3).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 III 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

Under NYSE Arca Equities Rule 5.2(j)(3), the Exchange may propose to list or trade pursuant to UTP ''Investment Company Units.'' [3] The Commission previously approved a proposal to list and trade the Shares of the Funds by the New York Stock Exchange, LLC (''NYSE'').[4] The Exchange proposes to trade pursuant to UTP the Shares of the Funds under NYSE Arca Equities Rule 5.2(j)(3).[5] Because the Funds invest in non-U.S. securities not listed on a national securities exchange or the Nasdaq Stock Market (''Nasdaq''), the Funds do not meet the ''generic'' listing requirements

[3] In October 1999, the Commission approved NYSE Arca Equities Rule 5.2(j)(3), which sets forth the rules related to listing and trading criteria for Investment Company Units. *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–1998–29). In July 2001, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of Investment Company Units under NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716–01 (July 19, 2001) (SR–PCX–2001–14). The definition of an Investment Company Unit is set forth in NYSE Arca Equities Rule 5.1(b)(15), which provides that an Investment Company Unit is a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company or a similar entity.

[4] *See* Securities Exchange Release No. 54458 (September 15, 2006) (SR–NYSE–2006–60) (the ''NYSE Proposal'').

[5] NYSE Arca Equities Rule 5.2(j)(3)(A)(i)(a) allows the listing and trading of Investment Company Units issued by a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio or securities. The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act''). On April 15, 2005, the Trust filed with the Commission a Registration Statement for the Funds on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the Investment Company Act relating to the Funds (File Nos. 333–92935 and 811–09729).

of NYSE Arca Equities Rule 5.2(j)(3), which permit listing and trading of Investment Company Units in reliance upon Rule 19b–4(e) under the Act.[6] Therefore, to trade the Funds pursuant to UTP, the Exchange must file, and obtain Commission approval of, a proposed rule change pursuant to Rule 19b–4 under the Act.[7]

The Shares represent beneficial ownership interests in the net assets of the Funds, less expenses. As set forth in detail in the NYSE Proposal, the Funds will hold certain securities (''Component Securities'') selected to correspond generally to the performance of the following indexes, respectively: (1) S&P Global Consumer Discretionary Index; (2) S&P Global Consumer Staples Index; (3) S&P Global Industrials Index; (4) S&P Global Utilities Index; and (5) S&P Global Materials Index (each an ''Underlying Index; collectively, the ''Underlying Indexes''). Each of the Underlying Indexes is a subset of the Standard & Poor's Global 1200 Index. The Underlying Indexes are free float adjusted and market capitalization weighted.

The investment objective of the Funds will be to provide investment results that correspond generally to the price and yield performance of the Underlying Indexes. In seeking to achieve their investment objective, the Funds will utilize ''passive'' indexing investment strategies. The Funds may fully replicate their respective Underlying Index, but currently intend to use a ''representative sampling'' strategy to track the applicable Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the Component Securities of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index.

Each Fund will invest at least 90% of its assets in the securities of its Underlying Index or in American Depositary Receipts (''ADRs''), Global Depositary Receipts, or European Depositary Receipts (collectively ''Depositary Receipts'') representing securities in the Underlying Index. A Fund may invest the remainder of its assets in securities not included in its Underlying Index, but which Barclays Global Fund Advisors (the ''Advisor'') believes will help the Fund track its Underlying Index. For example, a Fund may invest in securities not included in its Underlying Index in order to reflect various corporate actions (such as mergers) and other changes in its Underlying Index (such as reconstitutions, additions and deletions). A Fund also may invest its other assets in futures contracts, options on futures contracts, options, and swaps related to its Underlying Index, as well as cash and cash equivalents, including shares of money market funds affiliated with the Advisor.

To the extent the Funds invest in ADRs, such ADRs will be listed on a national securities exchange or Nasdaq, and to the extent the Funds invest in other Depositary Receipts, such Depositary Receipts will be listed on a foreign exchange. The Funds will not invest in any listed or unlisted Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. In addition, all Depositary Receipts must be sponsored (with the exception of certain pre-1984 ADRs that are listed and unsponsored because they are grandfathered).

Each Fund will not concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that a Fund will concentrate to approximately the same extent that its Underlying Index concentrates in the stocks of such particular industry or group of industries. In such case, a Fund could hold 25% or more of its total assets in the stocks of such industry or group of industries. For purposes of this limitation, securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities or state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

(a) *The Shares*

A description of the Trust, the operation of the Funds and the creation and redemption process for the Shares is set forth in the NYSE Proposal. To summarize, issuances of Shares will be made only in aggregations of at least 50,000 Shares or multiples thereof (''Creation Units'' or ''Creation Unit Aggregations''). The Funds will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[8] with SEI Investments Distribution Co. (the ''Distributor'').

Persons purchasing Creation Unit Aggregations from the Funds do so through an ''in-kind'' process in which a basket of securities (the ''Deposit Securities''), together with an amount of cash (the ''Balancing Amount''), plus the applicable transaction fee, is deposited with the Fund.[9] A redeeming Authorized Participant deposits Fund Shares in Creation Unit Aggregations generally in exchange for a basket of securities (the ''Fund Securities'') and a balancing cash payment (''Cash Redemption Payment'').[10] The redeeming Authorized Participant must pay a transaction fee to the Fund. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The NAV of each Fund is calculated by Investors Bank & Trust Company (''IBT''). IBT determines the NAV at the close of regular trading of the NYSE (ordinarily 4 p.m. New York time) on each day that the NYSE is open for trading. The NAV for each Fund is computed by dividing the value of the net assets of such Fund (*i.e.*, the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV. More information regarding the calculation of the NAV is set forth in the NYSE Proposal.

(b) Availability of Information About the Shares and the Underlying Indexes

On each business day the list of names and amount of each security constituting the current Deposit Securities of the Fund Deposit and the Balancing Amount effective as of the previous business day, per outstanding Share of each Fund, will be made available. According to the NYSE Proposal, an amount per Share representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per Share

[6] 17 CFR 240.19b–4(e); 15 U.S.C. 78s(b)(4).

[7] *Id.*

[8] An Authorized Participant must be either a ''Participating Party'', *i.e.*, a broker-dealer or other participant in the clearing process through the National Securities Clearing Corporation (''NSCC'') Continuous Net Settlement System, a clearing agency that is registered with the Commission, or a Depository Trust Company (''DTC'') participant, and in each case, must enter into a Participant Agreement.

[9] The Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.*, a ''cash in lieu'' amount—to be added to the Balancing Amount to replace any Deposit Security that may not be available in sufficient quantity or that may not otherwise be eligible for transfer.

[10] The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances (*e.g.*, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of Fund Securities on a redeeming investment banking firm's restricted list).

basis (the ''Intra-day Optimized Portfolio Value'' or ''IOPV'') will be calculated by an independent third party that is a major market data vendor (the ''Value Calculator''), such as Bloomberg L.P., every 15 seconds from 9:30 a.m. to 4:15 p.m. Eastern Time (''ET'') and disseminated every 15 seconds on the Consolidated Tape.

The IOPV reflects the current value of the Deposit Securities and the Balancing Amount. The IOPV also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.[11]

Since the Funds will utilize a representative sampling strategy, the IOPV may not reflect the value of all securities included in the Underlying Indexes. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular point in time. Therefore, the IOPV on a per Share basis should not be viewed as a real time update of the NAV of the Funds, which is calculated only once a day.

While the IOPV disseminated at 9:30 a.m. is expected to be generally very close to the most recently calculated Fund NAV on a per Share basis, it is possible that the value of the portfolio of securities held by each Fund may diverge from the Deposit Securities values during any trading day. In such case, the IOPV will not precisely reflect the value of each Fund's portfolio. However, during the trading day, the IOPV can be expected to closely approximate the value per Share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor).

There is an overlap in trading hours between the foreign and U.S. markets with respect to the Funds. Therefore, the Value Calculator will update the applicable IOPV every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the currency exchange rate. When the foreign market or markets are closed but U.S. markets are open, the IOPV will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The IOPV will also include the applicable cash component for each Fund.

In addition, a value for the Underlying Indexes will be disseminated once each trading day, based on closing prices in the relevant exchange market, utilizing the currency exchange rates of WM/Reuters (or another major market data vendor). In each Underlying Index, the prices used to calculate the Underlying Indexes are the official exchange closing prices or those figures accepted as such. S&P reserves the right to use an alternative pricing source on any given day.

As stated above under the heading ''The Shares,'' the NAV for the Fund will be calculated daily by IBT. IBT will also disseminate the information daily to Barclays Global Investors, N.A., the Distributor, the NYSE and others. The Funds' NAV will be published in a number of places, including, *http://www.iShares.com* and on the Consolidated Tape.

Closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

In addition, the Web site for the Trust, *http://www.iShares.com*, which will be publicly accessible at no charge (and to which the Exchange will provide a hyperlink on its Web site), will contain the following information: (1) The prior business day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

Beneficial owners of the Funds will receive all of the statements, notices, and reports required under the Investment Company Act and other applicable laws. They will receive, for example, annual and semi-annual reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of distributions, IRS Form 1099–DIVs, etc. Because the Trust's records reflect ownership of Shares by DTC only, the Trust will make available applicable statements, notices, and reports to the DTC Participants who, in turn, will be responsible for distributing them to the beneficial owners.

(c) UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of a Fund if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IOPV or the value of the applicable Underlying Index is no longer available; or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares of a Fund if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(d) Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. until 8 p.m. ET, even if the IOPV is not disseminated from 4:15 p.m. to 8 p.m. ET.[12] The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising an Underlying Index and/or the Depositary Receipts of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule[13] or by the halt or suspension of trading of the underlying securities. See ''UTP Trading Criteria'' above for specific instances when the Exchange will cease trading the Shares.

Shares will be deemed ''Eligible Listed Securities,'' as defined in NYSE

[11] The IOPV ticker is available at *www.ishares.com* and the IOPV is publicly available utilizing this ticker through various financial Web sites such as *http://finance.yahoo.com.*

[12] Because NSCC does not disseminate the new basket amount to market participants until approximately 6 p.m. to 7 p.m. ET, an updated IOPV is not possible to calculate during the Exchange's late trading session (4:15 p.m. to 8 p.m. ET). The Exchange may rely on the listing market to monitor dissemination of the IOPV during the Exchange's core trading session (9:30 a.m. to 4:15 p.m. ET). Currently the official index sponsors for the Funds' indexes do not calculate updated index values during the Exchange's late trading session; however, if the index sponsors did so in the future, the Exchange will not trade this product unless such official index value is widely disseminated.

[13] *See* NYSE Arca Equities Rule 7.12.

Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

(e) Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[14]

(f) Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),[15] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IOPV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds.[16] The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also disclose that the NAV for the Shares will be calculated shortly after 4 p.m. ET each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[17] in general, and furthers the objectives of section 6(b)(5),[18] in particular, because it is designed to prevent fraudulent and manipulative act and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act[19] because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

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

Written comments on the proposed rule change were neither solicited nor received.

III. 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–NYSEArca–2006–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NYSEArca–2006–60. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR—NYSEArca–2006–60 and

[14] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[15] The Exchange recently amended NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

[16] *See In the Matter of iShares, Inc., et al.,* Investment Company Act Release No. 25623 (June 25, 2002), which permits dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations and conditions set forth in the order.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 240.12f–5.

should be submitted on or before October 17, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[21] which requires that an exchange have rules designed, among other things, 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.

In addition, the Commission finds that proposal is consistent with section 12(f) of the Act,[22] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[23] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[24] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSEArca rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,[25] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In support of the proposed rule change, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

3. The Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

4. The Exchange will require its ETP Holders to deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading the Shares of a Fund if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IOPV or the value of the applicable Underlying Index is no longer available; or (b) the listing market delists the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously found that the listing and trading of these Shares on the NYSE is consistent with the Act.[26] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2006–60), is hereby approved on an accelerated basis.[27]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Nancy M. Morris,

Secretary.

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[20] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78*l*(f).

[23] Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[24] 17 CFR 240.12f–5.

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[26] *See* NYSE Proposal, *supra* note 4.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54464; File No. SR–OCC–2006–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Reduced Discounted Clearing Fees

September 18, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 15, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act[2] and Rule 19b–4(f)(2) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is to reduce OCC's currently discounted clearing fees for securities options and security futures where at least one side of the trade is cleared by an OCC clearing member for the period September 1, 2006, through December 29, 2006.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would reduce OCC's currently discounted clearing fees for securities options and security futures where at least one side of the trade is cleared by an OCC clearing member for the period September 1, 2006, through December 29, 2006. Clearing fees for such contracts will be reduced as reflected in the following chart.

Contracts/trade	Discounted fee effective July 1, 2005	Discounted fee effective September 1, 2006 through December 29, 2006
1–500	$0.05/contract	$0.035/contract.
501–1,000	$0.04/contract	$0.028/contract.
1,001–2,000	$0.03/contract	$0.021/contract.
>2,000	$55.00 (capped)	$35.00 (capped)

The additional fee reduction recognizes the increased contract volume experienced by OCC through the first six months of 2006. OCC believes that this fee reduction will financially benefit clearing members and other market participants without adversely affecting OCC's ability to meet its expenses and maintain an acceptable level of retained earnings.

OCC believes the proposed rule change is consistent with Section 17A of the Act because it financially benefits clearing members by reducing clearing fees and allocates such fees among clearing members in a fair and equitable manner. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2006–14 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–OCC–2006–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2006–14 and should be submitted on or before October 27, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. 06–8237 Filed 9–25–06; 8:45 am]

BILLING CODE 8010–01–P

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10610 and # 10611]

Maryland Disaster # MD–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Maryland dated 09/18/2006.

Incident: Tropical Storm Ernesto.

Incident Period: 09/01/2006 through 09/02/2006.

EFFECTIVE DATE: 09/18/2006.

Physical Loan Application Deadline Date: 11/17/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 06/18/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Calvert, St. Mary's.

Contiguous Counties: Maryland: Anne Arundel, Charles, Prince George's.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	7.934
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10610 B and for economic injury is 10611 0.

The State which received an EIDL Declaration # is Maryland.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Steven C. Preston,

Administrator.

[FR Doc. E6–15699 Filed 9–25–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10612 and # 10613]

Pennsylvania Disaster # PA–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 09/18/2006.

Incident: Severe Storms and Flooding.

Incident Period: 08/29/2006 through 09/02/2006.

EFFECTIVE DATE: 09/18/2006.

Physical Loan Application Deadline Date: 11/17/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 06/18/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Venango.

Contiguous Counties: Pennsylvania: Butler, Clarion, Crawford, Forest, Mercer, Warren.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	7.934
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10612 6 and for economic injury is 10613 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Steven C. Preston,

Administrator.

[FR Doc. E6–15700 Filed 9–25–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Small Business Administration (SBA).

ACTION: Notice of a computer matching program—SBA and the Louisiana Office of Community Development (LOCD).

SUMMARY: In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, the Computer Matching Privacy Act Amendments of 1990, the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public'', the Small Business Administration (SBA) is issuing a public notice of its intent to conduct a computer matching program with LOCD which uses a computer information system of SBA. The purpose of the computer matching program is to ensure that there is no duplication of benefits (DOB), as prohibited by the Small Business Act, between SBA disaster loans made to homeowners in Louisiana affected by the 2005 Gulf Coast hurricanes and LOCD grants to the same homeowners.

DATES: This matching program is expected to begin October 26, 2006. Any public comment must be received before this expected start date.

ADDRESSES: Any interested party may submit written comments to: Small Business Administration, Office of Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: On the matching program: Becky Brantley, Disaster External Affairs Liaison, 202–205–6734, and on the Privacy Act: Lisa Babcock, Chief, Freedom of Information/Privacy Acts Office, 202–401–8203.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (15 U.S.C. 552a), the SBA and LOCD have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the computer matching program is to exchange personal data to identify individuals who have been approved for an SBA home disaster loan as a result of the 2005 Gulf Coast hurricanes and who seek to obtain a grant from the LOCD for the same loss. Matching the information will prevent a DOB between an SBA disaster loan and an LOCD grant to the same homeowner. Section 7(b)(1) of the Small Business Act (15 U.S.C. 636(b)(1)) prohibits SBA, in making physical disaster loans, from duplicating the benefits that recipients of such loans may receive from other sources.

The parties to the agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed to make a decision on whether there is a DOB. The principal alternative to using this matching program would be to manually match the loan applications processed by SBA with the grant applications submitted to the LOCD. Manual matching would impose an administrative burden on the agencies and might result in delays in determining eligibility for LOCD grants to affected victims of the hurricanes.

A copy of the agreement between SBA and LOCD is available on request. Requests should be submitted to the same address listed above for comments.

Reporting of Matching Program

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Computer Matching Privacy Act Amendments of 1990 (Pub. L. 101–56), (collectively, the Law), and OMB Bulletin 89–22, copies of this notice are being provided to the House Committee on Government Reform and the Senate Committee on Homeland Security and Governmental Affairs, and to OMB.

Authority

The matching program will be conducted pursuant to the Law.

Objectives To Be Met by the Matching Program

The matching program will allow LOCD and SBA to share data in order to prevent an applicant for an LOCD grant from receiving a DOB with an SBA home disaster loan.

Records To Be Matched

The SBA records involved in the match are home loan applications received by SBA from disaster victims in Louisiana as a result of the 2005 Gulf Coast hurricanes. These home loan application records are contained in the SBA Privacy Act System of Records: Disaster Loan Case File—SBA 20, last published at 69 FR 58598.

Period of the Match

The computer matching program will be conducted in accordance with the agreement between SBA and the LOCD. The agreement will remain in effect until the last LOCD grant award has been processed by LOCD or June 30, 2007, whichever is earlier. The agreement may be extended by mutual agreement of the parties. Either SBA or LOCD, upon thirty (30) days written notice, may request an extension or may terminate the agreement.

Charles McClam,

Acting Chief Information Officer.

[FR Doc. E6–15701 Filed 9–25–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5328]

Renewal of Cultural Property Advisory Committee Charter

SUMMARY: The Charter of the Department of State's Cultural Property Advisory Committee (CPAC) has been renewed for an additional two years.

The Charter of the Cultural Property Advisory Committee is being renewed for a two-year period. The Committee was established by the Convention on Cultural Property Implementation Act of 1983, 19 U.S.C. 2601 *et seq*. It reviews requests from other countries seeking U.S. import restrictions on archaeological or ethnological material the pillage of which places a country's cultural heritage in jeopardy. The Committee makes findings and recommendations to the Secretary of State, who, on behalf of the President, determines whether to impose the import restrictions. The membership of the Committee consists of private sector experts in archaeology, anthropology, or ethnology; experts in the international sale of cultural property; and representatives of museums and of the general public.

FOR FURTHER INFORMATION CONTACT: Cultural Heritage Center, U.S. Department of State, Bureau of Educational and Cultural Affairs, State Annex 44, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 453–8800; Fax: (202) 453–8803.

Dated: September 18, 2006.

Maria P. Kouroupas,

Executive Director, Cultural Property Advisory, Committee, Department of State.

[FR Doc. E6–15723 Filed 9–25–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5559]

Culturally Significant Object Imported for Exhibition Determinations: ''Lucio Fontana: Venice/New York''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq*.; 22 U.S.C. 6501 note, *et seq*.), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Lucio Fontana: Venice/New York,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The object is imported pursuant to loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Solomon R. Guggenheim Museum, New York, New York, from on or about October 10, 2006, until on or about January 21, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: September 20, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–15732 Filed 9–25–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5556]

Advisory Committee on Transformational Diplomacy Notice of Meeting

The Department of State announces a meeting of the Secretary of State's Advisory Committee on Transformational Diplomacy beginning on Wednesday, October 11, 2006 and continuing on Thursday, October 12, 2006, at the U.S. Department of State at 2201 C Street, NW., Washington, DC The Committee is composed of a group of prominent Americans from the private sector and academia who provide the Department with advice on its worldwide management operations, including structuring, leading, and

managing large global enterprises, communicating governmental missions and policies to relevant publics, and better use of information technology.

The Committee will meet in open session from 5 p.m. to 6:45 p.m. on October 11, 2006. The Committee also will meet in open session from 8:15 a.m. until 12 p.m. on October 12, 2006.

The agenda for the October 11 session will include an overview briefing about the Department of State and its mission. The agenda for the October 12 session will include briefings on Public/Private Partnership Models, Workforce and Training, the State Department in 2012, Congressional Interaction, the Embassy of the Future, Transformational Diplomacy and discussion on establishing working groups for the Committee.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public (including government employees and Department of State employees) desiring access to the open sessions should, no later than October 6, 2006, notify the Advisory Committee on Transformational Diplomacy (*phone:* 202–647–0093) of their name, date of birth; citizenship (country); ID number, i.e., U.S. government ID (agency), U.S. military ID (branch), passport (country), or drivers license number (state); professional affiliation, address, and telephone number.

Members of the public may file a written statement with the committee. All members of the public must use the ''C'' Street entrance, after going through the exterior screening facilities. One of the following valid IDs will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire session.

For more information, contact Madelyn Marchessault, Designated Federal Official of the Advisory Committee on Transformational Diplomacy at 202–647–0093 or at *Marchessaultms@state.gov*.

Dated: September 19, 2006.

Marguerite Coffey,

Acting Director, Office of Management Policy, Department of State.

[FR Doc. E6–15731 Filed 9–25–06; 8:45 am]

BILLING CODE 4710–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15623]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the U.S. Department of Transportation's (DOT) intention to request renewal of a previously approved information collection.

DATES: Comments on this notice must be received by November 27, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–2003–15623] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

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

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION: *Title:* Use and Change of Names of Air Carriers, Foreign Air Charters, and Commuter Air Carriers, 14 CFR part 215.

OMB Control Number: 2106–0043.

Type of Request: Renewal without change, of a previously approved collection.

Abstract: In accordance with the procedures set forth in 14 CFR part 215, before a holder of certificated, foreign, or commuter air carrier authority may hold itself out to the public in any particular name or trade name, it must register that name or trade name with the Department, and notify all other certificated, foreign, and commuter air carriers that have registered the same or similar name(s) of the intended name registration.

Respondents: Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier.

Estimated Number of Respondents: 13.

Estimated Total Burden on Respondents: 65 hours.

Comments are invited on: (a) 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; (b) the accuracy of the Department'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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC, on September 19, 2006.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. E6–15724 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15962]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the U.S. Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received by November 27, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–2003–15962] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

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

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Title: Procedures and Evidence Rules for Air Carrier Authority Applications: 14 CFR Part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code—(Amended); 14 CFR Part 204—Data to Support Fitness Determinations; 14 CFR Part 291—Cargo Operations in Interstate Air Transportation.

OMB Control Number: 2106–0023.

Type of Request: Extension without change, of previously approved collection.

Abstract: In order to determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR parts 201 and 204.

Respondents: Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

Estimated Number of Respondents: 215.

Average Annual Burden per Respondent: 25.20 hours.

Estimated Total Burden on Respondents: 5,420 hours.

Comments are invited on: (a) 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; (b) the accuracy of the Department'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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC, on September 10, 2006.

Todd M. Homan,

Director, Office of Aviation Analysis.

[FR Doc. E6–15726 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–16944]

Operating Limitations at Chicago O'Hare International Airport; Order To Show Cause and Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Order To Show Cause and request for comments.

SUMMARY: The FAA has issued an order to show cause, which solicits the views of interested persons on the FAA's tentative determination to modify the August 2004 order temporarily limiting scheduled operations at O'Hare International Airport (O'Hare). The text of the order to show cause is set forth in this notice.

DATES: Any written information that responds to the FAA's order to show cause must be submitted by September 29, 2006.

ADDRESSES: You may send comments, identified by docket number FAA–2004–16944, using any of the following methods:

- *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 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide.

Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478) or you may visit *http://dms.dot.gov.*

Docket: To read background documents or comments received, go to

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

FOR FURTHER INFORMATION CONTACT: Komal Jain, Office of the Chief Counsel, Regulations Division, AGC–240, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Order To Show Cause

The Federal Aviation Administration (FAA) has tentatively determined that it is necessary to modify the August 2004 order, as amended, (the Order) temporarily limiting scheduled operations at O'Hare International Airport (O'Hare). Under the Order, the FAA may modify or withdraw any provision in the order on its own or on application by any air carrier for good cause shown. The FAA proposes to eliminate the prohibition on trading or transferring (buying, selling, or leasing) arrival authorizations for consideration for the remaining duration of the Order. We believe there may be merit to allowing carriers to modify their schedules for competitive or operational reasons through various market mechanisms prior to the effective date of the August 29, 2006, final rule regulating scheduled arrivals at O'Hare.

The FAA invites air carriers and other interested persons to submit written comments by no later than September 29, 2006, in Docket FAA–2006–16944 on this proposal. After reviewing and evaluating the comments, the FAA expects to issue a final modification to the Order based on this proposal.

Background

On August 18, 2004, the FAA issued an order limiting the number of scheduled arrivals that air carriers conduct at O'Hare during peak hours. The August 18 Order followed a period during which O'Hare operated without any regulatory constraint on the number of aircraft operations, and O'Hare experienced significant congestion-related delay. The Order took effect November 1, 2004, and was subsequently extended on March 25, 2005, October 6, 2005, and March 31, 2006. It terminates at midnight, October 28, 2006, when the August 29, 2006, final rule, Congestion and Delay Reduction at Chicago O'Hare International Airport, becomes effective. 71 FR 51382.

The Order established two means through which air carriers can move an existing arrival that has been authorized under the Order and scheduled within the period from 7 a.m. though 8:59 p.m. The first is through requests for schedule changes that are subject to the Administrator's approval and a determination that the schedule change would not adversely affect operations or congestion at O'Hare, taking into account the strict limits on operations per hour that were established when the Order first took effect. The second is through a trade of an arrival time for another but on a one-for-one basis with another air carrier. Once again, the trade is subject to the Administrator's approval and a determination that the trade will not increase congestion or adversely affect operations at the airport. At the time of the Order, the FAA determined that these two mechanisms would provide carriers with adequate flexibility to make changes if necessary during peak hours of operation.

Order To Show Cause

When it issued the Order the FAA intended that it would be in effect for a short duration—until the FAA published a final rule to limit scheduled arrivals at O'Hare and establish allocation, transfer and other procedures not included in the Order. The FAA did not anticipate that the Order would be extended through October 2006. Limiting trades of scheduled arrivals, so that they could occur only on a one-for-one basis and remain in place only for the duration of the Order, particularly when coupled with a prohibition on sales and leases, has had the unintended effect of eliminating any flexibility to shift operations even when such shifts would not contribute to congestion or interfere with the hourly cap on operations.

In order to facilitate the most efficient transition from the Order to the final rule, the FAA proposes to allow carriers to make long-term adjustments to their holdings of scheduled arrivals during the last remaining days of the Order, as described below. Under this proposed modification, the FAA would accept permanent trades, which the FAA would then recognize at the effective date of the final rule. As several carriers have long-standing, multi-seasonal trades to adjust schedule operating times, this proposal would facilitate the finalization of those or other trades and transfers prior to the commencement of the 2006 winter scheduling season.

Underlying this proposed decision is that through the Order's elimination of a usage requirement, there are several scheduled arrivals that while allocated have not been fully utilized. It was not until August 29, 2006, when we issued the final rule on O'Hare operations, that carriers could have definitely known that under-utilized authorizations could be transferred for consideration rather than simply traded temporarily on a one-for-one basis.[1] Unintentionally, the FAA thus created a 2-month window in which carriers may have found it to their benefit to hold onto their arrivals rather than trade them, saving them potentially to obtain monetary value in a secondary market. We are concerned that this contributes towards an inefficient use of authorizations.

For these reasons the Administrator has tentatively determined that there is no longer any justification for maintaining a restriction that arrival authorizations may only be transferred on a one-for-one basis and a prohibition on sales, leases and other transactions that result in the transfer of arrival authorizations for consideration. Therefore, with respect to scheduled flight operations at O'Hare under the August 2004 Order, as amended, the FAA proposes to adopt the following measures in substitution for ordering paragraph 6:

6. An air carrier who is currently operating or will operate at O'Hare by December 31, 2006, may buy, sell, lease or otherwise transfer or trade any scheduled arrival from 7 a.m. through 8:59 p.m. to or from any other air carrier who is operating or will operate at O'Hare by December 31, 2006. Each air carrier must receive advance written approval of the Administrator, or her delegate, of the trade or transfer. All requests to trade or transfer a scheduled arrival must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov*, and must come from a designated representative of the air carrier.

Request for Comments

The FAA invites all interested persons to submit written comments on the proposals described in this order by filing their written views in Docket FAA–2006–16944 on or before September 29, 2006.

Issued in Washington, DC, on September 22, 2006.

James W. Whitlow,

Deputy Chief Counsel for Policy and Adjudications.

[FR Doc. 06–8300 Filed 9–22–06; 2:07 pm]

BILLING CODE 4910–13–P

[1] Section 93.27 provides for the sale and lease of authorized authorizations in a blind, cash-only secondary market.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–30]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 16, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2006–24997] by any of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

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

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

FOR FURTHER INFORMATION CONTACT: Susan Lender (202) 267–8029 or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 6, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions for Exemption

[Docket No.: FAA–2006–24997]

Petitioner: Peter L. Model.

Section of 14 CFR Affected: 14 CFR 65.104.

Description of Relief Sought: The exemption, if granted, would permit Peter L. Model to obtain an experimental repairman certificate, despite the fact that he is not an American citizen. The petitioner is a Swiss national. He has worked on his Lancair IV–P experimental aircraft for 14 years. The aircraft will be operated in Switzerland in the future. He will be the only person to perform routine maintenance on the aircraft. Mr. Model has a U.S. pilot certificate and the plane is currently in Florida.

[FR Doc. E6–15715 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–27]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 16, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2002–11986] by any of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

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

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

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 31, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2002–11986.

Petitioner: Experimental Aircraft Association.

Section of 14 CFR Affected: 14 CFR § 61.113(a).

Description of Relief Sought: EAA currently holds Exemption No. 7830 that allows volunteer pilots flying EAA Young Eagles to ''log flight time'', a form of compensation , when flying children during these free flight experiences. The exemption also allows volunteer pilots to receive other types of compensation. This amendment would permit the Experimental Aircraft Association (EAA) to include the use of light-sport aircraft with a special light-sport certificate under this exemption. EAA also requests that an addition is made to the current condition and limitation that permits a pilot to hold at least a private pilot certificate. They request that the pilot be able to hold a recreational pilot, or a sport pilot certificate with the appropriate category, class, type-rating, or logbook endorsement, if necessary, for the aircraft to be used under this exemption in accordance with § 61.31(a), (d), (e), (f), (h), (i), and part 61 subpart D, E, or J as appropriate. The pilots who conduct the Young Eagle flights for EAA under this exemption

are required to hold a third-class medical certificate in accordance with § 61.23(a)(3); however, EAA is requesting that a private pilot, recreational pilot, or sport pilot be required to hold a current medical certificate appropriate to the pilot certificate held in accordance with § 61.23(a)(3)(i), § 61.23(a)(3)(ii), or § 61.23(c)(1)(ii).

[FR Doc. E6–15716 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Quantum Engineering, Inc.

(Waiver Petition Docket Number FRA–2006–25794)

Quantum Engineering, Inc. (Quantum) seeks a waiver of compliance with certain requirements of Title 49 Code of Federal Regulations (CFR) part 232, subpart E—*End-of-Train Devices*, published January 17, 2001. Specifically, 49 CFR 232.403(g)(2) states: ''If power is supplied by one or more batteries, the operating life shall be a minimum of 36 hours at 0 °C.'' Quantum requests a waiver to allow a minimum of 12 hours of battery reserve for the two batteries they propose using in their Model Q39 end-of-train devices.

According to Quantum, the Q39 end-of-train device will be powered by an air turbine-powered alternator (which has been in service for several years). Both the batteries and the alternator are continuously connected to provide electrical power to components of the device. The batteries are charged by the air-driven alternator during normal train operations and provide backup power when the alternator is not functioning (*e.g.*, during switching operations when train line air pressure is cut out). Quantum provided test data indicating that the end-of-train device will operate for approximately 16 hours with two new self-contained lead acid batteries at 0 °C after loss of train line air.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2006–25794) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on September 20, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–15751 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The South Carolina Railroad Museum, Inc.

[Docket Number FRA–2006–25452]

The South Carolina Railroad Museum, Inc. (SCMZ) seeks a permanent waiver of compliance from *Control of Alcohol and Drug Use*, 49 CFR Part 219 Subparts D through J, which require a railroad to conduct reasonable suspicion alcohol and/or drug testing, pre-employment drug testing, random alcohol and drug testing, and to have voluntary referral and co-worker report policies, and which also specify drug and alcohol testing procedures and recordkeeping requirements. The railroad is a nonprofit railroad museum located near Winnsboro, South Carolina. As part of its museum activity, it operates excursion passenger trains, primarily on certain weekends and on special charters.

The museum only runs scheduled excursion trains on 15 days in the calendar year. On those days, it runs four trains over the 10.2-mile round trip. In addition to the regularly scheduled operating days, it runs excursion trains on a charter basis. In 2005, SCMZ operated charters on 26 days. In each case, only one train was operated on the respective charter.

A portion (4,650 feet) of the museums's track is subject to a recent Lead Track Agreement between the museum and Norfolk Southern Corporation (NS), whereby NS will provide limited rail service to a commercial facility located along the museum's track. This service will not involve SCMZ volunteers but will be conducted entirely by NS employees.

The waiver would cover the museum's operation of excursion trains on the museum's trackage between Rockton, South Carolina, and Rion, South Carolina (approximately 5.1 miles). SCMZ has hours of service volunteers only.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver

Petition Docket Number FRA–2006–25452) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

Issued in Washington, DC on September 20, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–15753 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2006–25764]

Union Pacific Railroad Company (UP) seeks a waiver of compliance with certain requirements of 49 CFR, 232.205, *Class I Brake Test-Initial Terminal inspection*, published January 17, 2001, and 49 CFR 215—*Railroad Freight Car Safety Standards*, published April 21, 1980, for freight cars received in interchange from the Ferrocarriles Nacionales de Mexico Railroad (FXE), at Calexico, California. Specifically, UP seeks approval to move the equipment from the interchange point, at MP 708.5 on the Calexico Subdivision, to the UP rail yard in El Centro, California (a distance of 10.1 miles), without performing the inspections and tests specified.

According to UP, a Class III brake test-trainline continuity inspection would be performed per the requirements of 49 CFR 232.211, prior to departing Calexico, and the equipment would be inspected to ensure safe movement to El Centro at a train speed not to exceed 20 mph. Equipment found unsafe for movement to El Centro for repairs would be set out of the train at Calexico. The train would be equipped with a compliant end-of-train device per 49 CFR 232, Subpart E.

UP currently receives approximately 50 freight cars per day from FXE at the interchange point in Calexico. The volume has grown steadily in recent years and stands to grow even more as the effects of both the NAFTA and GATT trade agreements. United States Customs conduct inspections of the equipment at Heber, which usually takes more than an hour. If the equipment is ''off air'' for more than 4 hours at Heber, a ''transfer train brake test'' per the requirements of 49 CFR 232.215, would be performed prior to departure. From Heber, the train would move to El Centro (a distance of 4.6 miles), where a Class I brake test-initial terminal inspection would be performed per the requirements of 49 CFR 232.205.

UP states that the capacity of the existing railroad facility in Calexico is inadequate to handle current volume and the waiver is necessary to facilitate movement and to avoid restricting the volume of rail cars handled through this gateway. UP asserts that Calexico is a ''bottleneck'' that causes delays to international commerce on both sides of the border, and granting the requested waiver, will have no adverse effect on safety. UP also references current railroad operations at border crossings in Brownsville and Laredo, Texas, where trains move several miles from the border without performing a Class I air test.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2006–25764) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on September 20, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–15752 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR), Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2006–25862]

The above parties seek a waiver for relief of sanctions from 49 CFR Part 240.117(e)(1) through (4), 49 CFR Part 240.305(a)(1) through (4) and (6) [excluding supervisors as indicated], and 49 CFR Part 240.307. These sections of the regulation relate to punitive actions that are required to be taken against locomotive engineers for the violation of certain railroad operating rules. Refer to 49 CFR Part 240 for a detailed listing of these sections.

The Union Pacific Railroad (UP) and the employees of UP's North Platte Service Unit, represented by the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU), desire to participate in a Close Call Reporting System (C3RS) Demonstration Pilot Project sponsored by FRA's Office of Research and Development. The C3RS Demonstration Pilot Project is one of the action items included in FRA's Rail Safety Action Plan announced on January 25, 2006.

In other industries such as aviation, implementation of close call reporting systems that shield the reporting employee from discipline (and the employer from punitive sanctions levied by the regulation) have contributed to major reductions in accidents. In March 2005, FRA completed an overarching memorandum of understanding with railroad labor organizations and management to develop pilot programs to document close calls, *i.e.*, unsafe events that do not result in a reportable accident, but very well could have.

Participating railroads will be expected to develop corrective actions to address the problems that may be revealed. The aggregate data may prove useful in FRA's decision-making concerning regulatory and other options to address human factor-caused accidents. Experiences on the Norwegian Railway (Sernbaneverket) showed a 40 percent reduction in accidents after 3 years of implementation of a similar program. In a manufacturing environment, Syncrude, a mining company, experienced a 33 percent reduction in lost time frequency after 1 year of implementing a close call system.

The UP, BLET, and UTU have developed and signed an implementing memorandum of understanding (IMOU), based on the FRA's overarching memorandum of understanding, as a first step in commencing the demonstration pilot project. The project would involve approximately 1,200 yard and road service employees headquartered in North Platte, Nebraska. This IMOU was sent to FRA for consideration and acceptance on August 28, 2006. As referenced in the IMOU, certain close calls may be properly reported by the employee(s) involved and later discovered by UP, for example, through subsequent retrospective analysis of locomotive event recorder data, *etc*. In order to encourage employee reporting of close calls, the IMOU contains provisions to shield the reporting employee from UP discipline.

The UP, BLET, and UTU also desire to shield the reporting employee(s) and UP from punitive sanctions that would otherwise arise as provided in selected sections of 49 CFR Part 240 for properly reported close call events as defined in the C3RS IMOU. The waiver petition is requested for the duration of the C3RS demonstration project (5 years from implementation or until the demonstration project is completed or parties to the IMOU withdraw as described in the IMOU, whichever is first).

Note: Article 7.2 (of the IMOU) *Conditions under which a Reporting Employee is Not Protected from UP Discipline and/or Decertification and from FRA Enforcement:* UP employees included in this C3RS/IMOU receive no protection from discipline and/or decertification or from FRA enforcement action when one or more of the following conditions occur:

1. The employee's action or lack of action was intended to damage UP or another entity's operations or equipment or to injure other individuals, or the employee's action or lack of action purposely places others in danger (*e.g.*, sabotage);
2. The employee's action or lack of action involved a criminal offense;
3. The employee's behavior involved substance abuse or inappropriate use of controlled substances;
4. The close call report contains falsified information as determined by the Bureau of Transportation Statistics;
5. The event resulted in a railroad accident/incident that qualifies as reportable under 49 CFR Part 225.11;
6. The event resulted in an identifiable release of a hazardous material; or
7. The event was observed in real-time and reported to UP management (such as a train dispatcher or operator observing a signal violation) or was observed as part of Operating Practices testing.

Operating Practices testing (*e.g.*, operating rule efficiency testing, signal compliance testing) generally consists of real-time observations and do not qualify for exemption. Similarly, an employee is not exempt from discipline and/or decertification for a violation that UP or FRA identifies contemporaneously (*e.g.*, a block circuit is occupied by a train without authority, and the train dispatcher notices it before the train backs off the circuit) before the employee files a close call report. In such situations, UP or FRA may use event recorder information to support discipline and/or decertification and/or enforcement. For example, a UP official, who observes a train operating past a signal that requires a stop, may use any relevant data recorded by the locomotive's event recorder in pursuing disciplinary action against the train crew, regardless of whether a member of the crew files a close call report in a timely manner.

UP and other parties signatory to the IMOU dated August 25, 2006, believe the data from these properly reported close call incidents as defined in the IMOU will be invaluable in analysis and development of effective corrective actions. Without the requested waiver of sanctions and exemption from mandatory revocation of the engineer's certificate, the employee(s) involved in the incidents described above will not file a report of the incident. The incident(s) will likely go undetected and there will be no opportunity for analysis, data trending or appropriate corrective actions.

All parties signatory to the IMOU and participating in the demonstration pilot project believe that the close calls demonstration project and granting this waiver petition is in the public interest and consistent with improving railroad safety. All parties believe that the improvement in safety experienced in Norway as stated above: ''the Norwegian Railway (Sernbaneverket) showed a 40 percent reduction in accidents after 3 years of implementation of a similar program.'' These results of improved safety performance have also been observed in other modes of transportation and other industries following the implementation of a close calls reporting system.

The Federal Aviation Administration (FAA) reports numerous safety benefits from their close calls reporting system compared to non-U.S. flight operations (See FAA Web site). Examples of close call reporting system benefits from the U.S. Coast Guard include: ''Response costs decline 30–40 percent, resulting in potential USCG savings of $12–$16 million and potential shipping industry savings of $39–$52 million: potential reduction in seamen injuries and claims category savings range between 15–45 percent; potential savings on an industry-wide scale = $100s of millions.''

The parties are confident that railroad operations will benefit from this demonstration pilot project, and by full

implementation of a close call reporting system, public and railroad safety will be improved.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2006–25862) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on September 20, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–15754 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–17696]

Freeport McMoRan Energy L.L.C. Main Pass Energy Hub Liquefied Natural Gas Deepwater Port License Application Amendment; Final Public Hearings, Environmental Assessment and Draft Finding of No Significant Impact

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; notice of public hearings; request for comments.

SUMMARY: The Maritime Administration (MARAD) and U.S. Coast Guard announce the availability of the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) on the Main Pass Energy Hub (MPEH) Deepwater Port Amended License Application. We are also announcing the dates and locations of public hearings for input regarding the approval or denial of the license application.

The application and the amendment describe a project that would be located in the Gulf of Mexico in Main Pass Lease Block 299 (MP 299), approximately 16 miles southeast of Venice, Louisiana. Draft and final Environmental Impact Statements (EIS) evaluating the original application were published on June 17, 2005 and March 14, 2006, respectively.

The Main Pass Energy Hub Deepwater Port License Application originally proposed the use of ''open-loop'' open rack vaporization (ORV). In the amended application, the applicant is proposing a ''closed-loop'' system using submerged combustion vaporization with selective catalytic reduction (SCV/SCR). Though similar, a more generic SCV/SCR system was analyzed in detail in the Final EIS (FEIS) as an alternative. The amended application provides expanded and refined design information regarding the proposed changes. The EA was prepared to provide analysis of the actual SCV/SCR design now being proposed and to determine if there were any significant impacts resulting from this change in proposed regassification technology in addition to or different from those previously assessed in the FEIS. The original application and environmental analysis contained in the FEIS still apply, including facilities, offshore and onshore pipelines, and salt cavern gas storage. Previous comments on the FEIS and application will continue to be considered in this process and need not be repeated. Based upon the EA, we have determined that the project changes as proposed in this amended application will not have a significant impact on the environment and we are therefore issuing a Draft Finding of No Significant Impact (FONSI) for public review and comment.

DATES: Public hearings will be held in Grand Bay, Alabama on October 3, 2006; Pascagoula, Mississippi on October 4, 2006; and New Orleans, Louisiana, on October 5, 2006. Each public hearing will begin at 6 p.m. and end at 8 p.m., and will be preceded by an informational open house from 4:30 p.m. to 6 p.m. The public hearings may end later than the stated time, depending on the number of attendees requesting to speak.

Material submitted in response to the request for comments must reach the Docket Management Facility on or before November 6, 2006, which is the end of the 45 day public comment period. Federal and State agencies must submit comments on the application as amended, recommended conditions for licensing, or letters of no objection by November 20, 2006 (45 days after the final public hearings). Also by November 20, 2006 the Governors of the adjacent coastal states of Alabama, Louisiana, and Mississippi may approve, disapprove, or notify MARAD of inconsistencies with State programs relating to environmental protection, land and water use, and coastal zone management, in which case MARAD will condition any license granted to make it consistent with state programs. MARAD will issue a record of decision (ROD) to approve, approve with conditions, or deny the DWP license application by January 3, 2007 (90 days after the final public hearing).

ADDRESSES: The first public hearing and informational open house will be held on October 3, 2006, at the Grand Bay St. Elmo Community Center, 11610 Highway 90 West, Grand Bay, Alabama, phone: 251–865–4010. The second public hearing and informational open house will be held on October 4, 2006, at the La Font Inn, 2703 Denny Avenue, Pascagoula, Mississippi, phone: 228–762–7111. The third public hearing and informational open house will be held on October 5, 2006, at the New Orleans Marriott, 555 Canal Street, New Orleans, Louisiana, phone: 504–581–1000.

A copy of the EA, FEIS, license application, license application amendment, comments and associated documentation is available for view at the DOT's docket management Web site: *http://dms.dot.gov* under docket number 17696. Copies of the EA and FEIS are also available for review at the

Pascagoula Jackson-George Regional Headquarters Public Library, Pascagoula, MS, 228–769–3227 ; Bayou La Batre City Public Library, AL, 251–824–4213; Mobile Public Main Library, AL, 251–208–7106; New Orleans Public Main Library, LA, 504–529–7989.

Address docket submissions for USCG–2004–17696 to: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions and makes docket contents available for public inspection and copying, at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Roddy C. Bachman, U.S. Coast Guard, telephone: 202–372–1451, e-mail: *Roddy.C.Bachman@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Hearings, Open Houses and Request for Comments

We invite you to learn about the proposed deepwater port at the informational open houses. We also invite you to comment at the public hearings on the proposed action and the evaluation contained in the FEIS, EA, the license application and amendment. Relevant comments previously submitted on the FEIS and the application will continue to be considered in the license application process and need not be resubmitted. Speaker registration will be available at the door. In order to allow everyone a chance to speak, we may limit speaker time, or extend the hearing hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public hearing, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket. Public docket materials will be made available to the public on the Docket Management Facility's Docket Management System (DMS). See ''Request for Comments'' for information about DMS and your rights under the Privacy Act.

If you plan to attend either the open house or the public hearing, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

You can submit material to the Docket Management Facility during the public comment period (see **DATES**). MARAD and the Coast Guard will consider all comments submitted during the public comment period. Submissions should include:

- Docket number USCG–2004–17696.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Submit comments or material using only one of the following methods:

- Electronic submission to DMS, *http://dms.dot.gov.*
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the DMS Web site (*http://dms.dot.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the DMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Docket Management Facility (see **ADDRESSES**), or electronically on the DMS Web site.

Proposed Action

We published a notice of application for the proposed Main Pass Energy Hub deepwater port at 69 FR 32363 (June 9, 2004); a notice of intent to prepare an EIS at 69 FR 45337 (July 29, 2004); announced the availability of the draft EIS (DEIS) at 70 FR 35277 (June 17, 2005); the Final EIS at 71 FR 13213 (March 14, 2006); and the amended application, intent to prepare an EA, and request for comments at 71 FR 45899 (August 10, 2006). The proposed action requiring environmental review is the Federal licensing decision on the proposed deepwater port application as originally submitted and subsequently amended.

Alternatives Being Considered

The alternatives available for this action are: (1) License the facility according to the application as amended, (2) license the facility according to the application as amended with conditions (including conditions designed to mitigate environmental impact), and (3) deny the application, which for purposes of environmental review is the ''no-action'' alternative. These alternatives are more fully discussed in the FEIS and EA.

Background

MARAD and the Coast Guard, as the lead Federal agencies for the license review process under the Deepwater Port Act (DWPA) and the National Environmental Policy Act (NEPA), completed a Draft EIS that was released on June 17, 2005. A Final EIS was released on March 14, 2006. To seek public involvement and comply with the requirements of the DWPA and NEPA, open houses and public hearings were held in all adjacent coastal states for: (1) Scoping, (2) the DEIS, and (3) the FEIS in Grand Bay, Alabama; New Orleans, Louisiana; and Pascagoula, Mississippi.

During this public review process, extensive public and agency comments were submitted that discussed the project and both ''open-loop'' ORV and ''closed-loop'' SCV technologies as reasonable alternatives for the regasification technology. For this and other reasons, the Final EIS included detailed discussion and evaluation of both SCV and ORV technologies.

On May 5, 2005, Governor Blanco of Louisiana, exercising authority granted under the DWPA, disapproved the Main Pass application based on the use of ORV. In her letter of disapproval she indicated support for closed-loop systems. On May 31, 2006, the Coast Guard and MARAD received an amendment to the original application from the applicant. The applicant in this amended application now proposes to change the project to use SCV in place of ORV. On June 21, 2006, the Administrator of MARAD issued a ROD stating that a license for the project as originally planned would not be issued and no further action would be taken on the application as originally submitted. MARAD and the Coast Guard further determined that they would process the amended application according to the applicable provisions of the DWPA and NEPA.

The application amendment contains the actual SCV/SCR design that would

be used. Because a more generic SCV/SCR system was fully evaluated as a reasonable alternative in sufficient detail in the EIS to provide an opportunity for in-depth public review, the Coast Guard and MARAD determined, in coordination with other involved Federal agencies, including the U.S. Environmental Protection Agency, that an Environmental Assessment that incorporates by reference and tiers from the FEIS would provide the appropriate level of NEPA review and analysis. After the EA was completed, we determined that a FONSI for the amended application was applicable for the action and that the applicant's change in preferred regassification technology from ORV to SCV/SCR that was previously evaluated in the FEIS would not have a significant effect on the environment in addition to or different from those impacts previously assessed and disclosed in the FEIS.

The EA describes the project changes and focuses on the evaluation of the amendment, incorporating by reference and tiering from the FEIS. Our review indicates the SCV/SCR proposal provides a reduction in impacts in several key resource areas. In addition, a number of comments from the public, and from State and Federal agencies discussed and supported closed-loop SCV as a preferred alternative.

On August 10, 2006, (71 FR 45899) we provided notice of the availability of the amended application; the intent to prepare an EA; and request for comments.

Summary of the Application Amendment

In the original application, the applicant proposed open rack vaporization (ORV) as their preferred alternative. In this application amendment, the applicant is now proposing a ''closed-loop'' vaporization system known as submerged combustion vaporization with selective catalytic reduction (SCV/SCR). This change would eliminate seawater usage; replace water-cooled generators with low emission, air-cooled gas turbine generators; propose use of sodium hydroxide to neutralize the SCV process water; would move Platform No. 3 from its current position to the Terminal to support vaporization equipment; and make other minor changes to Terminal operations and infrastructure to support SCV/SCR operations. Proposed non-Terminal construction and operations were not changed by the amended application. All other aspects of the original application and environmental analysis contained in the EIS continue to apply, including facilities, pipelines, and salt cavern gas storage.

SCV/SCR vaporization was analyzed in detail in the EIS as an alternative technology (EIS Option 1d). In summary, the key differences in this proposed change from the original ORV proposal (EIS Option 2b) include:

- Elimination of 134 million gallons per day of seawater intake and discharge. Elimination of seawater intakes and outfall structures. The SCV/SCR system uses no seawater.
- Elimination of potential biological impacts from vaporization seawater intake due to impingement or entrainment and reduced discharge temperature plume.
- Elimination of the use of sodium hypochlorite chlorination requirements.
- Discharge of 345,000 gallons per day (at peak 1.6 bcfd vaporization) process water produced through SCV/SCR operation. Ph would be managed between 6 and 9 through injection of 20% by weight caustic soda solution (sodium hydroxide) into the stream. The neutralization reaction produces sodium carbonate and water. This would also require the addition of a 50,000 gallon storage tank.
- Installation of eight SCV/SCR units (EIS Option 1d) as replacements for the six ORV units previously proposed (EIS Option 2b).
- Relocation and remodeling the existing MPEH Platform No. 3 to a position north of Bridge 11 between Platforms BS–8 and BS–Y7 to accommodate three of the eight SCV/SCR vaporizers and three gas turbine generators relocated from Platform No. 1. Existing well conductors and jacket main piles would be removed and the jacket installed on the new site. Structural and system modifications to the deck of existing Platform BS–8 and existing Bridge No. 11 would also be required.
- Injection of 240 gallons per day of 19.5% (by weight) aqueous ammonia solution into the gas stream of the SCR. This would require installation of a 7200 gallon tank.
- Operational air emissions of the SCV/SCR amendment are reduced from the original proposal. Total emissions attributed to construction over 5 years would be approximately 7% higher than the original proposal due to the need to move one platform.
- Direct burning of 1–1.5% of natural gas for LNG vaporization—removing this resource from the nation's energy supply.

Federal Energy Regulatory Commission Certificate of Public Convenience and Necessity

The onshore portion of this project shoreward of the mean high water line falls under the jurisdiction of the Federal Energy Regulatory Commission (FERC). Freeport-McMoRan has received FERC authorization to construct and operate the Coden pipeline conditioned on receiving the license for the DWP from MARAD (FERC Order Issuing Certificate issued May 18, 2006, FERC Docket Nos. CP04–68 and CP04–69). This is the 5.1 mile Bayou La Batre alternative in the FEIS.

Department of Army Permits

On July 22, 2005, the New Orleans District, Army Corps of Engineers issued a joint public notice advising all interested parties of the proposed activity for which Department of the Army Section 404 and Section 10 permits are being sought, and solicited comments and information necessary to evaluate the probable impact on the public interest. This comment period is now closed. As this amendment falls under the environmental review of the DWPA, and not Section 10 of the Rivers and Harbors Act and does not change the Section 404 and Section 10 reviews, an additional comment period is not required by the Army Corps of Engineers.

Dated: September 21, 2006.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–15756 Filed 9–25–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34930]

Brandon Railroad LLC—Acquisition Exemption—Brandon Corp.

Brandon Railroad, LLC (BRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 for the acquisition of approximately 17.3 miles of rail line from the Brandon Corporation (Brandon) in the former Omaha-South Omaha switching district in Omaha, NE. Prior to 1978, the lines were operated by the South Omaha Terminal Railroad Company and have no mileposts associated with them. The lines were expected to be conveyed by Brandon to BRR on or shortly after September 8, 2006.

BRR certifies that its projected annual revenues as a result of the transaction

will not result in BRR becoming a Class II or Class I rail carrier, and will not exceed $5 million.

The exemption became effective on September 8, 2006 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and ten copies of all pleadings, referring to STB Finance Docket No. 34930, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: September 19, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–15728 Filed 9–25–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

The No FEAR Act Notice

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Surface Transportation Board (Board) gives notice of the ''Notification and Federal Employee Antidiscrimination Act of 2002,'' the No FEAR Act, to former and current STB employees and to applicants for STB employment.

FOR FURTHER INFORMATION CONTACT: Vernon A. Williams, Secretary to the Board (202) 565–1718.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires agencies, including the Board to provide this notice to Board employees, former Board employees and applicants for Board employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 631, 633a and 791, and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint with your agency (see contact information below). *See, e.g.* 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (*see* contact information below). In the alternative (or in some cases in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OCC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site: *http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination and whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws or, if applicable, in administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OCS has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within the Board (*e.g.*, EEO or human resources office). Additional information regarding Federal antidiscrimination, whistleblower

protection and retaliation laws can be found at the EEOC Web site: *http://www.eeoc.gov* and the OSC Web site: *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Contact Information

Employees and former employees of the Surface Transportation Board, and applicants for employment with Board, who wish to consult with an EEO counselor should contact: Lee Kramer Associates, 919 18th Street, NW., 10th Floor, Washington, DC 20006, telephone: 202–667–3137, fax: 202–667–0089, e-mail: *LKramer@radix.net.*

Dated: September 21, 2006.

Vernon A. Williams,

Secretary.

[FR Doc. E6–15727 Filed 9–25–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8082

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 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

DATES: Written comments should be received on or before November 27, 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, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

OMB Number: 1545–0790.

Form Number: 8082.

Abstract: A partner, S corporation shareholder, or the holder of a residual interest in a real estate mortgage investment conduit (REMIC) generally must report items consistent with the way they were reported by the partnership or S corporation on Schedule K–1 or by the REMIC on Schedule Q. Also, an estate or domestic trust beneficiary, or a foreign trust owner or beneficiary, is subject to the consistency reporting requirements for returns filed after August 5, 1997. Form 8082 is used to notify the IRS of any inconsistency between the tax treatment of items reported by the partner, shareholder, etc., and the way the pass-through entity treated and reported the same item on its tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 7,067.

Estimated Time per Respondent: 7 hr., 13 min.

Estimated Total Annual Burden Hours: 51,024.

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: September 12, 2006.

Larnice Mack,

IRS Reports Clearance Officer.

[FR Doc. E6–15696 Filed 9–25–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 17, 2006 from 11:30 a.m. e.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, October 17, 2006 at 11:30 a.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be

reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: September 15, 2006.

Venita H. Gardner,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–15697 Filed 9–25–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 18, 2006, at 2:30 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, October 18, 2006 at 2:30 p.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: September 15, 2006.

Venita H. Gardner,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–15698 Filed 9–25–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 186

Tuesday, September 26, 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

Bureau of Land Management

43 CFR Part 2560

[WO–350–1410–00–24 1A]

RIN 1004–AD60

Alaska Native Veteran Allotments

Correction

In rule document 06–7661 beginning on page 54199 in the issue of Thursday, September 14, 2006, make the following correction:

On page 54200, in the first column, under the **DATES** heading, in the second line, ''October 16, 2003.'' should read ''October 16, 2006.''.

[FR Doc. C6–7661 Filed 9–25–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed Water Service Contract, El Dorado County Water Agency, El Dorado County, CA

Correction

In notice document 06–7705 beginning on page 54519 in the issue of Friday, September 15, 2006, make the following correction:

On page 54519, in the second column, under **FOR FURTHER INFORMATION CONTACT**, in the fifth line, ''(16)989–7279'' should read ''(916)989–7279''.

[FR Doc. C6–7705 Filed 9–25–06; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 229

[Release Nos. 33–8732A; 34–54302A; IC–27444A; File No. S7–03–06]

RIN 3235–AI80

Executive Compensation and Related Person Disclosure

Correction

In rule document 06–6968 beginning on page 53158 in the issue of Friday, September 8, 2006, make the following correction:

§ 229.402 [Corrected]

On page 53249, in § 229.402(i)(1), in the table, in the third column heading, in the third line, ''ast'' should read ''last''.

[FR Doc. C6–6968 Filed 9–25–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9284]

RIN 1545–BC72

Collection After Assessment

Correction

In rule document E6–14610 beginning on page 52444 in the issue of Wednesday, September 6, 2006, make the following correction:

On page 52444 in the second column under the **DATES** heading, after *Effective Date:* the text should read as follows: ''These regulations are effective September 6, 2006.''.

[FR Doc. Z6–14610 Filed 9–25–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 26, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Northern Mexican Gartersnake (Thamnophis eques megalops) as Threatened or Endangered With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Northern Mexican Gartersnake (Thamnophis eques megalops) as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the northern Mexican gartersnake (*Thamnophis eques megalops*) as threatened or endangered with critical habitat under the Endangered Species Act of 1973, as amended (Act). The petitioners provided three listing scenarios for consideration by the Service: (1) Listing the United States population as a Distinct Population Segment (DPS); (2) listing *Thamnophis eques megalops* throughout its range in the United States and Mexico based on its rangewide status; or (3) listing *Thamnophis eques megalops* throughout its range in the United States and Mexico based on its status in the United States. After thorough analysis and review of all available scientific and commercial information, we find that listing of the subspecies, under any of the three scenarios, is not warranted. Of the three listing scenarios specified above, we found scenario two provided the most rigorous evaluation of the status of the northern Mexican gartersnake and herein provide detailed discussion of our conclusions in that context. We also provide additional discussion of our evaluation of scenarios (1) listing the United States population as a DPS and (3) listing *Thamnophis eques megalops* throughout its range in the United States and Mexico based on its status in the United States.

DATES: The finding announced in this document was made on September 26, 2006.

ADDRESSES: The complete supporting file for this finding is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES**) 602–242–0210.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but that the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Each subsequent 12-month finding will be published in the **Federal Register**.

On December 19, 2003, we received a petition dated December 15, 2003, requesting that we list the northern Mexican gartersnake as threatened or endangered, and that we designate critical habitat concurrently with the listing. The petition, submitted by the Center for Biological Diversity, was clearly identified as a petition for a listing rule and contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and actual and potential causes of decline. We acknowledged the receipt of the petition in a letter to Mr. Noah Greenwald, dated March 1, 2004. In that letter, we also advised the petitioners that, due to funding constraints in fiscal year (FY) 2004, we would not be able to begin processing the petition at that time.

On May 17, 2005, the petitioners filed a complaint for declaratory and injunctive relief, challenging our failure to issue a 90-day finding in response to the petition as required by 16 U.S.C. 1533(b)(3)(A) and (B). In a stipulated settlement agreement, we agreed to submit a 90-day finding to the **Federal Register** by December 16, 2005, and if positive, submit a 12-month finding to the **Federal Register** by September 15, 2006 [*Center for Biological Diversity* v. *Norton*, CV–05–341–TUC–CKJ (D. Az)]. The settlement agreement was signed and adopted by the District Court of Arizona on August 2, 2005.

On December 13, 2005, we made our 90-day finding that the petition presented substantial scientific information indicating that listing the northern Mexican gartersnake (*Thamnophis eques megalops*) may be warranted, but we did not discuss the applicability of any of the three listing scenarios that were provided in the petition. The finding and our initiation of a status review was published in the **Federal Register** on January 4, 2006 (71 FR 315). We are required, under the court-approved stipulated settlement agreement, to submit to the **Federal Register** our 12-month finding pursuant to the Act [16 U.S.C. 1533(b)(3)(B)] on or before September 15, 2006. This notice constitutes our 12-month finding for the petition to list the northern Mexican gartersnake as threatened or endangered.

Previous Federal Actions

The Mexican gartersnake (*Thamnophis eques*) (which included the subspecies) was placed on the list of candidate species as a Category 2 species in 1985 (50 FR 37958). Category 2 species were those for which existing information indicated that listing was possibly appropriate, but for which substantial supporting biological data to prepare a proposed rule were lacking. In the 1996 Candidate Notice of Review (February 28, 1996; 61 FR 7596), the use of Category 2 candidates was discontinued, and the northern Mexican gartersnake was no longer recognized as a candidate. In addition, on January 4, 2006, we published a 90-day finding on a petition to list the northern Mexican gartersnake (71 FR 315), as discussed above.

Biology

Species Description. The northern Mexican gartersnake may occur with other native gartersnake species and can be difficult for people without herpetological expertise to identify. With a maximum known length of 44 inches (in) (112 centimeters (cm)), it ranges in background color from olive to olive-brown to olive-gray with three stripes that run the length of the body. The middle dorsal stripe is yellow and darkens toward the tail. The pale yellow to light-tan lateral stripes distinguish the Mexican gartersnake from other sympatric (co-occurring) gartersnake species because a portion of the lateral

stripe is found on the fourth scale row, while it is confined to lower scale rows for other species. Paired black spots extend along the olive dorsolateral fields and the olive-gray ventrolateral fields. A conspicuous, light-colored crescent extends behind the corners of the mouth. The two dark brown to black blotches that occur behind the head of several gartersnake species may be diffuse or absent in the Mexican gartersnake. The coloration of the venter is bluish-gray or greenish-grey. The dorsolateral scalation is keeled, the anal plate is single, and there are eight or nine upper labial scales (Rosen and Schwalbe 1988, p. 4; Rossman et al. 1996, pp. 171–172).

Taxonomy. The northern Mexican gartersnake is a member of the family Colubridae and subfamily Natricinae (harmless live-bearing snakes) (Lawson et al. 2005, p. 596). The taxonomy of the genus *Thamnophis* has a complex history partly because many of the species are similar in appearance and scutelation (arrangement of scales), but also because many of the early museum specimens were in such poor and faded condition that it was difficult to study them (Conant 2003, p. 6). There are approximately 30 species that have been described in the gartersnake genus *Thamnophis* (Rossman et al. 1996, p. xvii–xviii). De Queiroz et al. (2002, p. 323) identified two large overlapping clades (related taxonomic groups) of gartersnakes that they called the ''Mexican'' and ''widespread'' clades which were supported by allozyme and mitochondrial DNA genetic analyses. *Thamnophis eques* is a member of the ''widespread'' clade and is most closely related taxonomically to, although genetically and phenotypically distinct from, the checkered gartersnake (*Thamnophis marcianus*) (De Queiroz and Lawson 1994, p. 217).

Rossman et al. (1996, p. 175) noted that the current specific name *eques* was not applied at the time of the original description of the holotype because the specimen was mistakenly identified as a black-necked gartersnake (*Thamnophis cyrtopsis*). In recent history and prior to 2003, *Thamnophis eques* was considered to have three subspecies, *T. e. eques*, *T. e. megalops*, and *T. e. virgatenuis* (Rossman et al. 1996, p. 175). *T. eques* displays considerable phenotypic variability (variation in its physical appearance) across its distribution, and all subspecific descriptions under *T. eques* have been based on morphometrics or morphological characters. The subspecies *T. e. eques* and *T. e. megalops* are distinguished by average differences in sub-caudal scale counts, while *T. e. virgatenuis* is distinguished from *T. e. megalops* based on having a darker background color and a narrower vertebral stripe (Rossman et al. 1996, p. 175). Rossman et al. (1996, p. 175) also noted that the discontinuous distributions of high-elevation and low-elevation *T. e. virgatenuis* and *T. e. megalops*, respectively, are ''zoogeographically peculiar and unique among gartersnakes.''

Rossman et al. (1996, p. 172) describe the distribution of *T. e. eques* as occurring from southern Nayarit eastward along the Transverse Volcanic Axis to west-central Veracruz, and identified an additional disjunct population in central Oaxaca. *T. e. virgatenuis* is distributed in three isolated, high-elevation populations in southwestern Durango and in west-central and northwestern Chihuahua (Rossman et al. 1996, p. 172).

In 2003, an additional seven new subspecies were identified under *T. eques:* (1) *T. e. cuitzeoensis*; (2) *T. e. patzcuaroensis*; (3) *T. e. inspiratus*; (4) *T. e. obscurus*; (5) *T. e. diluvialis*; (6) *T. e. carmenensis*; and (7) *T. e. scotti* (Conant 2003, p. 3). These seven new subspecies were described based on morphological differences in coloration and pattern; have high endemism (degree of restriction to a particular area) with highly restricted distributions; and occur in isolated wetland habitats within the mountainous Transvolcanic Belt region of southern Mexico, which contains the highest elevations in the country (Conant 2003, pp. 7–8). We are not aware of any challenges within the scientific literature of the validity of current taxonomy of any of the 10 subspecies of *T. eques*.

The most widely distributed of the 10 subspecies under *Thamnophis eques* is the northern Mexican gartersnake (*Thamnophis eques megalops*), which is the only subspecies that occurs in the United States and the entity we address in this finding. In Mexico, *T. e. megalops* historically occurred throughout the Sierra Madre Occidental south to Guanajuato, and east across the Mexican Plateau to Hidalgo, which comprised approximately 85 percent of the total rangewide distribution of the species (Rossman et al. 1996, p. 173). Robert Kennicott first described the northern Mexican gartersnake in 1860, as *Eutenia megalops* from the type locality of Tucson, Arizona (Rosen and Schwalbe 1988, p. 2). In 1951, Dr. Hobart Smith renamed the subspecies with its current scientific name (Rosen and Schwalbe 1988, p. 3). A summary of this species' lengthy taxonomic history can be found in Rosen and Schwalbe (1988, pp. 2–3). Several common names have been applied to the northern Mexican gartersnake in the United States over the years, such as the Arizona ribbon snake, the Emory's gartersnake, and the Arizona gartersnake (Rosen and Schwalbe 1988, p. 2).

In summary, while the taxonomic history of *Thamnophis eques* is robust, we found no indication in the significant body of taxonomic literature we reviewed that its current taxonomy is in doubt or in any way invalid (Rosen and Schwalbe 1988, pp. 2–3; De Queiroz and Lawson 1994, pp. 215–217; Liner 1994, p. 107; Rossman et al. 1996, pp. 171, 175; Conant 2003, p. 6; Crother et al. 2000, p. 72; 2003, p. 202; De Queiroz et al. 2002, p. 327).

Habitat. Throughout its rangewide distribution, the northern Mexican gartersnake occurs at elevations from 130 to 8,497 feet (ft) (40 to 2,590 meters (m)) (Rossman et al. 1996, p. 172). The northern Mexican gartersnake is considered a riparian obligate (restricted to riparian areas when not engaged in dispersal behavior) and occurs chiefly in the following general habitat types: (1) Source-area wetlands [e.g., cienegas (mid-elevation wetlands with highly organic, reducing (basic, or alkaline) soils), stock tanks (small earthen impoundment), etc.]; (2) large river riparian woodlands and forests; and (3) streamside gallery forests (as defined by well-developed broadleaf deciduous riparian forests with limited, if any, herbaceous ground cover or dense grass) (Hendrickson and Minckley 1984, p. 131; Rosen and Schwalbe 1988, pp. 14–16; Arizona Game and Fish Department 2001). Vegetation characteristics vary based on the type of habitat. For example, in source-area wetlands, dense vegetation consists of knot grass (*Paspalum distichum*), spikerush (*Eleocharis*), bulrush (*Scirpus*), cattail (*Typha*), deergrass (*Muhlenbergia*), sacaton (*Sporobolus*), Fremont cottonwood (*Populus fremontii*), Goodding's willow (*Salix gooddingii*), and velvet mesquite (*Prosopis velutina*) (Rosen and Schwalbe 1988, pp. 14–16).

In riparian woodlands consisting of cottonwood and willow or gallery forests of broadleaf and deciduous species along larger rivers, the northern Mexican gartersnake may be observed in mixed grasses along the bank or in the shallows (Rossman et al. 1996, p. 176; Rosen and Schwalbe 1988, p. 16). Within and adjacent to the Sierra Madre Occidental in Mexico, it occurs in montane woodland, Chihuahuan desertscrub, mesquite-grassland, and Cordillera Volcánica montane woodland (McCranie and Wilson 1987, pp. 14–17).

In small streamside riparian habitat, this snake is often associated with Arizona sycamore (*Platanus wrightii*), sugar leaf maple (*Acer grandidentatum*), velvet ash (*Fraxinus velutina*), Arizona cypress (*Cupressus arizonica*), Arizona walnut (*Juglans major*), Arizona alder (*Alnus oblongifolia*), alligator juniper (*Juniperus deppeana*), Rocky Mountain juniper (*J. scopulorum*), and a number of oak species (*Quercus* spp.) (McCranie and Wilson 1987, pp. 11–12; Cirett-Galan 1996, p. 156).

Behavior, Prey Base, and Reproduction. The northern Mexican gartersnake is surface active at ambient temperatures ranging from 71 degrees Fahrenheit (°F) to 91 °F [22 degrees Celsius (°C) to 33 °C] and forages along the banks of waterbodies. The northern Mexican gartersnake is an active predator and is believed to heavily depend upon a native prey base (Rosen and Schwalbe 1988, pp. 18, 20). Generally, its diet consists predominantly of amphibians and fishes, such as adult and larval native leopard frogs [e.g., lowland leopard frog (*Rana yavapaiensis*) and Chiricahua leopard frog (*Rana chiricahuensis*)], as well as juvenile and adult native fish species [e.g., Gila topminnow (*Poeciliopsis occidentalis occidentalis*), desert pupfish (*Cyprinodon macularius*), Gila chub (*Gila intermedia*), and roundtail chub (*Gila robusta*)] (Rosen and Schwalbe 1988, p. 18). Auxiliary prey items may also include young Woodhouse's toads (*Bufo woodhousei*), treefrogs (Family Hylidae), earthworms, deermice (*Peromyscus maniculatus*), lizards of the genera *Aspidoscelis* and *Sceloporus*, larval tiger salamanders (*Ambystoma tigrinum*), and leeches (Rosen and Schwalbe 1988, p. 20; Holm and Lowe 1995, pp. 30–31; Degenhardt et al. 1996, p. 318; Rossman et al. 1996, p. 176; Manjarrez 1998). To a much lesser extent, this snake's diet may include nonnative species, including juvenile fish, larval and juvenile bullfrogs, and mosquitofish (*Gambusia affinis*) (Holycross et al. 2006, p. 23).

Sexual maturity in northern Mexican gartersnakes occurs at 2 years of age in males and at 2 to 3 years of age in females (Rosen and Schwalbe 1988, pp. 16–17). Northern Mexican gartersnakes are ovoviviparous (eggs develop and hatch within the oviduct of the female). Mating occurs in April and May in their northern distribution followed by the live birth of between 7 and 26 neonates (newly born individuals) (average is 13.6) in July and August (Rosen and Schwalbe 1988, p. 16). Approximately half of the sexually mature females within a population reproduce in any one season (Rosen and Schwalbe 1988, p. 17).

Distribution

Historical Distribution. The United States comprises the northern portion of the northern Mexican gartersnake's distribution. Within the United States, the northern Mexican gartersnake historically occurred predominantly in Arizona with a limited distribution in New Mexico that consisted of scattered locations throughout the Gila and San Francisco headwater drainages in western Hidalgo and Grant counties (Price 1980, p. 39; Fitzgerald 1986, Table 2; Degenhardt et al. 1996, p. 317; Holycross et al. 2006, pp. 1–2). Fitzgerald (1986, Table 2) provided museum records for the following historical localities for northern Mexican gartersnakes in New Mexico: (1) Mule Creek; (2) the Gila River, 5 miles (mi) (8 kilometers (km)) east of Virden; (3) Spring Canyon; (4) the West Fork Gila River at Cliff Dwellings National Monument; (5) the Tularosa River at its confluence with the San Francisco River; (6) the San Francisco River at Tub Spring Canyon; (7) Little Creek at Highway 15; (8) the Middle Box of Gila River at Ira Ridge; (9) Turkey Creek; (10) Negrito Creek; and (11) the Rio Mimbres.

Within Arizona, the historical distribution of the northern Mexican gartersnake ranged from 130 to 6,150 ft (40 to 1,875 m) in elevation and spread variably based on the relative permanency of water and the presence of suitable habitat. In Arizona, the northern Mexican gartersnake historically occurred within several perennial or intermittent drainages and disassociated wetlands that included: (1) The Gila River; (2) the Lower Colorado River from Davis Dam to the International Border; (3) the San Pedro River; (4) the Santa Cruz River downstream from the International Border; (5) the Santa Cruz River headwaters/San Rafael Valley and adjacent montane canyons; (6) the Salt River; (7) the Rio San Bernardino from International Border to headwaters at Astin Spring (San Bernardino National Wildlife Refuge); (8) Agua Fria River; (9) the Verde River; (10) Tanque Verde Creek in Tucson; (11) Rillito Creek in Tucson; (12) Agua Caliente Spring in Tucson; (13) the downstream portion of the Black River from the Paddy Creek confluence; (14) the downstream portion of the White River from the confluence of the East and North forks; (15) Tonto Creek from the mouth of Houston Creek downstream to Roosevelt Lake; (16) Cienega Creek from the headwaters to the ''Narrows'' just downstream of Apache Canyon; (17) Pantano Wash (Cienega Creek) from Pantano downstream to Vail; (18) Potrero Canyon/Springs; (19) Audubon Research Ranch and vicinity near Elgin; (20) Upper Scotia Canyon in the Huachuca Mountains; (21) Arivaca Creek; (22) Arivaca Cienega; (23) Sonoita Creek; (24) Babocomari River; (25) Babocamari Cienega; (26) Barchas Ranch, Huachuca Mountain bajada; (27) Parker Canyon Lake and tributaries in the Canelo Hills; (28) Big Bonito Creek; (29) Lake O'Woods, Lakeside area; (30) Oak Creek from Midgley Bridge downstream to the confluence with the Verde River; and (31) Spring Creek above the confluence with Oak Creek (Woodin 1950, p. 40; Nickerson and Mays 1970, p. 503; Bradley 1986, p. 67; Rosen and Schwalbe 1988, Appendix I; 1995, p. 452; 1997, pp. 16–17; Holm and Lowe 1995, pp. 27–35; Sredl et al. 1995b, p. 2; 2000, p. 9; Rosen et al. 2001, Appendix I; Holycross et al. 2006, pp. 1–2, 15–51; Brennan and Holycross 2006, p. 123; Radke 2006; Rosen 2006; Holycross 2006).

One record for the northern Mexican gartersnake exists for the State of Nevada, opposite Fort Mohave, in Clark County along the shore of the Colorado River (De Queiroz and Smith 1996, p. 155); however, any populations of northern Mexican gartersnakes that may have historically occurred in Nevada pertained directly to the Colorado River and are likely extirpated.

Within Mexico, northern Mexican gartersnakes historically occurred within the Sierra Madre Occidental and the Mexican Plateau in the Mexican states of Sonora, Chihuahua, Durango, Coahila, Zacatecas, Guanajuato, Nayarit, Hidalgo, Jalisco, San Luis Potosí, Aguascalientes, Tlaxacala, Puebla, México, Veracruz, and Querétaro, which comprises approximately 70 to 80 percent of its historical rangewide distribution (Conant 1963, p. 473; 1974, pp. 469–470; Van Devender and Lowe 1977, p. 47; McCranie and Wilson 1987, p. 15; Rossman et al. 1996, p. 173; Lemos-Espinal et al. 2004, p. 83).

Status in the United States. Holycross et al. (2006, p. 12) included the northern Mexican gartersnake as a target species at 33 sites surveyed within drainages along the Mogollon Rim. A total of 874 person-search hours and 63,495 trap-hours were devoted to that effort, which resulted in the capture of 23 snakes total in 3 (9 percent) of the sites visited. This equates to approximately 0.03 snakes observed per person-search hour and 0.0004 snakes captured per trap-hour over the entire effort. For comparison, a population of northern Mexican gartersnakes at Page Springs, Arizona,

that we consider stable yielded 0.22 snakes observed per person-search hour and 0.004 snakes captured per trap-hour (an order of magnitude higher) (Holycross et al. 2006, p. 23). Survey sites were selected based on the existence of historical records for the species or sites where the species may occur based on habitat suitability within the historical distribution of the species. Holycross et al. (2006, p. 12) calculated the capture rates for the northern Mexican gartersnake as 12,761 trap-hours per snake and 49 person-search hours per snake. Northern Mexican gartersnakes were found at 2 of 11 (18 percent) historical sites and 1 of 22 (4 percent) sites where the species was previously unrecorded (Holycross et al. 2006, p. 12). When compared with extensive survey data in Rosen and Schwalbe (1988, Appendix I), these data demonstrate dramatic declines in both capture rates and the total number of populations of the species in areas where multiple surveys have been completed over time. However, these data may be affected by differences in survey efforts and drought.

In 2000, Rosen et al. (2001, Appendix I) resurveyed many sites in southeastern Arizona that were historically known to support northern Mexican gartersnake populations during the early to mid-1980s, and also provided additional survey data collected from 1993–2001. Rosen et al. (2001, pp. 21–22) reported their results in terms of increasing, stabilized, or decreasing populations of northern Mexican gartersnakes.

Three sites (San Bernardino National Wildlife Refuge, Finley Tank at the Audubon Research Ranch near Elgin, and Scotia Canyon in the Huachuca Mountains) were intensively surveyed and yielded mixed results. The northern Mexican gartersnake population on the San Bernardino National Wildlife Refuge experienced ''major, demonstrable declines'' to near or at extirpation over the span of a decade. That population is now considered extirpated (Radke 2006). The status of the population at Finley Tank is uncertain. Scotia Canyon was the last area intensively resurveyed by Rosen et al. (2001, pp. 15–16). In comparing this information with survey data from Holm and Lowe (1995, pp. 27–35), northern Mexican gartersnake populations in this area suggest a possible decline from the early 1980s, as evidenced by low capture rates in 1993 and even lower capture rates in 2000.

The remaining 13 sites in southeastern Arizona resurveyed by Rosen et al. (2001, pp. 21–22) also yielded mixed results. Population trend information is difficult to ascertain given the variability of survey sample design and effort used by Rosen et al. (2001). However, the survey results suggested population increases at one site (lower Cienega Creek), possible stability at two sites (lower San Rafael Valley, Arivaca), and negative trends at many other sites [Empire-Cienega Creek, Babocomari, Bog Hole, O'Donnell Creek, Turkey Creek (Canelo), Post Canyon, Lewis Springs (San Pedro River), San Pedro River near Highway 90, Barchas Ranch Pond (Huachuca Mountain bajada), Heron Spring, Sharp Spring, and Elgin-Sonoita windmill well site (San Rafael Valley)] (Rosen et al. 2001, pp. 21–22). While this survey effort could not confirm any specific extirpations of northern Mexican gartersnake populations on a local scale in southeastern Arizona, most sites yielded no snakes during resurvey (Rosen et al. 2001, Appendix I).

Our analysis of the best available data on the status of the northern Mexican gartersnake distribution in the United States indicates that its distribution has been significantly reduced in the United States, and it is now considered extirpated from New Mexico (Nickerson and Mays 1970, p. 503; Rosen and Schwalbe 1988, pp. 25–26, Appendix I; Holm and Lowe 1995, pp. 27–35; Sredl *et al.* 1995b, pp. 2, 9–10; 2000, p. 9; Rosen *et al.* 2001, Appendix I; Painter 2005, 2006; Holycross *et al.* 2006, p. 66; Brennan and Holycross 2006, p. 123; Radke 2006; Rosen 2006; Holycross 2006). Fitzgerald (1986, pp. 9–10) visited 33 localities of potential habitat for northern Mexican gartersnakes in New Mexico in the Gila River drainage and was unable to confirm its existence at any of these sites. The New Mexico Department of Game and Fish State Herpetologist, Charles Painter, provided several causes that have synergistically contributed to the decline of northern Mexican gartersnakes in New Mexico, including bullfrog and nonnative fish introductions, modification and destruction of habitat, commercial exploitation, direct human-inflicted harm, and fragmentation of populations. The last known observation of the northern Mexican gartersnake in New Mexico occurred in 1994 on private land (Painter 2000, p. 36; Painter 2005).

Our analysis of the best available information indicates that the northern Mexican gartersnake has likely been extirpated from a large portion of its historical distribution in the United States. We define a population as ''likely extirpated'' when there have been no northern Mexican gartersnakes reported for a decade or longer at a site within the historical distribution of the species, despite at least minimal survey efforts, and natural recovery at the site is not expected due to the presence of known threats. The perennial or intermittent stream reaches and disassociated wetlands where the northern Mexican gartersnake has likely been extirpated include: (1) The Gila River; (2) the Lower Colorado River from Davis Dam to the International Border; (3) the San Pedro River; (4) the Santa Cruz River downstream from the International Border at Nogales; (5) the Salt River; (6) the Rio San Bernardino from International Border to headwaters at Astin Spring (San Bernardino National Wildlife Refuge); (7) the Agua Fria River; (8) the Verde River upstream of Clarkdale; (9) the Verde River from the confluence with Fossil Creek downstream to its confluence with the Salt River; (10) Tanque Verde Creek in Tucson; (11) Rillito Creek in Tucson; (12) Agua Caliente Spring in Tucson; (13) Potrero Canyon/Springs; (14) Babocamari Cienega; (15) Barchas Ranch, Huachuca Mountain bajada; (16) Parker Canyon Lake and tributaries in the Canelo Hills; and (17) Oak Creek at Midgley Bridge (Rosen and Schwalbe 1988, pp. 25–26, Appendix I; 1997, pp. 16–17; Rosen *et al.* 2001, Appendix I; Brennan and Holycross 2006, p. 123; Holycross 2006; Holycross *et al.* 2006, pp. 15–51, 66; Radke 2006; Rosen 2006). Information pertaining to the cause or causes of extirpation of these sites is summarized in Table 1 below.

Conversely, our review of the best available information indicates the northern Mexican gartersnake is likely extant in a fraction of its historical range in Arizona. We define populations as ''likely extant'' when the species is expected to reliably occur in appropriate habitat as supported by recent museum records and/or recent (*i.e.*, less than 10 years) reliable observations. The perennial or intermittent stream reaches and disassociated wetlands where we conclude northern Mexican gartersnakes remain extant include: (1) The Santa Cruz River/Lower San Rafael Valley (headwaters downstream to the International Border); (2) the Verde River from the confluence with Fossil Creek upstream to Clarkdale; (3) Oak Creek at Page Springs; (4) Tonto Creek from the mouth of Houston Creek downstream to Roosevelt Lake; (5) Cienega Creek from the headwaters downstream to the ''Narrows'' just downstream of Apache Canyon; (6) Pantano Wash (Cienega Creek) from Pantano downstream to Vail; (7) Upper Scotia Canyon in the Huachuca Mountains; and (8) the Audubon Research Ranch and vicinity near Elgin

(Rosen *et al.* 2001, Appendix I; Caldwell 2005; Brennan and Holycross 2006, p. 123; Holycross 2006; Holycross *et al.* 2006, pp. 15–51, 66; Rosen 2006).

The current status of the northern Mexican gartersnake is unknown in several areas in Arizona where the species is known to have historically occurred. We base this determination on mostly historical museum records for locations where survey access is restricted, survey data are unavailable or insufficient, and/or current threats could preclude occupancy. The perennial or intermittent stream reaches and disassociated wetlands where the status of the northern Mexican gartersnake remains uncertain include: (1) The downstream portion of the Black River drainage from the Paddy Creek confluence; (2) the downstream portion of the White River drainage from the confluence of the East and North forks; (3) Big Bonito Creek; (4) Lake O'Woods near Lakeside; (5) Spring Creek above the confluence with Oak Creek; (6) Bog Hole Wildlife Area; (7) Upper 13 Tank, Patagonia Mountain bajada; (8) Babocamari River; and (9) Arivaca Cienega (Rosen and Schwalbe 1988, Appendix I; Rosen *et al.* 2001, Appendix I; Brennan and Holycross 2006, p. 123; Holycross 2006; Holycross *et al.* 2006, pp. 15–51; Rosen 2006).

In summary, after consultation with species' experts and land managers, and based upon our analysis of the best available scientific and commercial data, we conclude that the northern Mexican gartersnake has been extirpated from 85 to 90 percent of its historical distribution in the United States.

Status in Mexico. Throughout this finding, and due to the significantly limited amount of available literature that addresses the status of and threats to extant populations of the northern Mexican gartersnake in Mexico, we rely in part on (1) information that addresses the status of and threats to both riparian and aquatic biological communities within the historical distribution of the northern Mexican gartersnake in Mexico; and (2) information that addresses the status of and threats to native freshwater fish within the historical distribution of the northern Mexican gartersnake in Mexico, which we use as ecological surrogates due to their similar habitat requirements and their role as important prey species utilized by the northern Mexican gartersnake. Observations on the status of riparian and aquatic communities in Mexico are available but limited in comparison to our knowledge of these communities in the United States. The current distribution of the northern Mexican gartersnake in Mexico is also not well understood, although its status is believed to be in decline in many areas due to historical and continuing threats to its habitat and prey base, as discussed below. A large number of springs have dried up in several Mexican states within the distribution of the northern Mexican gartersnake, namely, Chihuahua, Durango, Coahila, and San Luis Potosí (Contreras Balderas and Lozano 1994, p. 381). Contreras Balderas and Lozano (1994, p. 381) also stated that several streams and rivers throughout Mexico and within the distribution of the northern Mexican gartersnake have dried up or become intermittent due to overuse of surface and groundwater supplies. We further acknowledge that northern Mexican gartersnakes were historically distributed in several regions within Mexico that have remained roadless and isolated and, according to the information we were able to obtain regarding the status of the northern Mexican gartersnake in Mexico, few ecological investigations have occurred in these areas due to their remote nature and the logistical difficulties that face research in such areas. However, Mexican biologists Ramirez Bautista and Arizmendi (2004, p. 3) were able to provide general information on the principal threats to northern Mexican gartersnake habitat in Mexico which included the dessication of wetlands, improper livestock grazing, deforestation, wildfires, and urbanization. In addition, nonnative species, such as bullfrogs and sport and bait fish, have been introduced throughout Mexico and continue to disperse naturally, broadening their distributions (Conant 1974, pp. 487–489; Miller *et al.* 2005, pp. 60–61). Given the lack of specific data on the status of the northern Mexican gartersnake in Mexico, we cannot conclude with any degree of certainty its overall status in Mexico.

Northern Mexican Gartersnake Distinct Population Segment

In the petition to list the northern Mexican gartersnake, the petitioners specified several listing options for our consideration, including listing northern Mexican gartersnake in the United States as a DPS. Under the Act, we must consider for listing any species, subspecies, or DPSs of vertebrate species/subspecies, if information is sufficient to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we developed a joint policy with the National Oceanic and Atmospheric Administration (NOAA) Fisheries entitled Policy Regarding the Recognition of Distinct Vertebrate Population (DPS Policy) to clarify our interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' for the purposes of listing, delisting, and reclassifying species under the Act (61 FR 4721; February 7, 1996). Under our DPS policy, we consider three elements in a decision regarding the status of a possible DPS as endangered or threatened under the Act. The elements are: (1) The population segment's discreteness from the remainder of the taxon to which it belongs; (2) the population segment's significance to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, when treated as if it were a species, is the population segment endangered or threatened?). Our policy further recognizes it may be appropriate to assign different classifications (*i.e.*, threatened or endangered) to different DPSs of the same vertebrate taxon (61 FR 4721; February 7, 1996).

Discreteness

The DPS policy's standard for discreteness requires an entity given DPS status under the Act to be adequately defined and described in some way that distinguishes it from other populations of the species. A population segment may be considered discrete if it satisfies either one of the following conditions: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of 4(a)(1)(D) of the Act.

Marked Separation from Other Populations of the Same Taxon as a Consequence of Physical, Physiological, Ecological or Behavioral Factors. We do not have any information to indicate that a marked separation exists between the United States and Mexico that would distinguish populations of northern Mexican gartersnake in the United States from those in Mexico. There is no information to indicate that a marked separation exists as a result of physical, physiological, ecological, or behavioral factors.

There has been no genetic analysis completed for the northern Mexican gartersnake. Thus, we have no information to indicate that genetic differences exist.

Populations Delimited by International Boundaries Within Which Differences in Control of Exploitation, Management of Habitat, Conservation Status, or Regulatory Mechanisms Exist that are Significant. In terms of the conservation status of the northern Mexican gartersnake, despite the significantly limited amount of monitoring and/or survey data for the northern Mexican gartersnake in Mexico, we believe there is a higher probability that the subspecies is fairing better overall in Mexico in terms of having more total populations, because a larger percentage of the overall range of the subspecies (approximately 70 to 80 percent of it historical distribution) occurs in Mexico. However, we have no information to indicate that the populations on either side of the United States-Mexico border have a more stable or better conservation status.

We recognize that differences in management regulatory protection of northern Mexican gartersnake populations may exist between populations within Mexico and those within the United States. These differences primarily pertain to protections afforded to occupied habitat. In Mexico, any activity that intentionally destroys or adversely modifies occupied northern Mexican gartersnake habitat is prohibited [SEDESOL 2000 (LGVS) and 2001 (NOM–059–ECOL–2001)]. Neither the Arizona Game and Fish Department or the New Mexico Department of Game and Fish can offer protections to occupied habitat. Instead, these agencies regulate take in the form of lethal or live collection of individuals which is prohibited in both states. However, any conclusions that may be drawn with reference to differences in management across the United States-Mexico border are largely speculative due to the lack of information available as to the efficacy and protections of these regulations in practice. Because we determine in the following section that populations of the northern Mexican gartersnake in the United States are not significant to the subspecies as a whole, we need not address further the ''discreteness'' test of the DPS policy. For further information on regulatory considerations, please see our discussion under Factor D below.

Significance

Under our DPS policy, a population segment must be significant to the taxon to which it belongs. The evaluation of ''significance'' may address, but is not limited to, (1) evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Ecological Setting. Throughout its rangewide distribution, the northern Mexican gartersnake occurs at elevations from 130 to 8,497 ft (40 to 2,590 m) (Rossman *et al.* 1996, p. 172). The northern Mexican gartersnake is considered a riparian obligate (restricted to riparian areas when not engaged in dispersal behavior) and occurs chiefly in the following general habitat types in both the United States and Mexico: (1) Source—area wetlands [*e.g.*, cienegas (mid-elevation wetlands with highly organic, reducing (basic, or alkaline) soils), stock tanks (small earthen impoundment), etc.]; (2) large river riparian woodlands and forests; and (3) streamside gallery forests (as defined by well-developed broadleaf deciduous riparian forests with limited, if any, herbaceous ground cover or dense grass) (Hendrickson and Minckley 1984, p. 131; Rosen and Schwalbe 1988, pp. 14–16; Arizona Game and Fish Department 2001). Based on this information, we determine that populations of the northern Mexican gartersnake in Arizona do not occupy an ecological setting differing enough from populations that occur in Mexico to be considered unique for the subspecies.

Gap in the Range. The Service can determine that a gap in a taxon's range caused by the potential loss of a population would be significant based on any relevant considerations. One factor which may support such a determination is whether the loss of a geographic area amounts to a substantial reduction of a taxon's range and this reduction is biologically important. The United States comprised the most northern portion of the northern Mexican gartersnake's range and constituted approximately 20–30 percent of its rangewide historical distribution. Because we do not currently know exactly what the status of the northern Mexican gartersnake is in Mexico at this time, we are unable to ascertain what percentage of extant populations occur in the United States as compared to Mexico. However, this is not sufficient evidence to support a determination that loss of the northern Mexican gartersnake in the United States represents a substantial reduction in the subspecies' range based on the geographic area which would be lost. Furthermore, no area that is uniquely biologically significant to the northern Mexican gartersnake is located within the United States as compared to Mexico.

Another factor relevant to determining whether a gap is significant is the biological significance of the number of total individuals of the taxon in the population that may be lost. Although we have no data on the absolute numbers of northern Mexican gartersnakes in the United States or Mexico, the best available science suggests that there are far more individuals in Mexico than in the United States, based on the more extensive range in Mexico and the current low density and number of extant populations in the United States. Therefore, we have no information to indicate that the loss of between 8 and 17 populations of northern Mexican gartersnakes known in the United States is biologically significant to the taxon as a whole.

In conclusion, we have determined that the gap in the range of the northern gartersnake that would be caused by the loss of the United States population would not be significant because: (1) Loss of the United States population would not constitute a substantial and biologically important reduction of the range of the subspecies; (2) the loss of the individuals in the United States would not be biologically significant to the subspecies; and (3) we have not identified any other reason why loss of the United States population would result in a significant gap in the range of the subspecies.

Marked Differences in Genetic Characteristics. Within the distribution of every species there exists a peripheral population, an isolate or subpopulation of a species at the edge of the taxon's range. Long-term geographic isolation and loss of gene flow between populations is the foundation of genetic changes in populations resulting from natural selection or change. Evidence of changes in these populations may include genetic, behavioral, and/or morphological differences from populations in the rest of the species' range. We have no information to indicate that genetic differences exist between populations of the northern Mexican gartersnake at the northern portion of its range in the United States from those in Mexico. Therefore, based on the genetic information currently available, the northern Mexican gartersnake in the United States should not be considered biologically or ecologically significant based simply on

genetic characteristics. Biological and ecological significance under the DPS policy is always considered in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPS's be used ''sparingly'' while encouraging the conservation of genetic diversity.

Whether the Population Represents the Only Surviving Natural Occurrence of the Taxon. As part of a determination of significance, our DPS policy suggests that we consider whether there is evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range. The northern Mexican gartersnake in the United States is not the only surviving natural occurrence of the subspecies. Consequently, this factor is not applicable to our determination regarding significance.

Conclusion

Following a review of the available information, we conclude that the northern Mexican gartersnake in the United States is not significant to the remainder of the subspecies. We made this determination based on the best available information, which does not demonstrate that (1) these populations persist in an ecological setting that is unique for the subspecies; (2) the loss of these populations would result in a significant gap in the range of the subspecies; and (3) these populations differ markedly from populations of northern Mexican gartersnake in Mexico in their genetic characteristics, or in other considerations that might demonstrate significance. Further, available information does not demonstrate that the life history and behavioral characteristics of the northern Mexican gartersnake in the United States is unique to the subspecies. Therefore, on the basis of the best scientific and commercial information available, we find that proposing to list a DPS for the northern Mexican gartersnake in the United States is not warranted; these populations do not meet the definition of a distinct population segment. We are not addressing the third prong of the DPS policy (*i.e.* the population segment's conservation status in relation to the Act's standards for listing) since we find that the United States portion of the range of the northern Mexican gartersnake does not qualify as a listable entity pursuant to our DPS policy, as discussed above.

Significant Portion of the Range

In the petition to list the northern Mexican gartersnake, the petitioners also requested that we consider listing the species throughout its range based on its status in the United States. As required by the Act, we have considered in this finding whether the northern Mexican gartersnake is in danger of extinction ''in all or a significant portion of its range'' as defined in the terms ''threatened species'' and ''endangered species'' pursuant to section 3 of the Act. In order to determine if Arizona constitutes a significant portion of the range of the subspecies, we evaluate whether threats in this geographic area imperil the viability of the subspecies as a whole due to any biological importance of this portion of the subspecies range. Based upon the best scientific information available, we find that the extant populations in the United States are not considered a stronghold for the subspecies, they do not represent core or important breeding habitat, we are not aware of any unique genetic or behavioral characteristics, and we are not aware that threats in this portion of its range threaten the whole subspecies with extinction. Therefore, we determine that the extant populations of the northern Mexican gartersnake in Arizona do not constitute a significant portion of the range of the subspecies because there is no particular characteristic to any segment within this portion of its range that would render it biologically more significant to the taxon as a whole than other portions of its current range.

We note that the court in Defenders of Wildlife v. Norton, 258 F.3d 1136 (9th Cir. 2001), appeared to suggest that a species could be in danger of extinction in a significant portion of its range if there is a ''major geographical area'' in which the species is no longer viable but once was. Although we do not necessarily agree with the court's suggestion, we have determined that the historical range of the subspecies within the United States does not constitute a ''major geographical area'' in this context. The portion of the northern Mexican gartersnake's historical range in United States (20 to 30 percent) constitutes a small percentage of the total range of the subspecies.

The petitioners also requested that we consider listing the species throughout its range based on its rangewide status. Below we respond to the petitioners request through our analysis of the five listing factors for the United States and Mexico.

Summary of Factors Affecting the Northern Mexican Gartersnake

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, information regarding the status of, and threats to, the northern Mexican gartersnake in relation to the five factors provided in section 4(a)(1) of the Act is discussed below and summarized in Table 1 below.

TABLE 1.—SUMMARY OF NORTHERN MEXICAN GARTERSNAKE STATUS AND THREATS BY POPULATION IN UNITED STATES

[All locations in Arizona unless otherwise specified.]

Population locality	Current status	Regional historical/current threats
Gila River	Extirpated	Considered extirpated by nonnatives, improper grazing, recreation, development, groundwater pumping, diversions, channelization, dewatering, road construction/use, wildfire, intentional harm, dams, prey base reductions.
Gila and San Francisco Headwaters in New Mexico.	Extirpated	Considered extirpated by nonnatives, improper grazing, recreation, prey base reductions.
Lower Colorado River from Davis Dam to International Border.	Extirpated	Considered extirpated by nonnatives, prey base reductions, recreation, development, road construction/use, borderland security/undocumented immigration, intentional harm, dams.

TABLE 1.—SUMMARY OF NORTHERN MEXICAN GARTERSNAKE STATUS AND THREATS BY POPULATION IN UNITED STATES—Continued

[All locations in Arizona unless otherwise specified.]

Population locality	Current status	Regional historical/current threats
San Pedro River in United States	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, groundwater pumping, road construction/use, borderland security/undocumented immigrants, intentional harm.
Santa Cruz River downstream of the Nogales area of the International Border.	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, development, groundwater pumping, diversions, channelization, road construction/use, borderland security/undocumented immigrants, intentional harm, contaminants.
Salt River	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, recreation, development, diversions, wildfire, channelization, road construction/use, intentional harm, dams.
Rio San Bernardino from International Border to headwaters at Astin Spring (San Bernardino National Wildlife Refuge).	Extirpated	Considered extirpated by nonnatives, prey base reductions, borderland security/undocumented immigration, intentional harm, competition with Marcy's checkered gartersnake.
Agua Fria River	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, development, recreation, dams, road construction/use, wildfire, intentional harm.
Verde River upstream of Clarkdale	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, recreation, development, groundwater pumping, diversions, channelization, road construction/use, intentional harm.
Verde River from the confluence with the Salt upstream to Fossil Creek.	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, recreation, groundwater pumping, diversions, channelization, road construction/use, wildfire, development,intentional harm, dams.
Potrero Canyon/Springs	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing.
Tanque Verde Creek in Tucson	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, recreation, development, groundwater pumping, road construction/use, intentional harm.
Rillito Creek in Tucson	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, recreation, development, groundwater pumping, road construction/use, intentional harm.
Agua Caliente Spring in Tucson	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, recreation, development, groundwater pumping, road construction/use, intentional harm.
Babocamari Cienega	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing.
Barchas Ranch, Huachuca Mountain bajada.	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, borderland security/undocumented immigration, intentional harm.
Parker Canyon Lake and tributaries in the Canelo Hills.	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, recreation, road construction/use, borderland security/undocumented immigration, intentional harm, dams.
Oak Creek at Midgley Bridge	Extirpated	Considered extirpated by nonnatives, prey base reductions, improper grazing, recreation, development, intentional harm.
Santa Cruz River/Lower San Rafael Valley (headwaters downstream to International Border).	Extant	Nonnatives, prey base reductions, improper grazing, borderland security/undocumented immigration, intentional harm.
Verde River from the confluence with Fossil Creek upstream to Clarkdale.	Extant	Nonnatives, prey base reductions, improper grazing, recreation, development, groundwater pumping, diversions, channelization, road construction/use, intentional harm, dams.
Oak Creek at Page Springs	Extant	Nonnatives, prey base reductions.
Tonto Creek from mouth of Houston Creek downstream to Roosevelt Lake.	Extant	Nonnatives, prey base reductions, improper grazing, recreation, development, diversions, channelization, road construction/use, wildfire, intentional harm, dams.
Cienega Creek from headwaters downstream to the "Narrows" just downstream of Apache Canyon.	Extant	Nonnatives, prey base reductions, improper grazing.
Pantano Wash (Cienega Creek) from Pantano downstream to Vail.	Extant	Nonnatives, prey base reductions, improper grazing, wildfire.
Upper Scotia Canyon in the Huachuca Mountains.	Extant	Nonnatives, prey base reductions, wildfire.
Audubon Research Ranch and vicinity near Elgin.	Extant	Nonnatives, prey base reductions, improper grazing.
Downstream portion of the Black River drainage from the Paddy Creek confluence.	Unknown	Nonnatives, prey base reductions, improper grazing, recreation, intentional harm.

TABLE 1.—SUMMARY OF NORTHERN MEXICAN GARTERSNAKE STATUS AND THREATS BY POPULATION IN UNITED STATES—Continued

[All locations in Arizona unless otherwise specified.]

Population locality	Current status	Regional historical/current threats
Downstream portion of the White River drainage from the confluence of the East/North.	Unknown	Nonnatives, prey base reductions, improper grazing, recreation, road construction/use, intentional harm.
Big Bonito Creek	Unknown	Nonnatives, prey base reductions, improper grazing.
Lake O' Woods (Lakeside)	Unknown	Nonnatives, prey base reductions, recreation, development, road construction/use, intentional harm.
Spring Creek above confluence with Oak Creek.	Unknown	Nonnatives, prey base reductions, development.
Bog Hole Wildlife Area	Unknown	Nonnatives, prey base reductions.
Upper 13 Tank, Patagonia Mountains bajada.	Unknown	Nonnatives, prey base reductions, improper grazing.
Babocamari River	Unknown	Nonnatives, prey base reductions, improper grazing.
Arivaca Cienega	Unknown	Nonnatives, prey base reductions, improper grazing, borderland security/undocumented immigration, intentional harm.

Note: ''Extirpated'' means that there have been no northern Mexican gartersnakes reported for a decade or longer at a site within the historical distribution of the species, despite survey efforts, and there is no expectation of natural recovery at the site due to the presence of known or strongly suspected causes of extirpation. ''Extant'' means areas where the species is expected to reliably occur in appropriate habitat as supported by museum records and/or recent, reliable observations. ''Unknown'' means areas where the species is known to have occurred based on museum records (mostly historical) but access is restricted, and/or survey data is unavailable or insufficient, or where threats could preclude occupancy. The information used to develop this table can be found in the sources listed below.

Sources: Hyatt undated, p. 71; Nickerson and Mays 1970, pp. 495, 503; Hulse 1973, p. 278; Vitt and Ohmart 1978, p. 44; Hendrickson and Minckley 1984, p. 131, 138–162; Meffe 1985, pp. 179–185; Rosen 1987, p. 5; Ohmart et al. 1988, pp. 143–147, 150; Rosen and Schwalbe 1988, Appendix I; 1995, p. 452; 1996, pp. 1–3; 1997, p. 1; 2002b, pp. 223–227; 2002c, pp. 31, 70; Bestgen and Propst 1989, pp. 409–410; Clarkson and Rorabaugh 1989, pp. 531–538; Marsh and Minckley 1990, p. 265; Medina 1990, pp. 351, 358–359; Sublette et al. 1990, pp. 112, 243, 246, 304, 313, 318; Abarca and Weedman 1993, pp. 2, 6–12; Girmendonk and Young 1993, pp. 45–52; Sullivan and Richardson 1993, pp. 35–42; Stefferud and Stefferud 1994, p. 364; Bahre 1995, pp. 240–252; Hale et al. 1995, pp. 138–140; Holm and Lowe 1995, pp. 5, 27–35, 37–38, 45–46; Rosen et al. 1995, p. 254; 1996b, pp. 8–9; 2001, Appendix I; Sredl et al. 1995a, p. 7; 1995b, p. 9; 1995c, p. 7; 2000, p. 10; Degenhardt et al. 1996, p. 319; Fernandez and Rosen 1996, pp. 6–19, 52–56; Stromberg et al. 1996, pp. 113–114, 123–128; Yuhas 1996; Drost and Nowak 1997, p. 11; Weedman and Young 1997, pp. 1, Appendices B, C; Inman et al. 1998, Appendix B; Rinne et al. 1998, pp. 75–80; Nowak and Spille 2001, pp. 11, 32–33; Esque and Schwalbe 2002, pp. 161–193; Nowak and Santana-Bendix 2002, p. 39; Stromberg and Chew 2002, pp. 198, 210–213; Tellman 2002, p. 43; USFWS 2002a, pp. 40802–40804; 2002b, Appendix H; 2006, pp. 91–105; Voeltz 2002, pp. 40, 45–81; Krueper et al. 2003, pp. 607, 613–614; Bonar et al. 2004, pp. 1–108; Forest Guardians 2004, p. 1; Unmack and Fagan 2004, p. 233; Fagan et al. 2005, pp. 34–41; Olden and Poff 2005, pp. 75, 82–87; Painter 2005; Philips and Thomas 2005; Webb and Leake 2005, pp. 302, 305–310, 318–320; ADWR 2006; American Rivers 2006; Brennan and Holycross 2006, p. 123; Holycross et al. 2006, pp. 15–61; McKinnon 2006a, 2006b, 2006c, 2006d, 2006e; Paradzick et al. 2006, pp. 88–93, 104–110; Segee and Neeley 2006, Executive Summary, pp. 5–7; 10–12, 15–16, 21–23.

In the discussions of Factors A through E below, we describe the known factors that have contributed to the current status of the northern Mexican gartersnake. The majority of this assessment is specific to those factors that have contributed to its status in the United States. The following discussion of these factors that pertain to the status and threats to the northern Mexican gartersnake in Mexico are mainly regional, or statewide, in scope because in many cases we were unable to find specific information documenting that populations of the northern Mexican gartersnake in Mexico are directly affected by these threats. In some instances, we do include discussion on more refined geographic areas of Mexico when supported by the literature. However, many of the threats that affect the northern Mexican gartersnake in the United States are also present in Mexico. Thus, the relationship between the threats to the habitat and species in Mexico may be similar to what we have documented in the United States.

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

In the following discussion, we elaborate on the physical threats to northern Mexican gartersnake habitats (i.e., riparian and aquatic communities) that have occurred and continue to occur within the distribution of the species in the United States and Mexico. Various threats that have affected and continue to affect riparian and aquatic communities include dams, diversions, groundwater pumping, introduction of nonnative species (vertebrates, plants, and crayfish), woodcutting, mining, contaminants, urban and agricultural development, road construction, livestock grazing, wildfires, and undocumented immigration (Hendrickson and Minckley 1984, p. 161; Ohmart et al. 1988, p. 150; Bahre 1995, pp. 240–252; Medina 1990, p. 351; Sullivan and Richardson 1993, pp. 35–42; Fleischner 1994, pp. 630–631; Hadley and Sheridan 1995; Hale et al. 1995, pp. 138–140; DeBano and Neary 1996, pp. 73–75; Rinne and Neary 1996, p. 135; Stromberg et al. 1996, pp. 124–127; Girmendock and Young 1997, pp. 45–52; Rinne et al. 1998, pp. 7–11; Belsky et al. 1999, pp. 8–12; Esque and Schwalbe 2002, pp. 165, 190; Hancock 2002, p. 765; Voeltz 2002, pp. 87–88; Webb and Leake 2005, pp. 305–308; Holycross et al. 2006, pp. 52–61; McKinnon 2006a, 2006b, 2006c, 2006d, 2006e; Paradzick et al. 2006, pp. 88–93; Segee and Neeley 1996, Executive Summary, pp. 10–12, 21–23). These activities and their effects on the northern Mexican gartersnake are discussed in further detail below.

It is important to recognize that in most areas where northern Mexican gartersnakes historically or currently occur, two or more threats may be acting synergistically in their influence on the suitability of those habitats or on the northern Mexican gartersnake itself. In our assessment of the status of these habitats, discussion of the role that nonnative species introductions have had on habitat suitability is critical. However, we provide that discussion under ''Factor C. Disease and Predation'' due to the intricate and complex relationship nonnative species have with respect to direct and indirect pressures applied to the northern

Mexican gartersnake and to its native prey base.

Threats to Riparian and Aquatic Biological Communities in the United States. The modification and destruction of aquatic and riparian communities in the post-settlement arid southwestern United States is well documented and apparent in the field (Medina 1990, p. 351; Sullivan and Richardson 1993, pp. 35–42; Fleischner 1994, pp. 630–631; Stromberg et al. 1996, pp. 113, 123–128; Girmendock and Young 1997, pp. 45–52; Belsky et al. 1999, pp. 8–12; Webb and Leake 2005, pp. 305–310; Holycross et al. 2006, pp. 52–61). Several threats have been identified in the decline of many native riparian flora and fauna species through habitat modification and destruction as well as nonnative species introductions. Researchers agree that the period from 1850 to 1940 marked the greatest loss and degradation of riparian and aquatic communities in Arizona, which were caused by anthropogenic (human) land uses and the primary and secondary effects of those uses (Stromberg et al. 1996, p. 114; Webb and Leake 2005, pp. 305–310). Many of these land activities continue today and are discussed at length below. An estimated one-third of Arizona's pre-settlement wetlands have dried or have been rendered ecologically dysfunctional (Yuhas 1996).

Modification and Loss of Cienegas in the United States. Cienegas are particularly important habitat for the northern Mexican gartersnake and are considered ideal for the species (Rosen and Schwalbe 1988, p. 14). Hendrickson and Minckley (1984, p. 131) defined cienegas as ''mid-elevation [3,281–6,562 ft (1,000–2000 m)] wetlands characterized by permanently saturated, highly organic, reducing soils.'' Many of these unique communities of the southwestern United States, and Arizona in particular, have been lost in the past century to streambed modification, improper livestock grazing, cultural impacts, stream flow stabilization by upstream dams, channelization, and stream flow reduction from groundwater pumping and diversions (Hendrickson and Minckley 1984, p. 161). Stromberg et al. (1996, p. 114) state that cienegas were formerly extensive along streams of the Southwest; however, most were destroyed during the late 1800s, when groundwater tables declined several meters and stream channels became incised along many southwestern streams, including the San Pedro River. Conservation of the remaining natural cienegas in Arizona will be contingent on their protection from severe flooding and from lowering of groundwater levels (Hendrickson and Minckley 1984, p. 169).

Many sub-basins where cienegas have been severely modified or lost entirely overlap, wholly or partially, the historical distribution of the northern Mexican gartersnake, including the San Simon, Sulphur Springs, San Pedro, and Santa Cruz valleys of southeastern and south-central Arizona. The San Simon Valley possessed several natural cienegas with luxuriant vegetation prior to 1885, and was used as a watering stop for pioneers, military, and surveying expeditions (Hendrickson and Minckley 1984, pp. 139–140). In the subsequent decades, the disappearance of grasses and commencement of severe erosion were the result of heavy grazing pressure by large herds of cattle as well as the effects from wagon trails that paralleled arroyos, occasionally crossed them, and often required stream bank modification (Hendrickson and Minckley 1984, p. 140). Today, only the artificially-maintained San Simon Cienega exists in this valley. Similar accounts of past conditions, adverse effects from historical anthropogenic activities, and subsequent reduction in the extent and quality of cienega habitats in the remaining valleys are also provided in Hendrickson and Minckley (1984, pp. 138–160).

Urban and Rural Development in the United States. Development within and adjacent to riparian areas has proven to be a significant threat to riparian biological communities and their suitability for native species (Medina 1990, p. 351). Riparian communities are sensitive to even low levels (less than 10 percent) of urban development within a watershed (Wheeler et al. 2005, p. 142). Development along or within proximity to riparian zones can alter the nature of stream flow dramatically, changing once perennial streams into ephemeral streams, which has direct consequences on the riparian community (Medina 1990, pp. 358–359). Obvious examples of the influence of urbanization and development can be observed within the areas of greater Tucson and Phoenix, Arizona, where impacts have modified riparian vegetation, structurally altered stream channels, facilitated nonnative species introductions, and dewatered large reaches of formerly perennial rivers where the northern Mexican gartersnake historically occurred (Santa Cruz, Gila, and Salt rivers, respectively). Urbanization and development of these areas, along with the introduction of nonnative species, are largely responsible for the extirpation of the northern Mexican gartersnake from these areas.

Urbanization on smaller scales can also impact habitat suitability and the prey base for the northern Mexican gartersnake. Medina (1990, pp. 358–359) concluded that perennial streams had greater tree densities in all diameter size classes of Arizona alder and box elder (*Acer negundo*) as compared to ephemeral reaches where small diameter trees were absent. Small diameter trees assist the northern Mexican gartersnake by providing additional habitat complexity and cover needed to reduce predation risk and enhance the usefulness of areas for thermoregulation. Regional development and subsequent land use changes, spurred by increasing populations, along lower Tonto Creek and within the Verde Valley where northern Mexican gartersnakes are extant continue to threaten this snake's habitat and affect the habitat's suitability for the northern Mexican gartersnake and its prey species (Girmendock and Young 1997, pp. 45–52; Voeltz 2002, pp. 58–59, 69–71; Paradzick et al. 2006, pp. 89–90). Holycross et al. (2006, pp. 53, 56) recently documented adverse effects to northern Mexican gartersnake habitat in the vicinity of Rock Springs along the Agua Fria River and also throughout the Verde Valley along the Verde River.

The effects of urban and rural development are expected to increase as populations increase. Consumer interest in second home and/or retirement real estate investments has increased significantly in recent times within the southwestern United States. Medina (1990, p. 351) points out that many real estate investors are looking for aesthetically scenic, mild climes to enjoy seasonally or year-round and hence choose to develop pre- or post-retirement properties that are within or adjacent to riparian areas due to their aesthetic appeal and available water. Arizona increased its population by 394 percent from 1960 to 2000, and is second only to Nevada as the fastest growing State in terms of human population (SSDAR 2000). Over the same time period, population growth rates in Arizona counties where the northern Mexican gartersnake historically occurred or may still be extant have varied by county but are no less remarkable: Maricopa (463 percent); Pima (318 percent); Santa Cruz (355 percent); Cochise (214 percent); Yavapai (579 percent); Gila (199 percent); Graham (238 percent); Apache (228 percent); Navajo (257 percent); Yuma (346 percent); LaPaz (142 percent); and Mohave (2004 percent) (SSDAR 2000). Population growth trends in Arizona,

and Maricopa County in particular, are expected to continue into the future. The Phoenix metropolitan area, founded in part due to its location at the junction of the Salt and Gila rivers, is a population center of 3.63 million people. The Phoenix metropolitan area is the sixth largest in the United States and resides in the fastest growing county in the United States since the 2000 census (Arizona Republic 2006).

Development growth predictions have also been made for traditionally rural portions of Arizona. The populations of developing cities and towns of the Verde watershed are expected to more than double in the next 50 years, which may pose exceptional threats to riparian and aquatic communities of the Verde Valley where northern Mexican gartersnakes occur (Girmendock and Young 1993, p. 47; American Rivers 2006; Paradzick et al. 2006, p. 89). Communities in Yavapai and Gila counties such as the Prescott-Chino Valley, Strawberry, Pine, and Payson have all seen rapid population growth in recent years. For example, the population in the town of Chino Valley, at the headwaters of the Verde River, has grown by 22 percent between 2000 and 2004; Gila County, which includes reaches of the Salt, White, and Black rivers and Tonto Creek, grew by 20 percent between 2000 and 2003 (*http://www.census.gov*). The upper San Pedro River is also the location of rapid population growth in the Sierra Vista-Huachuca City-Tombstone area (*http://www.census.gov*). All of these communities are near or within the vicinity of historical or extant northern Mexican gartersnake populations.

Road Construction, Use, and Maintenance in the United States. Roads cover approximately one percent of the land area in the United States, but negatively affect 20 percent of the habitat and biota in the United States (Angermeier et al. 2004, p. 19). Roads pose unique threats to herpetofauna (reptiles and amphibians) and specifically to species like the northern Mexican gartersnake, its prey base, and the habitat where it occurs through: (1) Fragmentation, modification, and destruction of habitat; (2) an increase in genetic isolation; (3) alteration of movement patterns and behaviors; (4) facilitation of the spread of nonnative species via human vectors; (5) an increase in recreational access and the likelihood of subsequent, decentralized urbanization; (6) interference with and/or inhibition of reproduction; (7) contributions of pollutants to riparian and aquatic communities; and (8) population sinks through direct mortality (Rosen and Lowe 1994, pp. 146–148; Waters 1995, p. 42; Carr and Fahrig 2001, pp. 1074–1076; Hels and Buchwald 2001, p. 331; Smith and Dodd 2003, pp. 134–138; Angermeier et al. 2004, pp. 19–24; Shine et al. 2004, pp. 9, 17–19; Andrews and Gibbons 2005, pp. 777–781; Wheeler et al. 2005, pp. 145, 148–149; Roe et al. 2006, p. 161).

Construction and maintenance of roads and highways near riparian areas can be a source of sediment and pollutants (Waters 1995, p. 42; Wheeler et al. 2005, pp. 145, 148–149). Sediment can adversely affect fish populations used as prey by the northern Mexican gartersnake by (1) interfering with respiration; (2) reducing the effectiveness of visually-based hunting behaviors; and (3) filling in interstitial spaces of the substrate which reduces reproduction and foraging success of fish interfering with respiration, and restricting reproduction and foraging of fish. Excessive sediment also fills in intermittent pools required for amphibian prey reproduction and foraging. Fine sediment pollution in streams impacted by highway construction without the use of sediment control structures was 5 to 12 times greater than control streams. Sediment can lead to several effects in resident fish species used by northern Mexican gartersnakes as prey species, which can ultimately cause the northern Mexican gartersnake's increased direct mortality, reduced reproductive success, lower overall abundance, lower species diversity, and reductions in food base as documented by Wheeler et al. (2005, p. 145). The underwater foraging ability of northern Mexican gartersnakes can also be directly compromised by excessive turbidity caused by sedimentation of water bodies. Metal contaminants, including iron, zinc, lead, cadmium, nickel, copper, and chromium, are bioaccumulative) and are associated with highway construction and use (Foreman and Alexander 1998, p. 220; Hopkins et al. 1999, p. 1260; Campbell et al. 2005, p. 241; Wheeler et al. 2005, pp. 146–149). A bioaccumulative substance increases in concentration in an organism or in the food chain over time. A mid- to higher order predator, such as a gartersnake, may therefore accumulate these types of contaminants over time in their fatty tissues and lead to adverse health affects.

Several studies have addressed the effects of bioaccumulative substances on watersnakes. We find these studies relevant because watersnakes and gartersnakes have very similar life histories and prey bases and therefore, the effects from contamination of their habitat from bioaccumulative agents are expected to have similar effects. Campbell et al. (2005, pp. 241–243) found that metal concentrations accumulated in the northern watersnake (*Nerodia sipedon*) at levels six times that of their primary food item, the central stoneroller (fish) (*Campostoma anomalum*). Metals, in trace amounts, affect the structure and function of the liver and kidneys of vertebrates and may also act as neurotoxins, affecting nervous system function (Rainwater et al. 2005, p. 670). Metals may also be sequestered in the skin of reptiles, but this effect is tempered somewhat by ecdysis (the regular shedding or molting of the skin) (Burger 1999, p. 212). Hopkins et al. (1999, p. 1261) found that metals may even interfere with metabolic rates of banded watersnakes (*Nerodia fasciata*), altering the allocation of energy between maintenance and reproduction, reducing the efficiency of energy stores, and forcing individuals to forage more often, which increases activity costs (the energy expended in hunting which effects the net nutritional intake of an organism) and predation risk.

Snakes of all species are particularly vulnerable to mortality when they attempt to cross roads. There are several reasons for this phenomenon. First, all snakes are thigmotherms (animals that derive heat from warm surfaces), which often compels them to slow down or even stop and rest on road surfaces that have been warmed by the sun as they attempt to cross (Rosen and Lowe 1994, p. 143). Additionally, many species of snakes are active when traffic densities are greatest, as is the case with gartersnakes, which are generally diurnal (active during daylight hours) (Rosen and Lowe 1994, p. 147). Van Devender and Lowe (1977, p. 47), however, observed several northern Mexican gartersnakes crossing the road at night after the commencement of the summer monsoon, which highlights the seasonal variability in surface activity of this snake, and many other species of reptiles. Perhaps the most common factor in road mortality of snakes is the propensity for drivers to intentionally run over snakes, which generally make easy targets because they usually cross roads at a perpendicular angle (Klauber 1956, p. 1026; Langley et al. 1989, p. 47; Shine et al. 2004, p. 11). This driving behavior is exacerbated by the general animosity that humans have toward snakes in general in modern-day society (Ernst and Zug 1996, p. 75; Green 1997 pp. 285–286). In fact, Langley et al. (1989, p. 47) conducted an experiment on the propensity for drivers to hit reptiles on the road using turtle and snake models and found that many

people have a greater desire to hit a snake on the road than any other animal; several drivers actually stopped and backed-over the snake mimic to ensure it was dead. Roe et al. (2006, p. 161) conclude that mortality rates due to roads are higher in vagile (mobile) species, such as gartersnakes (active hunters), than those of more sedentary species, such as the North American pit vipers in the genera *Agkistrodon, Sistrurus,* and *Crotalus,* which more commonly employ sit-and-wait foraging strategies. Roads that bisect wetland communities also act as mortality sinks in the dispersal or migratory movements of snakes (Roe et al. 2006, p. 161). The effect of road mortality of snakes becomes most significant in the case of small, highly fragmented populations where the chance removal of mature females from the population may appreciably degrade the viability of a population.

Roads create easy access to areas previously infrequently visited or inaccessible to humans, increasing the frequency and significance of anthropogenic threats to riparian areas and fragmenting the landscape, which may genetically isolate herpetofaunal populations (Rosen and Lowe 1994, pp. 146–148; Andrews and Gibbons 2005, p. 772).

While snakes of all species may suffer direct mortality from attempting to cross roads, Andrews and Gibbons (2005, pp. 777–779) found that many individuals of small, diurnal snake species avoid open areas (e.g., roads) instinctively in order to lower predation rates, which represents a different type of threat from roads. Shine et al. (2004, p. 9) found that the common gartersnake typically changed direction when encountering a road. These avoidance behaviors by individuals aversive to crossing roads affect movement patterns and may ultimately affect reproductive output within populations (Shine et al. 2004, pp. 9, 17–19). This avoidance behavior has been observed in the common gartersnake (*Thamnophis sirtalis*), a sister taxon to the Mexican gartersnake with similar life histories and behavior (Shine et al. 2004, p. 9). In our discussion and as evidenced by the literature we reviewed on the effect of roads on snake movements, we acknowledge the individuality of snakes in their behaviors towards road crossings in that roads may affect a snake's movement behavior by a variety of means and that generalizing these resultant behaviors does not adequately address this variability.

In addition to altering the movement patterns of some snakes, roads can interfere with the male gartersnake's olfactory-driven ability to follow the pheromone trails left by receptive females (Shine et al. 2004, pp. 17–18). This effect to the male's ability to trail females may exacerbate the effects of low population density and fragmentation that affect several species of snakes, including the northern Mexican gartersnake. Furthermore, roads can facilitate an increase in the distance traveled by male snakes seeking receptive females, which increases exposure to predation and subsequently increases mortality rates (Shine et al. 2004, pp. 18–19). Although the northern Mexican gartersnake was not the subject of the 2004 Shine et al. study, similar responses can be expected in the northern Mexican gartersnake because its life history is similar to the, study's subject species (i.e., the common gartersnake).

Roads tend to adversely affect aquatic breeding anuran (frog and/or toad) populations more so than other species due to their activity patterns, population structures, and preferred habitats (Hels and Buchwald 2001, p. 331). Carr and Fahrig (2001, pp. 1074–1076) found that populations of highly mobile anuran species such as leopard frogs (*Rana pipiens*) were affected more significantly than more sedentary species and that population persistence can be at risk depending on traffic densities, which may adversely affect the prey base for northern Mexican gartersnakes because leopard frogs are a primary prey species.

Recreation in the United States. As discussed above, population growth trends are expected to continue into the future. Expanding population growth leads to higher recreational use of riparian areas. Riparian areas located near urban areas are vulnerable to the effects of increased recreation with predictable changes in the type and intensity of land use following residential development. An example of such an area within the existing distribution of the northern Mexican gartersnake is the Verde Valley. The reach of the Verde River that winds through the Verde Valley receives a high amount of recreational use from people living in central Arizona (Paradzick et al. 2006, pp. 107–108). Increased human use results in the trampling of near-shore vegetation, which reduces cover for gartersnakes, especially neonates. Increased human visitation of occupied habitat also increases the potential for human-gartersnake interactions, which frequently does not bode well for snakes, as it often leads to their capture, injury, or death of the snake due to the lay person's fear of snakes (Rosen and Schwalbe 1988, p. 43; Ernst and Zug 1996, p. 75; Green 1997, pp. 285–286; Nowak and Santana-Bendix 2002, p. 39).

Groundwater Pumping, Surface Water Diversions, and Drought in the United States. Increased urbanization and population growth results in an increase in the demand for water and, therefore, water development projects. Collier et al. (1996, p. 16) mention that water development projects are one of two main causes of decline of native fish in the Salt and Gila rivers of Arizona. Municipal water use in central Arizona has increased by 39 percent in the last 8 years (American Rivers 2006). Water for development and urbanization is often supplied by groundwater pumping and surface water diversions from sources that include reservoirs and Central Arizona Project's allocations from the Colorado River. The hydrologic connection between groundwater and surface flow of intermittent and perennial streams is becoming better understood. Groundwater pumping creates a cone of depression within the affected aquifer that slowly radiates outward from the well site. When the cone of depression intersects the hyporheic zone of a stream (the active transition zone between two adjacent ecological communities under or beside a stream channel or floodplain between the surface water and groundwater that contributes water to the stream itself), the surface water flow may decrease, and the subsequent desiccation of riparian and wetland vegetative communities can follow. Continued groundwater pumping at such levels draws down the aquifer sufficiently to create a water-level gradient away from the stream and floodplain (Webb and Leake 2005, p. 309). Finally, complete disconnection of the aquifer and the stream results in strong negative effects to riparian vegetation (Webb and Leake 2005, p. 309). If complete disconnection occurs, the hyporheic zone could be adversely affected. The hyporheic zone can promote ''hot spots'' of productivity where groundwater upwelling occurs by producing nitrates that can enhance the growth of vegetation, but its significance is contingent upon its activity and extent of connection with the groundwater (Boulton et al. 1998, p. 67; Boulton and Hancock 2006, pp. 135, 138). Changes to the duration and timing of upwelling can potentially lead to localized extinctions in biota (Boulton and Hancock 2006, p. 139).

To varying degrees, the effects of groundwater pumping on surface water flow and riparian communities have been observed in the Santa Cruz, San Pedro, and Verde rivers as a result of groundwater demands of Tucson, Sierra

Vista, and the rapidly growing Prescott Valley, respectively (Stromberg et al. 1996, pp. 113, 124–128; Rinne et al. 1998, p. 9; Voeltz 2002, pp. 45–47, 69–71). Along the upper San Pedro River, Stromberg et al. (1996, pp. 124–127) found that wetland herbaceous species (important as cover for northern Mexican gartersnakes) are the most sensitive to the effects of a declining groundwater level. Webb and Leake (2005, pp. 302, 318–320) described a correlative trend regarding vegetation along southwestern streams from historically being dominated by marshy grasslands (preferable to northern Mexican gartersnakes) to being currently dominated by woody species more tolerant of declining water tables due to their associated deeper rooting depths.

The full effects of largescale groundwater pumping associated with the proposed Big Chino Water Ranch Project and its associated 30-mile (48 km), 36-in (91-cm) diameter pipeline have yet to be realized in the Verde River (McKinnon 2006c). This groundwater pumping and inter-basin transfer project is projected to deliver 2.8 billion gallons of groundwater annually from the Big Chino sub-basin aquifer to the rapidly growing area of Prescott Valley for municipal use (McKinnon 2006c). The Big Chino sub-basin provides 86 percent of the baseflow to the upper Verde River (American Rivers 2006; McKinnon 2006a). The potential for this project to obtain funding and approval for implementation has placed the Verde River on American River's ''Ten Most Endangered Rivers List (of 2006)'' (American Rivers 2006). This potential reduction or loss of baseflow in the Verde River could seasonally dry up large reaches and/or adversely affect the riparian community and the suitability of the habitat for extant populations of the northern Mexican gartersnake and its prey species in that area.

Within the Verde River watershed, and particularly within the Verde Valley where the northern Mexican gartersnake remains extant, several other activities continue to threaten surface flows (Rinne et al. 1998, p. 9; Paradzick et al. 2006, pp. 104–110). The demands for surface water allocations from rapidly growing communities and agricultural and mining interests have altered flows or dewatered significant reaches during the spring and summer months in some of the Verde River's larger, formerly perennial tributaries such as Wet Beaver Creek, West Clear Creek, and the East Verde River, which may have supported the northern Mexican gartersnake (Girmendock and Young 1993, pp. 45–47; Sullivan and Richardson 1993, pp. 38–39; Paradzick et al. 2006, pp. 104–110). Groundwater pumping in Tonto Creek regularly eliminates surface flows during parts of the year (Abarca and Weedman 1993, p. 2). The upper Gila River is also threatened by diversions and water allocations. In New Mexico, a proposed water project that resulted from a landmark Gila River water settlement in 2004 allows New Mexico the right to withhold 4.5 billion gallons of surface water every year (McKinnon 2006d). If this proposed water diversion project is implemented, in dry years, currently perennial reaches of the upper Gila River will dry completely which removes all suitability of this habitat for the northern Mexican gartersnakes and a host of other riparian and aquatic species (McKinnon 2006d).

Further evidence of the threat of groundwater depletion can be found in the management activities of the Arizona Department of Water Resources (ADWR). ADWR manages water supplies in Arizona and has established five Active Management Areas (AMA) across the state (ADWR 2006). An AMA is established by ADWR when an area's water demand has exceeded the groundwater supply and an overdraft has occurred. Geographically, all five AMAs overlap the historical distribution of the northern Mexican gartersnake in Arizona and provide further evidence of the role groundwater pumping has had and continues to have on historical and occupied northern Mexican gartersnake habitat. Such overdrafts are capable of adversely impacting surface water flow of streams that are hydrologically connected to the aquifer under stress and are often exacerbated by the ever-growing number of surface water diversions for various purposes.

In order to accommodate the needs of rapidly growing rural and urban populations, surface water is commonly diverted to serve many industrial and municipal uses. These diversions have dewatered large reaches of once perennial or intermittent streams, adversely affecting northern Mexican gartersnake habitat throughout its range in Arizona and New Mexico. Many tributaries of the Verde River are permanently or seasonally dewatered by diversions for agriculture (Paradzick et al. 2006, pp. 104–110).

The effects of the water withdrawals discussed above may be exacerbated by the current, long-term drought facing the arid southwestern United States. Philips and Thomas (2005) provided streamflow records that indicate that the drought Arizona experienced between 1999 and 2004 was the worst drought since the early 1940s and possibly earlier. Ongoing drought conditions have depleted recharge of aquifers and decreased baseflows in the region. While drought periods have been relatively numerous in the arid Southwest according to recorded history from the mid-1800s to the present, the effects of anthropogenic threats on riparian and aquatic communities have compromised the ability of these communities to function under the additional stress of prolonged drought conditions. Holycross et al. (2006, pp. 52–53) recently documented the effects of drought on northern Mexican gartersnake habitat in the vicinity of Arcosante along the Agua Fria River and at Big Bug Creek where the streams were completely dry and therefore unsuitable northern Mexican gartersnake habitats.

Improper Livestock Grazing in the United States. Poorly managed livestock grazing has damaged approximately 80 percent of stream, cienega, and riparian ecosystems in the western United States (Kauffman and Krueger 1984, pp. 433–435; Weltz and Wood 1986, pp. 367–368; Waters 1995, pp. 22–24; Pearce et al. 1998, p. 307; Belsky et al. 1999, p. 1). Livestock grazing, as a resource use on public and private lands, has more than doubled quantitatively in 50 years; the number of cattle being grazed in the western United States increased from 25.5 million head in 1940, to 54.4 million head in 1990 (Belsky et al. 1999, p. 3).

Effects of improper livestock management on riparian and aquatic communities have spanned from early settlement to modern day. Some historical accounts of riparian area conditions in Arizona elucidate early effects of poor livestock management. Cheney et al. (1990, pp. 5, 10) provide historical accounts of the early adverse effects of improper livestock management in the riparian zones and adjacent uplands of the Tonto National Forest and in south-central Arizona. These accounts describe the removal of riparian trees for preparation of livestock use and substantial changes to flow regimes accentuated by observed increases in runoff and erosion rates. Such accounts of riparian conditions within the historical distribution of the northern Mexican gartersnake in Arizona contribute to the understanding of when declines in abundance and distribution may have occurred and the causes for subsequent fragmentation of populations and widespread extirpations.

In the recent past, riparian and aquatic communities have been negatively impacted by poor livestock management (e.g., overgrazing, uncontrolled access to riparian areas,

improper pasture rotation, no monitoring of use, etc.) within several watersheds that the northern Mexican gartersnake historically occupied, and in some cases, poor livestock management may constitute the greatest impact to riparian vegetation. The specific ways in which improper livestock grazing can adversely affect northern Mexican gartersnakes and contribute to their decline is discussed below. Watersheds where improper grazing has been documented as a contributing factor of northern Mexican gartersnake declines include the Verde, Salt, Agua Fria, San Pedro, Gila, and Santa Cruz (Hendrickson and Minckley 1984, pp. 140, 152, 160–162; Rosen and Schwalbe 1988, pp. 32–33; Girmendock and Young 1997, p. 47; Voeltz 2002, pp. 45–81; Krueper et al. 2003, pp. 607, 613–614; Holycross et al. 2006, pp. 52–61; McKinnon 2006d, 2006e; Paradzick et al. 2006, pp. 90–92). Holycross et al. (2006, pp. 53–55, 58) recently documented adverse effects from improper livestock grazing on northern Mexican gartersnake habitat along the Agua Fria from EZ Ranch to Bloody Basin Road, along Dry Creek from Dugas Road to Little Ash Creek, along Little Ash Creek from Brown Spring to Dry Creek, along Sycamore Creek in the vicinity of its confluence with the Verde River, and on potential northern Mexican gartersnake habitat along Pinto Creek at the confluence with the West Fork of Pinto Creek. In southeastern Arizona, there have been observations of effects to the vegetative community suggesting that livestock grazing activities continue to adversely affect extant populations of northern Mexican gartersnakes by reducing or eliminating cover required by the northern Mexican gartersnake for thermoregulation, protection from predation, and foraging (Hale 2001, pp. 32–34, 50, 56).

Poor livestock management causes a decline in diversity, abundance, and species composition of riparian herpetofauna communities from direct or indirect threats to the prey base, the habitat, or to the northern Mexican gartersnake itself from: (1) Declines in the structural richness of the vegetative community; (2) losses or reductions of the prey base; (3) increased aridity of habitat; (4) loss of thermal cover and protection from predators; and (5) a rise in water temperatures to levels lethal to larval stages of amphibian and fish development (Szaro et al. 1985, p. 362; Schulz and Leininger 1990, p. 295; Belsky et al. 1999, pp. 8–11). Improper livestock grazing may also lead to desertification (the process of becoming arid land or desert as a result of land mismanagement or climate change) due to a loss in soil fertility from erosion and gaseous emissions spurred by a reduction in vegetative ground cover (Schlesinger et al. 1990, p. 1043). Stock tanks may facilitate the spread of nonnative species when nonnative species of fish, amphibians, and crayfish are intentionally or unintentionally stocked by anglers and private landowners (Rosen et al. 2001, p. 24). Specific attributes of ecosystems, such as composition, function, and structure, have been documented as being altered by improper livestock management through a variety of means including: (1) Decreasing the density and biomass of individual species, reducing species richness, and changing biological community organization; (2) interfering with nutrient cycling and ecological succession; and (3) changing vegetation stratification, contributing to soil erosion, and decreasing availability of water to biotic communities (Fleischner 1994, p. 631).

The management of stock tanks is an important consideration for northern Mexican gartersnakes. Stock tanks can be intermediary ''stepping stones'' in the dispersal of nonnative species from larger source populations to new areas (Rosen et al. 2001, p. 24). Additionally, dense bank and aquatic vegetation is an important habitat characteristic for the northern Mexican gartersnake that can be affected if the impoundment is poorly managed, which may lead to trampling or overgrazing of the bankside vegetation. Poor management may also favor nonnative predators of the northern Mexican gartersnake (Rosen and Schwalbe 1988, pp. 47, 32). Alternatively, well-managed stock tanks can provide habitat suitable for northern Mexican gartersnakes both structurally and in terms of prey base, especially when the tank remains devoid of nonnative species while supporting native prey species; provides adequate vegetation cover; and provides reliable water sources in periods of prolonged drought. Given these benefits of well-managed stock tanks, we believe well-managed stock tanks may be an important component to northern Mexican gartersnake conservation.

A key to proper livestock management appears to be increasing the distribution of cattle across the entire grazing space. Fleischner (1994, p. 629) found that ''Because livestock congregate in riparian ecosystems, which are among the most biologically rich habitats in arid and semiarid regions, the ecological costs of grazing are magnified at these sites.'' Stromberg and Chew (2002, p. 198) and Trimble and Mendel (1995, p. 243) also discussed the propensity for poorly managed cattle to remain within or adjacent to riparian communities. Trimble and Mendel (1995, p. 243) stated that ''Cows, unlike sheep, appear to love water and spend an inordinate amount of time together lounging in streams and ponds, especially in summer (surface-active season for reptiles and amphibians), sometimes going in and coming out several times in the course of a day.'' Expectedly, this behavior is more pronounced in more arid regions (Trimble and Mendel 1995, p. 243). In one rangeland study, it was concluded that 81 percent of the vegetation that was removed by cattle was from a riparian area which amounted to only two percent of the total grazing space (Trimble and Mendel 1995, p. 243). Another study reported that grazing rates were 5 to 30 times higher in riparian areas than on the uplands which may be due in part to several factors: (1) Higher forage volume and palatability of species in riparian areas; (2) water availability; (3) the close proximity of riparian areas to the best upland grazing sites; and (4) microclimatic features such as cooler temperatures and shade (Trimble and Mendel 1995, p. 244).

The northern Mexican gartersnake uses riparian herbaceous vegetation for cover, thermoregulation, and foraging. Clary and Webster (1989, p. 1) noted that excessive grazing and trampling from poor livestock management can affect riparian and stream communities by reducing or eliminating this vegetation, causing channel aggradation or degradation, causing widening or incisement of stream channels, and changing streambank morphology, with the cumulative result of lowering corresponding water tables. In support of findings made by Fleischner (1994, pp. 631–632), these effects can largely be attributed to the tendency of livestock in the arid Southwest to spend a disproportionately longer time in riparian areas than in upland range pasture (5–30 times longer, comparatively), which leads to overgrazing of the riparian vegetation (Clary and Medin 1990, p. 1). However, even when livestock's access to riparian areas is restricted, poor livestock management in the uplands leads to soil compaction and decreased filtering capacity of vegetation. These effects increase the speed and amount of runoff from the uplands, which contributes heightened, unnatural amounts of sediment in aquatic habitat. This damages the suitability of that habitat and fills in pools, which affects their permanency and suitability for many prey species of the northern Mexican

gartersnake (Sartz and Tolsted 1974, p. 354; Weltz and Wood 1986, pp. 367–368; Orodho et al. 1990, p. 9; Trimble and Mendel 1995, pp. 235–236; Pearce et al. 1998, p. 302). The response of riparian herbaceous vegetation after the removal of cattle was documented as dramatic, with a four to six fold increase in density, as observed in the upper San Pedro River (Krueper et al. 2003, pp. 607, 613–614). Schulz and Leininger (1990, p. 295) also remarked that riparian ecosystems can improve quickly when livestock are removed.

As stated previously, dense vegetative cover is an essential component to habitat suitable for the northern Mexican gartersnake for several reasons (Szaro et al. 1985, p. 364; Rosen and Schwalbe 1988, p. 47). The removal or severe alteration of this habitat component significantly affects the foraging success and heightens the predation risk of the northern Mexican gartersnake. Small, isolated populations of northern Mexican gartersnakes that use stock tanks as refugia may be extirpated within 1 year of vegetation removal (Rosen and Schwalbe 1988, p. 33). Northern Mexican gartersnake populations that occur in isolated wetlands or stock tanks are not likely to recolonize naturally (i.e. without reestablishment efforts) once extirpated due to the species' tendency to avoid long overland movements (Rosen and Schwalbe 1988. p. 33).

Szaro et al. (1985, p. 360) assessed the effects of improper livestock management on the same stream on a sister taxon. They found that western (terrestrial) gartersnake (*Thamnophis elegans vagrans*) populations were significantly higher (versus controls) in terms of abundance and biomass in areas that were excluded from grazing, where the streamside vegetation remained lush, than where uncontrolled access to grazing was permitted. This effect was complemented by higher amounts of cover from organic debris from ungrazed shrubs that accumulates as the debris moves downstream during flood events. Specifically, results indicated that snake abundance and biomass were significantly higher in ungrazed habitat, with a five-fold difference in number of snakes captured, despite the difficulty of making observations in areas of increased habitat complexity (Szaro et al. 1985, p. 360). Szaro et al. (1985, p. 362) also noted the importance of riparian vegetation for the maintenance of an adequate prey base and as cover in thermoregulation and predation avoidance behaviors, as well as for foraging success.

Direct mortality of amphibian species, in all life stages, from being trampled by livestock has been documented in the literature (Bartelt 1998, p. 96; Ross et al. 1999, p. 163). The resultant extirpation risk of amphibian populations as a prey base for northern Mexican gartersnakes by direct mortality is governed by the relative isolation of the amphibian population, the viability of that population, and the propensity for stochastic events such as wildfires. Livestock grazing within habitat occupied by northern Mexican gartersnakes can result in direct mortality of individual gartersnakes as observed in a closely related taxon on the Apache-Sitgreaves National Forest. In that instance, a black-necked gartersnake (*Thamnophis cyrtopsis cyrtopsis*) had apparently been killed by trampling hoof action of cattle along the shore of a stock tank within an actively grazed allotment (Chapman 2005). This event was not observed first-hand, but was supported by postmortem photo documentation of the physical injuries to the specimen and the location of the carcass among a dense cluster of hoof tracks along the shoreline of the stock tank. It is also unlikely that a predator would kill the snake and leave it uneaten. While this type of direct mortality of gartersnakes has long been suspected by agency biologists and academia, this may be the first recorded observation of direct mortality of a gartersnake due to livestock trampling. We expect this type of direct mortality to be uncommon but significant in the instance of a fragmented population with a skewed age-class distribution and low to no recruitment as currently observed in many northern Mexican gartersnake populations in the United States. In these circumstances, the loss of one or more adults, most notably reproductive females, may lead directly to extirpation of the species from a given site with no expectation of recolonization.

Our analysis of the best available scientific and commercial information available indicates that adverse effects from improper livestock management on the northern Mexican gartersnake, its habitat, and its prey base can be significant. However, we recognize that well-managed grazing can occur with limited effects to this species when management emphasis is directed to moderated access restrictions for occupied habitat combined with the use of remote drinkers (containerized water sources supplied by water pumped from a nearby source) as well as other livestock management protocols that lessen the effect of vegetation disturbance and removal adjacent to occupied habitat by increasing the distribution of cattle across an allotment. Lastly, as previously stated, we also recognize the value of well-managed stock tanks in the conservation of northern Mexican gartersnakes.

Catastrophic Wildfires in the United States. Low-intensity fire has been a natural disturbance factor in forested landscapes for centuries, and low-intensity fires were common in southwestern forests prior to European settlement (Rinne and Neary 1996, pp. 135–136). Rinne and Neary (1996, p. 143) discuss the current effects of fire management policies on aquatic communities in Madrean-type ecosystems in the southwestern United States. They concluded that existing wildfire suppression policies intended to protect the expanding number of human structures on forested public lands have altered the fuel loads in these ecosystems and increased the probability of devastating wildfires. The effects of these catastrophic wildfires include the removal of vegetation, the degradation of watershed condition, altered stream hydrographs, and increased sedimentation of streams. These effects can harm fish communities, as observed in the 1990 Dude Fire, in which corresponding ash flows decimated some fish populations in Dude Creek and the East Verde River (Voeltz 2002, p. 77). These effects can significantly lessen the prey base for northern Mexican gartersnakes and could lead to direct mortality in the case of fires that are within occupied habitat.

Fire has also become an increasingly significant threat in lower elevation communities as well. Esque and Schwalbe (2002, pp. 180–190) discuss the effect of wildfires in the upper and lower subdivisions of Sonoran desertscrub where the northern Mexican gartersnake historically occurred. The widespread invasion of nonnative annual grasses, such as brome species (*Bromus sp.*) and Mediterranean grasses (*Schismus sp.*), appear to be largely responsible for altered fire regimes that have been observed in these communities, which are not adapted to fire (Esque and Schwalbe 2002, p. 165). In areas comprised entirely of native species, ground vegetation density is mediated by barren spaces that do not allow fire to carry itself across the landscape. However, in areas where nonnative grasses have become established, the fine fuel load is continuous, and fire is capable of spreading quickly and efficiently (Esque and Schwalbe 2002, p. 175). After disturbances such as fire, brome grasses may exhibit dramatic population

explosions, which hasten their effect on native vegetative communities. Additionally, with increased fire frequency, these population explosions ultimately lead to a type-conversion of the vegetative community from desertscrub to grassland (Esque and Schwalbe 2002, pp. 175–176). Fires carried by the fine fuel loads created by nonnative grasses often burn at unnaturally high temperatures, which may result in soils becoming hydrophobic (water repelling), exacerbate sheet erosion, and contribute large amounts of sediment to receiving water bodies, thereby affecting the health of the riparian community (Esque and Schwalbe 2002, pp. 177–178). The siltation of isolated, remnant pools in intermittent streams has significant effects on lower-elevation species, as observed in lowland leopard frogs and native fish, important prey species for northern Mexican gartersnakes (Esque and Schwalbe 2002, p. 190).

Undocumented Immigration and International Border Enforcement and Management in the United States. Undocumented immigrants attempt to cross the International border from Mexico into the United States in areas historically or currently occupied by the northern Mexican gartersnake. This method of immigration and the corresponding efforts to enforce U.S. border laws and policies have been occurring for many decades with increasing intensity and have resulted in unintended adverse effects to biotic communities in the border region. During the warmest months of the year, many attempted border crossings occur in riparian areas that serve to provide shade, water, and cover. Increased U.S. border enforcement efforts that began in the early 1990s in California and Texas have resulted in concentrated levels of attempted undocumented immigrant crossings into Arizona (Segee and Neeley 2006, p. 6).

Riparian habitats that historically supported or may currently support northern Mexican gartersnakes in the San Bernardino National Wildlife Refuge, the San Pedro River corridor, the Santa Cruz River corridor, the lower Colorado River corridor, and along many smaller streamside and canyon bottom areas within Cochise, Santa Cruz, and Pima counties have high levels of undocumented immigrant traffic (Segee and Neeley 2006, Executive Summary, pp. 10–12, 21–23).

Use of new roads and trails from immigration and enforcement activities, as well as the construction, use, and maintenance of enforcement infrastructure (i.e., fences, walls, and lighting systems), leads to compaction of streamside soils, and the destruction and removal of riparian vegetation necessary as cover for the northern Mexican gartersnake. These activities also serve as a source of additional sediment to streams that affect their suitability as habitat for prey species of the northern Mexican gartersnake and affect the suitability and availability of pool habitats by filling them in with sediment. Riparian areas along the upper San Pedro River have been impacted by out of control fires that undocumented immigrants likely started to keep warm and/or prepare food (Segee and Neeley 2006, p. 23). There also remains the threat of pursuit, capture, and death of northern Mexican gartersnakes when they are encountered by undocumented immigrants and border enforcement personnel in high use areas due to the snake's stigma in society (Rosen and Schwalbe 1988, p. 43; Ernst and Zug 1996, p. 75; Green 1997, pp. 285–286; Nowak and Santana Bendix 2002, p. 39).

The wetland habitat within the San Bernardino National Wildlife Refuge has been adversely affected by undocumented immigration. It is estimated that approximately 1,000 undocumented immigrants per month use these important wetlands for bathing, drinking, and other uses during their journey northward. These activities can contaminate the water quality of the wetlands and lead to reductions in the prey base for the northern Mexican gartersnake, as well as increase exposure of the snake to humans, and thereby increase direct mortality rates (Rosen and Schwalbe 1988, p. 43; Ernst and Zug 1996, p. 75; Green 1997, pp. 285–286; Nowak and Santana-Bendix 2002, p. 39; Segee and Neeley 2006, pp. 21–22). In addition, numerous observations of littering and destruction of vegetation and wildlife occur annually throughout the San Bernardino National Wildlife Refuge, which adversely affect the quality and quantity of vegetation as habitat for the northern Mexican gartersnake (USFWS 2006, p. 95).

There remains the possibility that adverse effects to riparian communities may increase in the future as land access and infrastructure restrictions in sensitive wildlife areas may be relaxed according to proposed policy changes that aim to boost border enforcement activities in these currently roadless areas and as concentrated enforcement efforts in urban locations funnel more undocumented immigrant traffic to remote wilderness areas (Segee and Neeley 2006, pp. 15–16).

Habitat Threats in Mexico. Threats to northern Mexican gartersnake habitat in Mexico include the intentional and unintentional introductions of nonnative species, improper livestock grazing, urbanization and development, water diversions and groundwater pumping, loss of vegetation cover and deforestation, erosion, and pollution, as well as impoundments and dams that have modified or destroyed riparian and aquatic communities within Mexico in areas where the species occurred historically (Conant 1974, p. 471; Contreras Balderas and Lozano 1994, p. 384; va Landa et al. 1997, p. 316; Miller et al. 2005, pp. 60–61; Abarca 2006). We experienced difficulty finding specific information documenting that populations of northern Mexican gartersnakes in Mexico are directly affected by these threats which is problematic in a rangewide analysis given that approximately 70 to 80 percent of the historic distribution of the northern Mexican gartersnake occurs in Mexico. We did, however, find enough information to provide some refined discussion of smaller geographic areas within Mexico, and acknowledge that many of the threats that affect the northern Mexican gartersnake in the United States also occur in Mexico and could affect the northern Mexican gartersnake in similar ways but at potentially varying intensities.

Conant (2003, p. 4) noted anthropogenic threats to seven fragmented, endemic subspecies of Mexican gartersnake in the Transvolcanic Belt Region of southern Mexico, which extends from southern Jalisco eastward through the state of México to central Veracruz which comprises a small proportion of the subspecies' range. Although Conant (2003) addresses threats to a small percentage of the historic distribution, many of these rural land uses are regionally ubiquitous and therefore these threats can be extrapolated to the surrounding vicinity of the distribution of these seven recently described subspecies of the Mexican gartersnake in Mexico. Some of these threats included water diversions, pollution (e.g., discharge of raw sewage), sedimentation of aquatic habitats, and eutrophication (increase of dissolved nutrients and decrease of dissolved oxygen) of lentic (still water) habitats. Conant (2003, p. 4) expressed great concern that while many of these threats were evident during his field work in the 1960s, they are ''continuing with increased velocity.''

Water pollution, dams, groundwater pumping, and impoundments were identified by Miller et al. (2005, pp. 60–61) as significant threats to aquatic

biota. Miller et al. (2005, p. 60) stated that ''During the time we have collectively studied fishes in México and southwestern United States, the entire biotas of long reaches of major streams [where the northern Mexican gartersnake is distributed] such as the Río Grande de Santiago below Guadalajara (Jalisco) and Río Colorado downstream of Hoover (Boulder) Dam, have simply been destroyed by pollution and river alteration.'' Near Torreón, Coahuila, where the northern Mexican gartersnake was historically distributed, groundwater pumping has resulted in flow reversal, which has driedup many local springs, drawn arsenicladen water, further contaminated the area, and resulted in adverse human health effects in that area. Severe water pollution from untreated domestic waste is evident downstream of large Mexican cities, and inorganic pollution from nearby industrialized areas and agricultural irrigation return flow has dramatically affected aquatic communities (Miller et al. 2005, p. 60). Miller et al. (2005, p. 61) provides an excerpt from Soto Galera et al. (1999) addressing the threats to the Río Lerma (Mexico's longest river) where the northern Mexican gartersnake was historically distributed: ''The basin has experienced a staggering amount of degradation during the 20th Century. By 1985–1993, over half of our study sites had disappeared or become so polluted that they could no longer support fishes. Only 15 percent of the sites were still capable of supporting sensitive species. Forty percent (17 different species) of the native fishes of the basin had suffered major declines in distribution, and three species may be extinct. The extent and magnitude of degradation in the Río Lerma basin matches or exceeds the worst cases reported for comparably sized basins elsewhere in the world.''

Several rivers within the historic distribution of the northern Mexican gartersnake have been impounded and dammed throughout Mexico, resulting in habitat modification and the dispersal and establishment of nonnative species. The damming and modification of the Río Colorado, where the northern Mexican gartersnake was distributed, has facilitated the replacement of the entire native fishery with nonnative species (Miller et al. 2005, p. 61). Nonnative species continue to pose significant threats in the decline of native, often endemic, prey species of the northern Mexican gartersnake in several regions of Mexico, as discussed further in Factor C below (Miller et al. 2005, p. 60).

Miller et al. (2005) does provide some locality specific information on the status and threats of freshwater fishes and riparian and aquatic communities in specific waterbodies throughout Mexico that historically overlapped, or are adjacent to, the historic distribution of the northern Mexican gartersnake: the Río Grande (dam construction, p. 78); the Río Bravo (extirpations, pp. 82, 112); headwaters of the Río Lerma (extinction/rediscovery, nonnatives, pollution, dewatering, pp. 60, 105, 197); Lago de Chapala and its outlet to the Río Grande de Santiago (major declines, p. 106); medium-sized streams throughout the Sierra Madre Occidental (localized extirpations, logging, dewatering, pp. 109, 177, 247); the Río Conchos (extirpations, p. 112); the ríos Casas Grandes, Santa María, del Carmen, and Laguna Bustillos (diversions, groundwater pumping, channelization, flood control practices, pollution, and introduction of nonnative species, pp. 124, 197); the Río Santa Cruz (extirpations, p. 140); the Río Yaqui (nonnatives, pp. 148, Plate 61); the Río Colorado (nonnatives, p. 153); the ríos Fuerte and Culiacán (logging, p. 177); canals, ponds, lakes in the endorheic (closed) Valle de México (nonnatives, extirpations, pollution, pp. 197, 281); the Río Verde Basin (dewatering, nonnatives, extirpations, Plate 88); the Río Mayo (dewatering, nonnatives, p. 247); the Río Papaloapan (pollution, p. 252); lagos de Zacapu and Yuriria (habitat destruction, p. 282); and the Río Pánuco Basin (nonnatives, p. 295).

Conant (1974, pp. 486–489) described significant threats to northern Mexican gartersnake habitat within its historical distribution in various locations in western Chihuahua, Mexico, and within the Rio Concho system where it is known to occur. These threats specifically included impoundments, diversions, and purposeful introductions of largemouth bass, common carp, and bullfrogs. We discuss the threats from nonnative species introductions below in our discussion of Factor C. McCranie and Wilson (1987, p. 2) discuss threats to the pine-oak communities of higher elevation habitats in the Sierra Madre Occidental, specifically noting that '' * * * the relative pristine character of the pine oak woodlands is threatened * * * every time a new road is bulldozed up the slopes in search of new madera or pasturage. Once the road is built, further development follows; pueblos begin to pop up along its length, especially if the road is paved as has been the case with (Mexican) Highway 40 through southern Durango. We feel fortunate to have worked in an area of this country of rapid population growth that is all too fast disappearing.'' In Mexico, as compared to the United States, there is believed to be a delay in the magnitude and significance of adverse effects to riparian communities, but it is believed that threats to riparian and aquatic communities that have been observed in Arizona as described below are currently occurring with increasing significance in several regions across Mexico within the historic distribution of the northern Mexican gartersnake (Conant 1974, pp. 471, 487–489; Contreras Balderas and Lozano 1994, pp. 379–381; va Landa et al. 1997, p. 316; Miller et al. 2005, p. 60–61; Abarca 2006; Rosen 2006).

Collectively, the impacts described above are expected to continue as a result of Mexico's expanding role as an economical labor force for international manufacturing under the North American Free Trade Agreement (NAFTA) and the subsequent increase in population size, economic growth and development, and infrastructure. Mexico's human population grew 700 percent from 1910 to 2000 (Miller et al. 2005, p. 60). More recently, Mexico's population increased by 245 percent from 1950 to 2002, and is projected to grow by another 28 percent by 2025 (EarthTrends 2005). As of 1992, Mexico had the second highest gross domestic product in Latin America at 5.8 percent, following Brazil (DeGregorio 1992, p. 60). As a result of NAFTA, the number of maquiladoras (export assembly plants) is expected to increase by as many as 3,000 to 4,000 (Contreras Balderas and Lozano 1994, p. 384). To accommodate Mexico's increasing population, rural areas are largely devoted to food production based on traditional methods, which has led to serious losses in vegetative cover and soil erosion (va Landa et al. 1997, p. 316). To increase forage and stocking rates for livestock production in the arid lowlands of northern Mexico, African buffelgrass (*Pennisetum ciliare*) was widely introduced in Mexico and has spread on its own (Búrquez-Montijo et al. 2002, p. 131). Buffelgrass invasions pose a serious threat to native arid ecosystems because buffelgrass prevents germination of native species, competes for water, crowds out native vegetation, and creates fine fuels in vegetation communities not adapted to fire; in such native arid ecosystems, buffelgrass has caused many changes, including severe soil erosion (Búrquez-Montijo et al. 2002, pp. 135, 138). Erosion affects the suitability of habitat for northern Mexican gartersnakes and their prey species. Recent estimates indicate that 80 percent of Mexico is affected by soil

erosion with the most serious erosion occurring in the states of Guanajuato (43 percent of the state's land area), Jalisco (25 percent of the state's land area), and México (25 percent of the state's land area) (va Landa et al. 1997, p. 317), the states in which the northern Mexican gartersnake historically occurred.

The threats to riparian and aquatic communities in Mexico (such as the intentional and unintentional introductions of nonnative species, improper livestock grazing, urbanization and development, water diversions and groundwater pumping, loss of vegetation cover and deforestation, erosion, pollution, impoundments, and dams) vary in their significance both geographically and ecologically, based on geographical distribution of land management activities and urban centers, but are expected to continue into the future. Threats that affect the amount of water within an occupied area directly affect its suitability to northern Mexican gartersnakes. Threats that alter the vegetation of occupied habitat reduce the habitat's suitability as cover for protection from predators, as a foraging area, and as an effective thermoregulatory site. Nonnative species, explained further in our Factor C discussion, compete with the northern Mexican gartersnake for prey as well as prey on juvenile and sub-adult northern Mexican gartersnakes, which hampers the recruitment of young snakes into the population and lessens the viability of that population over time. However, because specific and direct survey information is significantly limited concerning the presence and potential effect of these threats to the subspecies in Mexico, this discussion is based on extrapolation of how we understand these threats to affect the subspecies in the United States. Furthermore, the subspecies was historically distributed in several regions within Mexico that have remained roadless and isolated, thus suggesting that the severity of threats may be less than that found within the range in United States where lands have greater past and current economic pressures such as grazing and development. As such we can not conclude that the subspecies is likely to become endangered throughout its range in Mexico. Although we acknowledge that these threats are affecting the subpecies in the United States, we have determined that the portion of the subspecies' range in the United States does not constitute a significant portion of the range of the subspecies or a DPS. Therefore, on the basis of the best available information, we determine that it is not likely that the northern Mexican gartersnake will become an endangered species within the foreseeable future based on threats under this factor.

B. Overutilization for commercial, recreational, scientific, or educational purposes

The northern Mexican gartersnake may not be collected in the United States without special authorization by the Arizona Game and Fish Department or the New Mexico Department of Game and Fish. We have found no evidence that current or historical levels of lawful or unlawful field collecting of northern Mexican gartersnakes has played a significant role in the decline of this species. The Arizona Game and Fish Department recently produced field identification cards for distribution that provide information to assist with the field identification of each of Arizona's five native gartersnake species as well as guidance on submitting photo vouchers for university museum collections. Additionally, universities such as Arizona State University and the University of Arizona recently began to accept photo voucher record, versus physical specimens, in their respective museum collections. We believe these measures further reduce the necessity for field biologists to collect physical specimens (unless discovered postmortem) for locality voucher purposes and therefore further reduce impacts to vulnerable populations from formal biological field investigations and field specimen collections. We were unable to obtain any information about the effect of overutilization for commercial, recreational, scientific, or educational purposes in Mexico.

Specific discussion of the regulatory protections for the northern Mexican gartersnake is provided under Factor D ''Inadequacy of Existing Regulatory Mechanisms'' below.

C. Disease or Predation

Disease

Disease in northern Mexican gartersnakes has not yet been documented as a specific threat in the United States or Mexico. However, because little is known about disease in wild snakes, it is premature to conclude that there is no disease threat that could directly affect remaining northern Mexican gartersnake populations (Rosen 2006).

Disease and nonnative parasites have been implicated in the decline in the prey base of the northern Mexican gartersnake. The outbreak of chytrid fungus (of the genus *Batrachochytrium*) has been identified as a chief causative agent in the significant declines of many of the native ranid frogs and other amphibian species, and regional concerns exist for the native fish community due to nonnative parasites such as the Asian tapeworm (*Bothriocephalus achelognathi*) in southeastern Arizona (Rosen and Schwalbe 1997, pp. 14–15; 2002c, pp. 1–19; Morell 1999, pp. 728–732; Sredl and Caldwell 2000, p. 1; Hale 2001, pp. 32–37; Bradley et al. 2002, p. 206). The chytrid fungus has been implicated in both large-scale declines and local extirpations of many amphibians, chiefly anuran species, around the world (Johnson 2006, p. 3011). Lips et al. (2006, pp. 3166–3169) suggest that the high virulence and large number of potential hosts make the chytrid fungus a serious threat to amphibian diversity. In Arizona, chytrid infections have been reported in several northern Mexican gartersnake native prey species (Morell 1999, pp. 731–732; Sredl and Caldwell 2000, p. 1; Hale 2001, pp. 32–37; Bradley et al. 2002, p. 207; USFWS 2002a, pp. 40802–40804). Declines of native prey species of the northern Mexican gartersnake from chytrid infections have contributed to the decline of this species in the United States. However, we do not have specific information regarding potential impacts of chytrid infections on northern Mexican gartersnake native prey species in Mexico.

We also note that in a pure culture (uncontaminated growth medium), the fungus *Batrachochytrium* can grow on boiled snakeskin (keratin), which indicates the potential for the fungus to live saprobically (obtaining nutrients from non-living organic matter, commonly dead and decaying plant or animal matter, by absorbing soluble organic compounds) on gartersnake skin in the wild if other components of the ecosystem limit the growth of competing bacteria and oomycetes (a taxonomic group of fungi that produce oospores such as the genera *Pythium, Phytophthora*, and *Aphanomyces*) (Longcore et al. 1999, p. 227). While the genus *Batrachochytrium* has been grown on snakeskin in the laboratory, no reports of the organism on reptilian hosts in the wild have been documented. We anticipate diligence in monitoring the status of incidence of this disease in this species in the wild for early detection purposes should this potential threat come to fruition in wild populations of northern Mexican gartersnakes.

Nonnative Species Interactions

A host of native predators prey upon northern Mexican gartersnakes

including birds of prey, other snakes [kingsnakes (*Lampropeltis sp.*), whipsnakes (*Masticophis sp.*), etc.], wading birds, raccoons (*Procyon lotor*), skunks (*Mephitis sp.*), and coyotes (*Canis latrans*) (Rosen and Schwalbe 1988, p. 18). However, nonnative species, such as the bullfrog, the northern (virile) (*Orconectes virilis*) and red swamp (*Procambarus clarki*) crayfish, and numerous species of exotic sport and bait fish species continue to be the most prominent threat to the northern Mexican gartersnake and to its prey base from direct predation, competition, and modification of habitat in the United States and potentially in Mexico (Conant 1974, pp. 471, 487–489; Meffe 1985, pp. 179–185; Rosen and Schwalbe 1988, pp. 28, 32; 1997, p. 1; Bestgen and Propst 1989, pp. 409–410; Clarkson and Rorabaugh 1989, pp. 531, 535; Marsh and Minckley 1990, p. 265; Stefferud and Stefferud 1994, p. 364; Rosen et al. 1995, pp. 257–258; 1996b, pp. 2, 11–13; 2001, p. 2; Degenhardt et al. 1996, p. 319; Fernandez and Rosen 1996, pp. 8, 23–27; Weedman and Young 1997, pp. 1, Appendices B, C; Inman et al. 1998, p. 17; Rinne et al. 1998, pp. 4–6; Fagan et al. 2005, pp. 34, 34–41; Olden and Poff 2005, pp. 82–87; Unmack and Fagan 2004, p. 233; Miller et al. 2005, pp. 60–61; Abarca 2006; Brennan and Holycross 2006, p. 123; Holycross et al. 2006, pp. 13–15; Rosen and Melendez 2006, p. 54).

Nonnative Species Interactions in the United States. Nonnative species represent serious threats to the northern Mexican gartersnake through competition for prey, direct predation, and alteration of habitat. Riparian and aquatic communities have been dramatically impacted by a shift in species' composition. Specifically, riparian and wetland communities have experienced a shift from being historically dominated by native fauna to being increasingly occupied by an expanding assemblage of nonnative plant and animal species that have been intentionally or accidentally introduced, or have colonized new areas from neighboring occupied localities. For example, nonnative shrub species in the genus *Tamarix* have been widely introduced throughout the western States and appear to thrive in regulated river systems (Stromberg and Chew 2002, pp. 210–213). Tamarix invasions may result in habitat alteration from potential effects to water tables, changes to canopy and ground vegetation structures, and increased fire risk, which hasten the demise of native cottonwood and willow communities and affect the suitability of the vegetation component to northern Mexican gartersnake habitat (Stromberg and Chew 2002, pp. 211–212; USFWS 2002b, p. H–9).

Declines in the Northern Mexican Gartersnake Anuran Prey Base in the United States. The decline of the northern Mexican gartersnake within its historical and extant distribution was subsequent to the declines in its prey base (native amphibian and fish populations) from introductions of nonnative bullfrogs, crayfish, and numerous species of exotic sport and bait fish as documented in an extensive body of literature (Nickerson and Mays 1970, p. 495; Hulse 1973, p. 278; Vitt and Ohmart 1978, p. 44; Meffe 1985, pp. 179–185; Ohmart et al. 1988, pp. 143–147; Rosen and Schwalbe 1988, pp. 28–31; 1997, pp. 8–16; Bestgen and Propst 1989, pp. 409–410; Clarkson and Rorabaugh 1989, pp. 531–538; Marsh and Minckley 1990, p. 265; Sublette et al. 1990, pp. 112, 243, 246, 304, 313, 318; Stefferud and Stefferud 1994, p. 364; Holm and Lowe 1995, p. 5; Rosen et al. 1995, pp. 251, 257–258; 1996a, pp. 2–3; 1996b, p. 2; 2001, p. 2; Sredl et al. 1995a, pp. 7–8; 1995b, pp. 8–9; 1995c, pp. 7–8; 2000, p. 10; Degenhardt et al. 1996, p. 319; Fernandez and Rosen 1996, pp. 8–27; Drost and Nowak 1997, p. 11; Weedman and Young 1997, pp. 1, Appendices B, C; Inman et al. 1998, p. 17; Rinne et al. 1998, pp. 4–6; Turner et al. 1999, p. 11; Nowak and Spille 2001, p. 11; Bonar et al. 2004, p. 3; Fagan et al. 2005, pp. 34, 34–41; Olden and Poff 2005, pp. 82–87; Holycross et al. 2006, pp. 13–15, 52–61; Brennan and Holycross 2006, p. 123). The northern Mexican gartersnake is particularly vulnerable to a loss in native prey species (Rosen and Schwalbe 1988, p. 20). Rosen et al. (2001, pp. 10, 13, 19) examined this issue in detail and proposed a hypothesis involving two reasons for the decline in northern Mexican gartersnakes following the loss or decline in the native prey base: (1) The northern Mexican gartersnake is unlikely to increase foraging efforts at the risk of increased predation; and (2) the species needs substantial food regularly to maintain its weight and health. If forced to forage more often for smaller prey items, a reduction in growth and reproductive rates will result (Rosen et al. 2001, pp. 10, 13).

Native ranid frog species such as lowland leopard frogs, northern leopard frogs, and federally threatened Chiricahua leopard frogs have all experienced significant declines throughout their distribution in the Southwest, partially due to predation and competition with nonnative species (Clarkson and Rorabaugh 1989, pp. 531, 535; Hayes and Jennings 1986, p. 490). Rosen et al. (1995, pp. 257–258) found that Chiricahua leopard frog distribution in the Chiricahua Mountain region of Arizona was inversely related to nonnative species distribution and without corrective action, predicted that the Chiricahua leopard frog will be extirpated from this region. Along the Mogollon Rim, Holycross et al. (2006, p. 13) found that only 8 sites of 57 surveyed (15 percent) consisted of an entirely native anuran community and that native frog populations in another 19 sites (33 percent) had been completely displaced by invading bullfrogs.

Declines in the native leopard frog populations in Arizona have significantly contributed to declines in the northern Mexican gartersnake, as a primary native predator. Scotia Canyon in the Huachuca Mountains of southeastern Arizona is a location where corresponding declines between leopard frog and northern Mexican gartersnake populations has been documented through repeated survey efforts over time (Holm and Lowe 1995, p. 33). Surveys of Scotia Canyon occurred during the early 1980s and again during the early 1990s. Leopard frogs in Scotia Canyon were infrequently observed during the early 1980s and were apparently extirpated by the early 1990s (Holm and Lowe 1995, pp. 45–46). Northern Mexican gartersnakes in low numbers were observed in decline during the early 1980s with low capture rates remaining through the early 1990s (Holm and Lowe 1995, pp. 27–35). Surveys documented further decline in 2000 (Rosen et al. 2001, pp. 15–16). A former stronghold for the northern Mexican gartersnake, the San Bernardino National Wildlife Refuge has also been affected by correlative declines between leopard frog and northern Mexican gartersnake populations (Rosen and Schwalbe 1988, p. 28; 1995, p. 452; 1996, pp. 1–3; 1997, p. 1; 2002b, pp. 223–227; 2002c, pp. 31, 70; Rosen et al. 1996b, pp. 8–9; 2001, pp. 6–10). Declines of leopard frog populations, often correlated with nonnative species introductions (but also with the spread of chytridiomycosis, symptomatic disease caused by the chytrid fungus, and habitat modification and destruction), has not just occurred throughout southeastern Arizona, but throughout much of the U.S. distribution of the northern Mexican gartersnake based on survey data (Nickerson and Mays 1970, p. 495; Vitt and Ohmart 1978, p. 44; Ohmart et al. 1988, p. 150; Rosen and Schwalbe 1988,

Appendix I; 1995, p. 452; 1996, pp. 1–3; 1997, p. 1; 2002b, pp. 232–238; 2002c, pp. 1, 31; Clarkson and Rorabaugh 1989, pp. 531–538; Sredl et al. 1995a, pp. 7–8; 1995b, pp. 8–9, 1995c, pp. 7–8; 2000, p. 10; Holm and Lowe 1995, pp. 45–46; Rosen et al. 1996b, p. 2; 2001, pp. 2, 22; Degenhardt et al. 1996, p. 319; Fernandez and Rosen 1996, pp. 6–20; Drost and Nowak 1997, p. 11; Turner et al. 1999, p. 11; Nowak and Spille 2001, p. 32; Holycross et al. 2006, pp. 13–14, 52–61). Specifically, Holycross et al. (2006, pp. 53–57, 59) recently documented extirpations of the northern Mexican gartersnake's native leopard frog prey base at several currently historically, or potentially occupied locations including the Agua Fria River in the vicinity of Table Mesa Road and Little Grand Canyon Ranch and at Rock Springs, Dry Creek from Dugas Road to Little Ash Creek, Little Ash Creek from Brown Spring to Dry Creek, Sycamore Creek (Agua Fria watershed) in the vicinity of the Forest Service Cabin, at the Page Springs and Bubbling Ponds fish hatchery along Oak Creek, Sycamore Creek (Verde River watershed) in the vicinity of the confluence with the Verde River north of Clarkdale, along several reaches of the Verde River mainstem, Cherry Creek on the east side of the Sierra Ancha Mountains, and Tonto Creek from Gisela to ''the Box.''

Rosen et al. (2001, p. 22) concluded that the presence and expansion of nonnative predators (mainly bullfrogs, crayfish, and green sunfish) are the primary causes of decline in northern Mexican gartersnakes in southeastern Arizona. Specifically, the authors identified the expansion of bullfrogs into the Sonoita grasslands (the threshold to the Canelo Hills) and the introduction of crayfish into Lewis Springs as being of particular concern in terms of future recovery efforts for the northern Mexican gartersnake. It should also be noted that Rosen et al. (2001, Appendix I) documented the decline of several native fish species in several locations visited, further affecting the prey base of northern Mexican gartersnakes. Rosen et al. (1995, pp. 252–253) sampled 103 sites in the Chiricahua Mountains region which included the Chiricahua, Dragoon, and Peloncillo mountains, and the Sulphur Springs, San Bernardino, and San Simon valleys. They found that 43 percent of all ectothermic aquatic and semi-aquatic vertebrate species detected were nonnative. The most commonly encountered nonnative species was the bullfrog (Rosen et al. 1995, p. 254).

Declines in the Northern Mexican Gartersnake Native Fish Prey Base in the United States. Native fish species such as the federally endangered Gila chub, petitioned roundtail chub, and federally endangered Gila topminnow are among the primary prey species for the northern Mexican gartersnake (Rosen and Schwalbe 1988, p. 18). Similar to bullfrogs, predatory nonnative fish species such as largemouth bass also prey upon juvenile northern Mexican gartersnakes. Additionally both nonnative sport and bait compete with the northern Mexican gartersnake in terms of its native fish and native anuran prey base. Collier et al. (1996, p. 16) note that interactions between native and nonnative fish have significantly contributed to the decline of many native fish species from direct predation and indirectly from competition (which has adversely affected the prey base for northern Mexican gartersnakes). Holycross et al. (2006, pp. 53–55) recently documented significantly depressed or extirpated native fish prey bases for the northern Mexican gartersnake along the Agua Fria in the vicinity of Table Mesa Road and the Little Grand Canyon Ranch, along Dry Creek from Dugas Road to Little Ash Creek, along Little Ash Creek from Brown Spring to Dry Creek, along Sycamore Creek (Agua Fria watershed) in the vicinity of the Forest Service Cabin, and along Sycamore Creek (Verde River watershed) in the vicinity of its confluence with the Verde River north of Clarkdale.

The widespread decline of native fish species from the arid southwestern United States and Mexico has resulted largely from interactions with nonnative species and has been captured in the listing rules of 13 native species listed under the Act whose historical ranges overlap with the historical distribution of the northern Mexican gartersnake. These native fish species were likely prey species for the northern Mexican gartersnake, including: bonytail chub (*Gila elegans,* 45 FR 27710, April 23, 1980), Yaqui catfish (*Ictalurus pricei,* 49 FR 34490, August 31, 1984), Yaqui chub (*Gila purpurea,* 49 FR 34490, August 31, 1984), Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis,* 32 FR 4001, March 11, 1967), beautiful shiner (*Cyprinella formosa,* 49 FR 34490, August 31, 1984), humpback chub (*Gila cypha,* 32 FR 4001, March 11, 1967), Gila chub (*Gila intermedia,* 70 FR 66663, November 2, 2005), Colorado pikeminnow (*Ptychocheilus lucius,* 32 FR 4001, March 11, 1967), spikedace (*Meda fulgida,* 51 FR 23769, July 1, 1986), loach minnow (*Tiaroga cobitis,* 51 FR 39468, October 28, 1986), razorback sucker (*Xyrauchen texanus,* 56 FR 54957, October 23, 1991), desert pupfish (*Cyprinodon macularius,* 51 FR 10842, March 31, 1986), and Gila topminnow (*Poeciliopsis occidentalis occidentalis,* 32 FR 4001, March 11, 1967)]. In total within Arizona, 19 of 31 (61 percent) of native fish species are listed under the Act. Arizona ranks the highest of all 50 States in the percentage of native fish species at risk (85.7 percent, Stein 2002, p. 21).

Fragmentation of extant listed native fish populations is exacerbating the decline of these species and may preclude their recovery as well as continue to affect their role in the prey base of northern Mexican gartersnakes. Fagan et al. (2005, pp. 34–41) examined the correlation between fragmentation of extant distributions and the relative risk of extinction of any given species. They found the strongest correlation to risk of extinction due to fragmentation of fish populations occurred at the intermediate to large spatial scales, which geographically correspond to tributaries and river basins (Fagan et al. 2005, p. 38). At this range in spatial scale, the effects of dam building, water diversions, and introduced nonnatives appear to be significant factors exacerbating the fragmentation by acting as barriers to the exchange of genetic material among listed fish populations (Fagan et al. 2005, pp. 38–39).

Olden and Poff (2005, p. 75) stated that environmental degradation and the proliferation of nonnative fish species threaten the endemic and unique fish faunas of the American Southwest. The fastest expanding nonnative species are red shiner (*Cyprinella lutrensis*), fathead minnow (*Pimephales promelas*), green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterus salmoides*), western mosquitofish, and channel catfish (*Ictalurus punctatus*). These species are considered to be the most invasive in terms of their negative impacts on native fish communities (Olden and Poff 2005, p. 75). Many nonnative fishes in addition to those listed immediately above, including yellow and black bullheads (*Ameiurus sp.*), flathead catfish (*Pylodictis olivaris*), and smallmouth bass (*Micropterus dolomieue*), have been introduced into formerly and currently occupied northern Mexican gartersnake habitat (Bestgen and Propst 1989, pp. 409–410; Marsh and Minckley 1990, p. 265; Sublette et al. 1990, pp. 112, 243, 246, 304, 313, 318; Abarca and Weedman 1993, pp. 6–12; Stefferud and Stefferud 1994, p. 364; Weedman and Young 1997, pp. 1, Appendices B, C; Voeltz 2002, p. 88; Bonar et al. 2004, pp. 1–108).

Several authors have identified both the presence of nonnative fish species as well as their deleterious effects on native species within Arizona. Abarca and Weedman (1993, pp. 6–12) found that the number of nonnative fish species was twice the number of native fish species in Tonto Creek in the early 1990s, with a stronger nonnative influence in the lower reaches where the northern Mexican gartersnake is considered extant. At the Gisela sampling point, four of six sampling attempts resulted in no fish captured; of the 41 fish captured in the remaining two attempts, 90 percent were nonnative, including 28 fathead minnows, 5 green sunfish, 3 red shiner, and 1 yellow bullhead. Surveys in the Salt River above Lake Roosevelt indicate a decline of roundtail chub and other natives with an increase in flathead and channel catfish numbers (Voeltz 2002, p. 49). In New Mexico, nonnative fish have been identified as the main cause for declines observed in roundtail chub populations (Voeltz 2002, p. 40).

A report provided by Bonar et al. (2004, pp. 1–108) is the most current and perhaps one of the most complete assessments of native and nonnative fish species interactions in the Verde River mainstem. Overall, Bonar et al. (2004, p. 57) found that nonnative fishes were approximately 2.6 times more dense per unit volume of river than native fishes, and their standing crop was approximately 2.8 times that of native fishes per unit volume of river. Bonar et al. (2004, p. 79) verified the findings of Voeltz (2002, pp. 71, 88), in stating that red shiner were the most commonly encountered nonnative fish species in the Verde River by almost four-fold; they found the species to be present throughout the Verde River year-around, but noted the highest numbers in the reach between Beasley Flat to Sheep Bridge above Horseshoe Reservoir in riffle habitats. River reaches above Horseshoe Reservoir have resident self-sustaining populations of bass, green sunfish, catfish, and carp, with a low, unstable native fish community, which results in fewer native fish predation observations in sampling results for this reach (Bonar et al. 2004, pp. 80, 87). Reaches below Bartlett Reservoir had both high native and nonnative fish abundance, which resulted in more frequent observations of nonnative predation on native fish according to Bonar et al. (2004, p. 87). Lastly, Bonar et al. (2004, p. 6) found that channel and flathead catfish, green sunfish, largemouth and smallmouth bass, and yellow bullhead had the highest rates of piscivory (fish predation) on native and nonnative fish species in all river reaches; of these species, largemouth bass were documented as the most significant predator on native fish.

Northern Mexican gartersnakes can successfully use some nonnative species, such as mosquitofish and red shiner, as prey species. However, all other nonnative species, most notably the spiny-rayed fish, are not considered prey species for the northern Mexican gartersnake. These nonnative species can be difficult to swallow due to their body shape and spiny dorsal fins, are predatory on juvenile gartersnakes, and reduce the abundance of or completely eliminate native fish populations. This is particularly important in the wake of a stochastic event such as flooding, extreme water temperatures, or excessive turbidity. Native fish are adapted to the dramatic fluctuations in water conditions and flow regimes and persist in the wake of stochastic events as a prey base for the northern Mexican gartersnake. Nonnative fish, even species that may be used as prey by the northern Mexican gartersnake, generally are ill-adapted to these conditions and may be removed from the area temporarily or permanently, depending on the hydrologic connectivity to extant populations. If an area is solely comprised of nonnative fish, the northern Mexican gartersnake may be faced with nutritional stress or starvation. The most conclusive evidence for the northern Mexican gartersnake's intolerance for nonnative fish remains in the fact that, in most incidences, nonnative fish species generally do not occur in the same locations as the northern Mexican gartersnake and its native prey species.

Bullfrog Diet and Distribution in the United States. Bullfrogs are widely considered one of the most serious threats to the northern Mexican gartersnake throughout its range (Conant 1974, pp. 471, 487–489; Rosen and Schwalbe 1988, pp. 28–30; Rosen et al. 2001, pp. 21–22). Bullfrogs adversely affect northern Mexican gartersnakes through direct predation of juvenile and sub-adults and from competition with native prey species. Bullfrogs first appeared in Arizona in 1926, as a result of a systematic introduction effort by the State Game Department (now, the Arizona Game and Fish Department) for the purposes of sport hunting and as a food source. (Tellman 2002, p. 43). By 1982, the Arizona Game and Fish Department had systematically introduced some 682,000 bullfrog tadpoles into streams throughout the State (Tellman 2002, p. 43). Bullfrogs are extremely prolific, adept at colonizing new areas, and may disperse to distances of 6.8 miles (10.9 km) and likely further within drainages (Bautista 2002, p. 131; Rosen and Schwalbe 2002a, p. 7; Casper and Hendricks 2005, p. 582). Batista (2002, p. 131) confirmed ''the strong colonizing skills of the bullfrog and that the introduction of this exotic species can disturb local anuran communities.''

Bullfrogs are voracious, opportunistic, even cannibalistic predators that readily attempt to consume any animal smaller than themselves, including conspecifics (other species within the same genus) which can encompass 80 percent of their diet (Casper and Hendricks 2005, p. 543). Bullfrogs have demonstrated astonishing variability in their diet, which has been documented to include vegetation, earthworms, leeches, insects, centipedes, millipedes, spiders, scorpions, crayfish, snails, numerous species of larval and metamorphosed amphibians, fish, small alligators, turtles, lizards, numerous species of snakes [seven genera; including six different species of gartersnakes, two species of rattlesnakes, and Sonoran gophersnakes (*Pituophis catenifer affinis*)], small mammals (e.g., chipmunks, cotton rats, shrews, mice, and voles), numerous species of birds, bats, muskrats, and even juvenile mink (Bury and Whelan 1984, p. 5; Clarkson and DeVos 1986, p. 45; Holm and Lowe 1995, pp. 37–38; Carpenter et al. 2002, p. 130; King et al. 2002; Hovey and Bergen 2003, pp. 360–361; Casper and Hendricks 2005, p. 544; Combs et al. 2005, p. 439; Wilcox 2005, p. 306).

Bullfrogs have been documented throughout the State of Arizona. Holycross et al. (2006, pp. 13–14, 52–61) found bullfrogs at 55 percent of sample sites in the Agua Fria watershed, 62 percent of sites in the Verde River watershed, 25 percent of sites in the Salt River watershed, and 22 percent of sites in the Gila River watershed. In total, bullfrogs were observed at 22 of the 57 sites surveyed (39 percent) across the Mogollon Rim (Holycross et al. 2006, p. 13).

A number of authors have documented the presence of bullfrogs through their survey efforts Statewide in specific regional areas, drainages, and disassociated wetlands that include the Kaibab National Forest (Sredl et al. 1995a, p. 7); the Coconino National Forest (Sredl et al. 1995c, p. 7); the White Mountain Apache Reservation (Hulse 1973, p. 278); Beaver Creek (tributary to the Verde River) (Drost and Nowak 1997, p. 11); the Watson Woods Riparian Preserve near Prescott (Nowak and Spille 2001, p. 11); the Tonto National Forest (Sredl et al. 1995b, p. 9);

the Lower Colorado River (Vitt and Ohmart 1978, p. 44; Clarkson and DeVos 1986, pp. 42–49; Ohmart et al. 1988, p. 143); the Huachuca Mountains (Rosen and Schwalbe 1988, Appendix I; Holm and Lowe 1995, pp. 27–35; Sredl et al. 2000, p. 10; Rosen et al. 2001, Appendix I); the Pinaleno Mountains region (Nickerson and Mays 1970, p. 495); the San Bernardino National Wildlife Refuge (Rosen and Schwalbe 1988, Appendix I; 1995, p. 452; 1996, pp. 1–3; 1997, p. 1; 2002b, pp. 223–227; 2002c, pp. 31, 70; Rosen et al. 1995, p. 254; 1996b, pp. 8–9; 2001, Appendix I); the Buenos Aires National Wildlife Refuge (Rosen and Schwalbe 1988, Appendix I); the Arivaca Area (Rosen and Schwalbe 1988, Appendix I; Rosen et al. 2001, Appendix I); Cienega Creek drainage (Rosen et al. 2001, Appendix I); Babocamari River drainage (Rosen et al. 2001, Appendix I); Turkey Creek drainage (Rosen et al. 2001, Appendix I); O'Donnell Creek drainage (Rosen et al. 2001, Appendix I); Audubon Research Ranch near Elgin (Rosen et al. 2001, Appendix I); Santa Cruz River drainage (Rosen and Schwalbe 1988, Appendix I; Rosen et al. 2001, Appendix I); San Rafael Valley (Rosen et al. 2001, Appendix I); San Pedro River drainage (Rosen and Schwalbe 1988, Appendix I; Rosen et al. 2001, Appendix I); Bingham Cienega (Rosen et al. 2001, Appendix I); Sulfur Springs Valley (Rosen et al. 1996a, pp. 16–17); Whetstone Mountains region (Turner et al. 1999, p. 11); Aqua Fria River drainage (Rosen and Schwalbe 1988, Appendix I; Holycross et al. 2006, pp. 13, 15–18, 52–53); Verde River drainage (Rosen and Schwalbe 1988, Appendix I; Holycross et al. 2006, pp. 13, 26–28, 55–56); greater metropolitan Phoenix area (Rosen and Schwalbe 1988, Appendix I); greater metropolitan Tucson area (Rosen and Schwalbe 1988, Appendix I); Sonoita Creek drainage (Rosen and Schwalbe 1988, Appendix I); Sonoita Grasslands (Rosen and Schwalbe 1988, Appendix I); Canelo Hills (Rosen and Schwalbe 1988, Appendix I); Pajarito Mountains (pers. observation, J. Servoss, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service); Picacho Reservoir (Rosen and Schwalbe 1988, Appendix I); Dry Creek drainage (Holycross et al. 2006, pp. 19, 53); Little Ash Creek drainage (Holycross et al. 2006, pp. 19, 54); Oak Creek drainage (Holycross et al. 2006, pp. 23, 54); Sycamore Creek drainages (Holycross et al. 2006, pp. 20, 25, 54–55); Rye Creek drainage (Holycross et al. 2006, pp. 37, 58); Spring Creek drainage (Holycross et al. 2006, pp. 25, 59); Tonto Creek drainage (Holycross et al. 2006, pp. 40–44, 59); San Francisco River drainage (Holycross et al. 2006, pp. 49–50, 61); and the upper Gila River drainage (Holycross et al. 2006, pp. 45–50, 60–61).

Perhaps one of the most serious consequences of bullfrog introductions is their persistence in an area once they have become established, and the subsequent difficulty in eliminating bullfrog populations. Rosen and Schwalbe (1995, p. 452) experimented with bullfrog removal at various sites on the San Bernardino National Wildlife Refuge in addition to a control site with no bullfrog removal in similar habitat on the Buenos Aires National Wildlife Refuge. Removal of adult bullfrogs resulted in a substantial increase in younger age-class bullfrogs where removal efforts were the most intensive (Rosen and Schwalbe 1997, p. 6). Evidence from dissection samples from young adult and sub-adult bullfrogs indicated these age-classes readily prey upon juvenile bullfrogs (up to the average adult leopard frog size) as well as juvenile gartersnakes, which suggests that the selective removal of only the large adult bullfrogs (favoring the young adult and sub-adult age classes) could indirectly lead to increased predation of leopard frogs and juvenile gartersnakes (Rosen and Schwalbe 1997, p. 6). Consequently, this strategy was viewed as being potentially ''self-defeating'' and ''counter-productive'' but required further investigation (Rosen and Schwalbe 1997, p. 6).

Bullfrog Effects on the Native Anuran Prey Base for the Northern Mexican Gartersnake in the United States. Bullfrog introductions in the United States and Mexico have adversely affected the native leopard frog prey base for northern Mexican gartersnakes (Conant 1974, pp. 471, 487–489; Hayes and Jennings 1986, pp. 491–492; Rosen and Schwalbe 1988, p. 28–30; 2002b, pp. 232–238; Rosen et al. 1995, pp. 257–258; 2001, pp. 2, Appendix I). Different age classes of bullfrogs within a community can affect native ranid populations via different mechanisms. Juvenile bullfrogs may affect native ranids by competition, male bullfrogs may affect native ranids by predation, and female bullfrogs may affect native ranids by both mechanisms depending on body size and microhabitat (Wu et al. 2005, p. 668). Pearl et al. (2004, p. 18) also suggested that the effect of bullfrog introductions on native ranids may be different based on microhabitat use, but also suggested that an individual ranid frog species' physical ability to escape influences the effect of bullfrogs on each native ranid community.

Kupferberg (1994, p. 95) found that where bullfrogs were present in California, native anurans were rare or absent. Effects of larval bullfrogs on native ranid frogs have also been described in the literature. Survivorship of larval threatened California red-legged frogs (*Rana aurora*) was 700 percent greater in the absence of bullfrog larvae (Lawler et al. 1999). Bury and Whelan (1986, pp. 9–10) implicated bullfrog introductions in the decline of several native ranid frogs in several States within the western United States including Nevada, California, Montana, Colorado, Oregon, and Washington. Hayes and Jennings (1986, pp. 500–501) conclude that while bullfrog introductions have affected the status of native ranid frogs throughout the western United States, the synergistic effect of other factors, such as habitat alteration and destruction, introduced nonnative fishes, commercial exploitation, toxicants, pathogens and parasites, and acid rain, likely also played significant roles.

Bullfrog Predation on Northern Mexican Gartersnakes in the United States. Sub-adult and adult bullfrogs not only compete with the northern Mexican gartersnake for prey items, but directly prey upon juvenile and occasionally sub-adult northern Mexican gartersnakes (Rosen and Schwalbe 1988, pp. 28–31; 1995, p. 452; 2002b, pp. 223–227; Holm and Lowe 1995, pp. 29–29; Rossman et al. 1996, p. 177; AGFD *In Prep,* p. 12; 2001, p. 3; Rosen et al. 2001, pp. 10, 21–22; Carpenter et al. 2002, p. 130; Wallace 2002, p. 116). A well-circulated photograph of an adult bullfrog in the process of consuming a northern Mexican gartersnake at Parker Canyon Lake, Cochise County, Arizona, taken by John Carr of the Arizona Game and Fish Department in 1964, provides photographic documentation of bullfrog predation (Rosen and Schwalbe 1988, p. 29; 1995, p. 452). A common observation in northern Mexican gartersnake populations that co-occur with bullfrogs is a preponderance of large, mature adult snakes with conspicuously low numbers of individuals in the neonate (newborn) and juvenile age size classes due to bullfrogs preying on young small snakes, which ultimately leads to low recruitment levels (reproduction and survival of young) (Rosen and Schwalbe 1988, p. 18; Holm and Lowe 1995, p. 34).

The tails of gartersnakes are easily broken-off through predation attempts (tails of gartersnakes do not regenerate), which may assist in escaping an individual predation attempt but may also lead to infection or compromise an individual's physical ability to escape

future predation attempts or successfully forage. The incidence of tail breaks in gartersnakes can often be used to assess predation pressures within gartersnake populations. Rosen and Schwalbe (1988, p. 22) found the incidence of tail breaks to be statistically higher in females than in males. Fitch (2003, p. 212) also found that tail breaks in the common gartersnake occurred more frequently in females than males and in adults more than in juveniles. Fitch (2003, p. 212) also commented that, while tail breakage in gartersnakes can save the life of an individual snake, it also leads to permanent handicapping of the snake, resulting in slower swimming and crawling speeds, which could leave the snake more vulnerable to predation or affect its foraging ability. Furthermore, Mushinsky and Miller (1993, pp. 662–664) found that the incidence of tail injury in water snakes in the genera *Nerodia* and *Regina* (which have similar life histories to northern Mexican gartersnakes) was higher in females than in males and in adults more than juveniles. We believe this could be explained by higher basking rates associated with gravid (pregnant) females that increased their visibility to predators and that predation on juvenile snakes generally results in complete consumption of the animal, which would limit observations of tail injury in the juvenile age class. Rosen and Schwalbe (1988, p. 22) suggested that the indication that female northern Mexican gartersnakes bear more injuries is consistent with the inference that they employ a riskier foraging strategy. Willis *et al.* (1982, p. 98) discussed the incidence of tail injury in three species in the genus *Thamnophis* [common gartersnake, Butler's gartersnake (*T. butleri*), and the eastern ribbon snake (*T. sauritus*)] and concluded that individuals that suffered nonfatal injuries prior to reaching a length of 12 in (30 cm) are not likely to survive and that physiological stress during post-injury hibernation may play an important role in subsequent mortality.

Ecologically significant observations on tail injuries were made by Rosen and Schwalbe (1988, pp. 28–31) from the once-extant population of northern Mexican gartersnakes on the San Bernardino National Wildlife Refuge where 78 percent of specimens had broken tails with a ''soft and club-like'' terminus, which suggests repeated injury from multiple predation attempts. While palpating (medically examining by touch) gravid female northern Mexican gartersnakes, Rosen and Schwalbe (1988, p. 28) noted bleeding from this region which suggested the snakes suffered from ''squeeze-type'' injuries inflicted by adult bullfrogs. While a sub-adult or adult northern Mexican gartersnake may survive an individual predation attempt from a bullfrog while only incurring tail damage, secondary effects from infection of the wound can significantly contribute to mortality of individuals.

Research on the effects of attempted predation performed by Mushinsky and Miller (1993, pp. 661–664) and Willis *et al.* (1982, pp. 100–101) supports the observations made by Holm and Lowe (1995, p. 34) on the northern Mexican gartersnake population age class structure in Scotia Canyon in the Huachuca Mountains of southeastern Arizona in the early 1990s. Specifically, Holm and Lowe (1995, pp. 33–34) observed a conspicuously greater number of adult snakes, in that population than sub-adult snakes as well as a higher incidence of tail injury (89 percent) in all snakes captured. Bullfrogs have been identified as the primary cause for both the collapse of the native leopard frog (prey base for the northern Mexican gartersnake) and northern Mexican gartersnake populations on the San Bernardino National Wildlife Refuge (Rosen and Schwalbe 1988, p. 28; 1995, p. 452; 1996, pp. 1–3; 1997, p. 1; 2002b, pp. 223–227; 2002c, pp. 31, 70; Rosen *et al.* 1996b, pp. 8–9). Rosen and Schwalbe (1988, p. 18) stated that the low survivorship of neonates, and possibly yearlings, due to bullfrog predation is an important proximate cause of population declines of this snake at the San Bernardino National Wildlife Refuge and throughout its distribution in Arizona.

Effects of Crayfish on Northern Mexican Gartersnakes in the United States. Crayfish represent another category of nonnative species threat as they are a primary threat to many prey species of the northern Mexican gartersnake and may also prey upon juvenile gartersnakes (Fernandez and Rosen 1996, p. 25; Voeltz 2002, pp. 87–88). Fernandez and Rosen (1996, p. 3) studied the effects of crayfish introductions on two stream communities in Arizona, a low-elevation semi-desert stream and a high mountain stream, and concluded that crayfish can noticeably reduce species diversity and destabilize trophic structures (food chains) in riparian and aquatic ecosystems through their effect on vegetative structure, stream substrate composition, and predation on eggs, larval, and adult forms of native invertebrate and vertebrate species. Crayfish fed on embryos, tadpoles, newly metamorphosed frogs, and adult leopard frogs, but they did not feed on egg masses (Fernandez and Rosen 1996, p. 25). However, Gamradt and Kats (1996, p. 1155) found that crayfish readily consumed the egg masses of California newts (*Taricha torosa*). Fernandez and Rosen (1996, pp. 6–19, 52–56) and Rosen (1987, p. 5) discussed observations of inverse relationships between crayfish abundance and native herpetofauna including narrow-headed gartersnakes (*Thamnophis rufipunctatus rufipunctatus*), northern leopard frogs, and Chiricahua leopard frogs. Crayfish may also affect native fish populations. Carpenter (2005, pp. 338–340) documented that crayfish may reduce the growth rates of native fish through competition for food and noted that the significance of this impact may vary between species. Crayfish also prey on fish eggs and larvae (Inman *et al.* 1998, p. 17).

Crayfish alter the abundance and structure of aquatic vegetation by grazing on aquatic and semiaquatic vegetation, which reduces the cover needed for frogs and gartersnakes as well as the food supply for prey species such as tadpoles (Fernandez and Rosen 1996, pp. 10–12). Fernandez and Rosen (1996, pp. 10–12) also found that crayfish frequently burrow into stream banks, which leads to increased bank erosion, stream turbidity, and siltation of substrates. Creed (1994, p. 2098) found that filamentous alga (*Cladophora glomerata*) was at least 10-fold greater in aquatic habitat absent crayfish. Filamentous alga is an important component of aquatic vegetation that provides cover for foraging gartersnakes as well as microhabitat for prey species.

Inman et al. (1998, p. 3) documented nonnative crayfish as widely distributed and locally abundant in a broad array of natural and artificial lotic (free-flowing) and lentic (still water) habitats throughout Arizona, many of which overlapped the historical and extant distribution of the northern Mexican gartersnake. Hyatt (undated, p. 71) concluded that the majority of waters in Arizona contained at least one species of crayfish. Holycross et al. (2006, p. 14) found crayfish in 64 percent of the sample sites in the Agua Fria watershed; in 85 percent of the sites in the Verde River watershed; in 46 percent of the sites in the Salt River watershed; and in 67 percent of the sites in the Gila River watershed. In total, crayfish were recently observed at 35 (61 percent) of the 57 sites surveyed across the Mogollon Rim (Holycross et al. 2006, p. 14).

Several other authors have specifically documented the presence of

crayfish in many areas and drainages throughout Arizona, which is testament to their ubiquitous distribution in Arizona and their strong colonizing abilities. These areas included the Kaibab National Forest (Sredl et al. 1995a, p. 7); the Coconino National Forest (Sredl et al. 1995c, p. 7); the Watson Woods Riparian Preserve near Prescott (Nowak and Spille 2001, p. 33); the Tonto National Forest (Sredl et al. 1995b, p. 9); the Lower Colorado River (Ohmart et al. 1988, p. 150; Inman et al. 1998, Appendix B); the Huachuca Mountains (Sredl et al. 2000, p. 10); the Arivaca Area (Rosen et al. 2001, Appendix I); Babocamari River drainage (Rosen et al. 2001, Appendix I); O'Donnell Creek drainage (Rosen et al. 2001, Appendix I); Santa Cruz River drainage (Rosen and Schwalbe 1988, Appendix I; Rosen et al. 2001, Appendix I); San Pedro River drainage (Inman et al. 1998, Appendix B; Rosen et al. 2001, Appendix I); Aqua Fria River drainage (Inman et al. 1998, Appendix B; Holycross et al. 2006, pp. 14, 15–18, 52–54); Verde River drainage (Inman et al. 1998, Appendix B; Holycross et al. 2006, pp. 14, 20–28, 54–56); Salt River drainage (Inman et al. 1998, Appendix B; Holycross et al. 2006, pp. 15, 29–44, 56–60); Black River drainage (Inman et al. 1998, Appendix B); San Francisco River drainage (Inman et al. 1998, Appendix B; Holycross et al. 2006, pp. 14, 49–50, 61); Nutrioso Creek drainage (Inman et al. 1998, Appendix B); Little Colorado River drainage (Inman et al. 1998, Appendix B); Leonard Canyon Drainage (Inman et al. 1998, Appendix B); East Clear Creek drainage (Inman et al. 1998, Appendix B); Chevelon Creek drainage (Inman et al. 1998, Appendix B); Eagle Creek drainage (Inman et al. 1998, Appendix B; Holycross et al. 2006, pp. 47–48, 60); Bill Williams drainage (Inman et al. 1998, Appendix B); Sabino Canyon drainage (Inman et al. 1998, Appendix B); Dry Creek drainage (Holycross et al. 2006, pp. 19, 53); Little Ash Creek drainage (Holycross et al. 2006, pp. 19, 54); Sycamore Creek drainage (Holycross et al. 2006, pp. 25, 54–55); East Verde River drainage (Holycross et al. 2006, pp. 21–22, 54); Oak Creek drainage (Holycross et al. 2006, pp. 23, 54); Pine Creek drainage (Holycross et al. 2006, pp. 24, 55); Spring Creek drainage (Holycross et al. 2006, pp. 25, 55); Big Bonito Creek drainage (Holycross et al. 2006, pp. 29, 56); Cherry Creek drainage (Holycross et al. 2006, pp. 33, 57); East Fork Black River drainage (Holycross et al. 2006, pp. 34, 57); Haigler Creek drainage (Holycross et al. 2006, pp. 35, 58); Houston Creek drainage (Holycross et al. 2006, pp. 35–36, 58); Rye Creek drainage (Holycross et al. 2006, pp. 37, 58); Tonto Creek drainage (Holycross et al. 2006, pp. 40–44, 59); Blue River drainage (Holycross et al. 2006, pp. 45, 60); Campbell Blue River drainage (Holycross et al. 2006, pp. 46, 60); and the Gila River drainage (Inman et al. 1998, Appendix B; Holycross et al. 2006, pp. 45–50, 61).

Bullfrog and Crayfish Eradication in the United States. As previously noted, nonnative species such as bullfrogs and crayfish have proven difficult, if not impossible, to eradicate once established in certain environments. Bullfrogs, for example, are particularly damaging to, and persistent in, riparian communities. A population of adult bullfrogs can sustain itself even when the native vertebrate prey base has been severely reduced or extirpated because adult bullfrogs are cannibalistic and larval bullfrogs can be sustained by grazing on aquatic vegetation (Rosen and Schwalbe 1995, p. 452). Effective removal of semi-aquatic nonnative species is possible in simple, geographically isolated systems that can be manipulated (e.g., stock tanks); however, it can be expensive, and specially designed fencing is likely needed to prevent reinvasion until entire landscapes (e.g., an entire valley) have been cleared of nonnative species (Rosen and Schwalbe 2002a, p. 7; Hyatt undated). No single method is available to effectively remove bullfrogs or crayfish from lotic, or complex inter-connected systems (Rosen and Schwalbe 1996a, pp. 5–8; 2002a, p. 7; Hyatt Undated, pp. 63–71). The inability of land managers to effectively address the invasion of nonnative species in such communities highlights the serious nature of nonnative species invasions. Hyatt (undated, p. 71) concluded that successful eradication of crayfish in Arizona is highly unlikely. While potential threats to physical habitat from human land use activities can usually be lessened or removed completely with adjustments to land management practices, the concern for the apparent irreversibility of nonnative species invasions becomes paramount which leaves us to conclude that nonnative species are the greatest threat to the northern Mexican gartersnake due to the long-term implications.

Nonnative Fish distribution and Community Interactions in the United States. Rosen et al. (2001, Appendix I) and Holycross et al. (2006, pp. 15–51) conducted large-scale surveys for northern Mexican gartersnakes in southeastern and central Arizona and narrow-headed gartersnakes in central and east-central Arizona and documented the presence of nonnative fish at many locations. Rosen et al. (2001, Appendix I) found nonnative fish in the following survey locations: the Arivaca Area; Babocamari River drainage; O'Donnell Creek drainage; Audubon Research Ranch (Post Canyon) near Elgin; Santa Cruz River drainage; Agua Caliente Canyon; Santa Catalina Mountains; and the San Pedro River drainage. Holycross et al. (2006, pp. 14–15, 52–61) found nonnative fish in the Aqua Fria River drainage; the Verde River drainage; the Dry Creek drainage; the Little Ash Creek drainage; the Sycamore Creek drainage; the East Verde River drainage; the Oak Creek drainage; the Pine Creek drainage; the Big Bonito Creek drainage; the Black River drainage; the Canyon Creek drainage; the Cherry Creek drainage; the Christopher Creek drainage; the East Fork Black River drainage; the Haigler Creek drainage; the Houston Creek drainage; the Rye Creek drainage; the Salt River drainage; the Spring Creek drainage; the Tonto Creek drainage; the Blue River drainage; the Campbell Blue River drainage; the Eagle Creek drainage; and the San Francisco River drainage. Other authors have documented the presence of nonnative fish through their survey efforts in specific regions that include the Tonto National Forest (Sredl et al. 1995b, p. 8) and the Huachuca Mountains (Sredl et al. 2000, p. 10).

Holycross et al. (2006, pp. 14–15) found nonnative fish species while surveying for narrow-headed and Mexican gartersnakes in 64 percent of the sample sites in the Agua Fria watershed, 85 percent of the sample sites in the Verde River watershed, 75 percent of the sample sites in the Salt River watershed, and 56 percent of the sample sites in the Gila River watershed. In total, nonnative fish were observed at 41 of the 57 sites surveyed (72 percent) across the Mogollon Rim (Holycross et al. 2006, p. 14). Entirely native fish communities were detected in only 8 of 57 sites surveyed (14 percent) (Holycross et al. 2006, p. 14). While the locations and drainages identified above that are known to support populations of nonnative fish do not provide a thorough representation of the status of nonnative fish distribution Statewide in Arizona, it is well documented that nonnative fish have infiltrated the majority of aquatic communities in Arizona.

Rinne et al. (1998, p. 3) documented over a dozen species of nonnative fish that have been stocked within the historical distribution of the northern Mexican gartersnake in the Verde Basin with over 850 stocking events occurring

in Horseshoe and/or Bartlett reservoirs and almost 4,500 in streams (mostly tributaries to the Verde) over the past 60 years. Rinne et al. (1998, pp. 4–6) found that in all but the uppermost reach, nonnatives predominated the sampling results in the Verde River. Voeltz (2002, p. 88) documented an ''alarming trend'' in the Verde River with the reduction of native fish abundance corresponding with an explosion in red shiner populations.

Nonnative fish can also affect native amphibian populations. Matthews et al. (2002, p. 16) examined the relationship of gartersnake distributions, amphibian population declines, and nonnative fish introductions in high elevation aquatic ecosystems in California. Matthews *et al.* (2002, p. 16) specifically examined the effect of nonnative trout introductions on populations of amphibians and mountain gartersnakes (*Thamnophis elegans elegans*). Their results indicated the probability of observing gartersnakes was 30 times greater in lakes containing amphibians than in lakes where amphibians have been extirpated by nonnative fish. These results supported prediction by Jennings et al. (1992, p. 503) that native amphibian declines will lead directly to gartersnake declines. Matthews et al. (2002, p. 20) noted that in addition to nonnative fish species adversely impacting amphibian populations that are part of the gartersnake's prey base, direct predation on gartersnakes by nonnative fish also occurs. Inversely, gartersnake predation on nonnative species, such as centrarchids, may physically harm the snake. Choking injuries to northern Mexican gartersnakes may occur from attempting to ingest nonnative spiny-rayed fish species (such as green sunfish and bass) because the spines located in the dorsal fins of these species can become lodged, or cut into the gut tissue of the snake, as observed in narrow-headed gartersnakes (Nowak and Santana-Bendix 2002, p. 25).

Nonnative fish invasions can indirectly affect the health, maintenance, and reproduction of the northern Mexican gartersnake by altering its foraging strategy and foraging success. Observations made by Dr. Phil Rosen at Finley Tank on the Audubon Research Ranch near Elgin, Arizona, of northern Mexican gartersnake populations and individual growth trends prior to the arrival of the nonnative bullfrog, provides information on the effects of nonnative fish invasions and the likely nutritional ramifications of a fish-only diet in a species that normally has a varied diet largely supported by amphibian prey items (Rosen et al. 2001, p. 19). The more energy expended in foraging, coupled by the reduced number of small to medium-sized fish available in lower densities, may lead to deficiencies in nutrition affecting growth and reproduction because energy is instead allocated to maintenance and the increased energy costs of intense foraging activity (Rosen et al. 2001, p. 19). In contrast, a northern Mexican gartersnake diet that includes both fish and amphibians such as leopard frogs provides larger prey items which reduce the necessity to forage at a higher frequency allowing metabolic energy gained from larger prey items to be allocated instead to growth and reproductive development. Myer and Kowell (1973, p. 225) experimented with food deprivation in common gartersnakes and found significant reductions in lengths and weights in juvenile snakes that were deprived of regular feedings versus the control group that were fed regularly at natural frequencies. Reduced foraging success may therefore increase mortality rates in the juvenile size class and consequently affect recruitment of northern Mexican gartersnakes where their prey base has been compromised by nonnative species.

Nonnative fish species also facilitate the invasion of other aquatic nonnative species such as bullfrogs. Adams et al. (2003, pp. 343, 349) found that the invasion of nonnative fish species indirectly facilitates the invasion of bullfrogs. Survivorship of tadpoles is increased when nonnative fish prey upon predatory macroinvertebrates, which reduces the densities of predatory macroinvertebrates and relaxes their predation rate on bullfrog tadpoles. These findings support the ''invasional meltdown'' hypothesis, which suggests that when positive interactions among nonnatives are prevalent, that community of nonnative species can increase the probability of further invasions (Simberloff and Von Holle 1999, p. 21; Adams et al. 2003, pp. 343, 348–350). While mutually facilitative interactions among introduced species have not been thoroughly examined, it has been concluded that nonnatives can and do facilitate the expansion of other nonnative species (Simberloff and Van Holle 1999, p. 21).

Nonnative Species in Mexico. The native fish prey base for northern Mexican gartersnakes has been dramatically affected by the introduction of nonnative species in several regions of Mexico (Conant 1974, pp. 471, 487–489; Miller et al. 2005, pp. 60–61; Abarca 2006). In the lower elevations of Mexico where northern Mexican gartersnakes occurred historically and may still be extant, there are approximately 200 species of native freshwater fish documented with 120 native species under some form of threat and an additional 15 that have become extinct due to human activities (Contreras Balderas and Lozano 1994, pp. 383–384). In 1979, The American Fisheries Society listed 69 species of native fish in Mexico as threatened or in danger of becoming extinct. Ten years later that number rose to 123 species, an increase of 78 percent (Contreras Balderas and Lozano 1994, pp. 383–384). Miller et al. (2005, p. 60) concludes that some 20 percent of Mexico's native fish are threatened or in danger of becoming extinct. Nonnative species are increasing everywhere throughout Mexico and the outlook for this trend looks ''bleak'' for native fish according to Miller et al. (2005, p. 61). A number of freshwater fish populations have been adversely affected by nonnative species in many documented localities, several of which were previously noted in the discussion under Factor A.

Bullfrogs were purposefully introduced nationwide in a concerted effort to establish the species in all lakes and canal systems throughout Mexico as a potential food source for humans although frog legs ultimately never gained popularity in Mexican culinary culture (Conant 1974, pp. 487–489). Rosen and Melendez (2006, p. 54) report bullfrog invasions to be prevalent in northwestern Chihuahua and northeastern Sonora where the northern Mexican gartersnake is thought to occur. In many areas, native leopard frogs were completely displaced (extirpated) where bullfrogs were observed. Rosen and Melendez (2006, p. 54) also demonstrated the relationship between fish and amphibian communities in Sonora and western Chihuahua in that native leopard frogs, a primary prey item for the northern Mexican gartersnake, only occurred in the absence of nonnative fish and were absent from waters containing nonnative species, which included several major waters. In addition to bullfrog invasions, the first record in Mexico for the nonnative Rio Grande leopard frog was recently documented in northwestern Sonora, Mexico where the northern Mexican gartersnake is considered likely extirpated (Rorabaugh and Servoss 2006, p. 102).

Unmack and Fagan (2004, p. 233) compared historical museum collections of nonnative fish species from the Gila River basin in Arizona and the geographically small Yaqui River basin

in Sonora, Mexico, to gain insight into the trends in distribution, diversity, and abundance of nonnative fishes in each basin over time. They found that nonnative species are slowly but steadily increasing in distribution, diversity, and abundance in the Yaqui Basin (Unmack and Fagan 2004, p. 233). Unmack and Fagan (2004, p. 233) predicted that, in the absence of aggressive management intervention, significant extirpations and/or range reductions of native fish species are expected to occur in the Yaqui Basin of Sonora, Mexico which may have extant populations of northern Mexican gartersnake, as did much of the Gila Basin before the introduction of nonnative species. The implications of these declines in native fish to northern Mexican gartersnakes indicate a potentially serious threat to the gartersnake's persistence in these areas.

However, because specific and direct survey information is significantly limited concerning the presence and potential effect of nonnative species on the northern Mexican gartersnake in Mexico, this discussion is based on extrapolation of how we understand these threats to affect the subspecies in the United States. Furthermore, based on the information available concerning the threats in Mexico we can not conclude that the subspecies is likely to become endangered throughout its range in Mexico. Although we acknowledge that these threats are affecting the subpecies in the United States, we have determined that the portion of the subspecies' range in the United States does not constitute a significant portion of the range of the subspecies or a DPS. Therefore, on the basis of the best available information, we determine that it is not likely that the northern Mexican gartersnake will become an endangered species within the foreseeable future based on threats under this factor.

D. The Inadequacy of Existing Regulatory Mechanisms

Currently, the northern Mexican gartersnake is considered ''State Endangered'' in New Mexico. In the State of New Mexico, an ''Endangered Species'' is defined as ''any species of fish or wildlife whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors: (1) The present or threatened destruction, modification or curtailment of its habitat; (2) overutilization for scientific, commercial or sporting purposes; (3) the effect of disease or predation; (4) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or (5) any combination of the foregoing factors'' as per New Mexico Statutory Authority (NMSA) 17–2–38.D. ''Take'', defined as ''means to harass, hunt, capture or kill any wildlife or attempt to do so'' by NMSA 17–2–38.L., is prohibited without a scientific collecting permit issued by the New Mexico Department of Game and Fish as per NMSA 17–2–41.C and New Mexico Administrative Code (NMAC) 19.33.6. However, while the New Mexico Department of Game and Fish can issue monetary penalties for illegal take of northern Mexican gartersnakes, only recommendations are afforded with respect to actions that result in destruction or modification of habitat (NMSA 17–2–41.C and NMAC 19.33.6) (Painter 2005).

Prior to 2005, the Arizona Game and Fish Department allowed for take of up to four northern Mexican gartersnakes per person per year as specified in Commission Order Number 43. The Arizona Game and Fish Department defines ''take'' as ''pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring, or netting wildlife or the placing or using any net or other device or trap in a manner that may result in the capturing or killing of wildlife.'' The Arizona Game and Fish Department has subsequently amended Commission Order Number 43, which closed the season on northern Mexican gartersnakes, effective January 2005. Take of northern Mexican gartersnakes is no longer permitted in Arizona without issuance of a scientific collecting permit as per Arizona Administrative Code R12–4–401 *et seq.* While the Arizona Game and Fish Department can seek criminal or civil penalties for illegal take of northern Mexican gartersnakes, only recommendations are afforded with respect to actions that result in destruction or modification of northern Mexican gartersnake habitat.

As previously mentioned, humans encounter gartersnake species somewhat regularly in riparian areas used for recreational purposes or for other reasons. This is partially due to gartersnakes having an active foraging strategy as well as diurnal behavior. Many such encounters result in the capture, injury, or death of the gartersnake due to the lay person's fear or dislike of snakes (Rosen and Schwalbe 1988, p. 43; Ernst and Zug 1996, p. 75; Green 1997, pp. 285–286; Nowak and Santana-Bendix 2002, p. 39). It would be very difficult for the Arizona Game and Fish Department or the New Mexico Department of Fish and Game to cite lay people (who are not reptile hobbyists or amateur herpetologists in specific pursuit of herpetofauna) for such forms of take. Consequently, while the pursuit and intentional collection of reptiles, including the northern Mexican gartersnake, is regulated by these agencies, unregulated capture, collection, or killing likely occurs regularly.

We are reasonably certain that the level of illegal field collecting by the hobbyist community is low because gartersnakes are relatively undesirable in amateur herpetological collections. However, there remains the possibility that small, isolated, and/or low-density populations could be negatively affected by the collection of reproductive females (Painter 2000, p. 39; Painter 2005; Holycross 2006).

The northern Mexican gartersnake is considered a ''Candidate Species'' in the Arizona Game and Fish Department draft document, Wildlife of Special Concern (WSCA) (AGFD *In Prep.*, p. 12). A ''Candidate Species'' is one ''whose threats are known or suspected but for which substantial population declines from historical levels have not been documented (though they appear to have occurred)'' (AGFD *In Prep.*, p. 12). The purpose of the WSCA list is to provide guidance in habitat management implemented by land-management agencies.

Neither the New Mexico Department of Game and Fish nor the Arizona Game and Fish Department have specified or mandated recovery goals for the northern Mexican gartersnake, nor has either State developed a conservation agreement or plan for this species.

The U.S. Bureau of Land Management considers the northern Mexican gartersnake as a ''Special Status Species,'' and agency biologists actively attempt to identify gartersnakes observed incidentally during fieldwork for their records (Young 2005). Otherwise, no specific protection or land-management consideration is afforded to the species on Bureau of Land Management lands.

The presence of water is a primary habitat constituent for the northern Mexican gartersnake. Public concern over the inadequacy of Arizona surface water laws to ensure that flow is maintained perennial streams was discussed by Arizona Republic columnist Shaun McKinnon (2006b). McKinnon (2006b) highlighted the fact that because the existing water laws are so old, they reflect a legislative interpretation of the resource that is not consistent with what we know today; yet the laws have never been updated or amended to account for this discrepancy. For example, over 100

years ago when Arizona's water laws were written, the important connection between groundwater and surface water was not known (McKinnon 2006b). Furthermore, meaningful changes to these regulations that account for the relative scarcity of surface water are unlikely to come about because Arizona is so ''entrenched in tradition and in property ownership'' and because the threat of litigation over proposed changes precludes such efforts (McKinnon 2006b). McKinnon (2006b) specifically, mentions the Gila, Salt, Verde, Santa Cruz, and San Pedro rivers as having habitat attributes that have directly suffered from inadequate surface water regulations.

The U.S. Forest Service does not include northern Mexican gartersnake on their ''Management Indicator Species List,'' but it is included on the ''Regional Forester's Sensitive Species List.'' This means that northern Mexican gartersnakes are ''considered'' in land management decisions. Individual U.S. Forest Service biologists may opportunistically gather data on the gartersnakes observed incidentally in the field for their records, although it is not required.

Activities that could adversely affect northern Mexican gartersnakes and their habitat continue to occur throughout their extant distribution on U.S. Forest Service lands. Clary and Webster (1989, p. 1) stated that ''* * * most riparian grazing results suggest that the specific grazing system used is not of dominant importance, but good management is—with control of use in the riparian area a key item.'' Due to ongoing constraints in funding, staff levels, and time, and regulatory compliance pertaining to monitoring and reporting duties tied to land management, proactive measures continue to be limited. These factors affect a land manager's ability to employ adaptive management procedures when effects to sensitive species or their habitat could be occurring at levels greater than accounted for in regulatory compliance mechanisms, such as in section 7 consultation under the Act for other listed species that may co-occur with the northern Mexican gartersnake in an area.

The majority of extant populations of northern Mexican gartersnake in the United States occur on lands managed by the U.S. Bureau of Land Management and U.S. Forest Service. Although both agencies have riparian protection goals, neither agency has specific management plans for the northern Mexican gartersnake.

Riparian communities are complex and recognized as unique in the southwestern United States but are highly sensitive to many anthropogenic land uses, as evidenced by the comparatively high number of federally listed riparian or aquatic species. Four primary prey species for the northern Mexican gartersnake, the Chiricahua leopard frog, Gila topminnow, Gila chub, and roundtail chub, are federally listed or were petitioned for listing. Other listed or proposed riparian species or their proposed or designated critical habitat overlap the current or historical distribution of the northern Mexican gartersnake. Despite secondary protections that may be afforded to the northern Mexican gartersnake from federally listed species and/or their critical habitat, riparian and aquatic communities continue to be adversely impacted for reasons previously discussed, contributing to the declining status of the northern Mexican gartersnake throughout its range in the United States.

Throughout Mexico, the Mexican gartersnake is federally listed at the species level of its taxonomy as ''Amenazadas,'' or Threatened, by the Secretaria de Medio Ambiente y Recursos Naturales (SEMARNAT) (SEDESOL 2001). Threatened species are ''those species, or populations of the same, likely to be in danger of disappearing in a short or medium time frame, if the factors that impact negatively their viability, cause the deterioration or modification of their habitat or directly diminish directly the size of their populations continue to operate'' (SEDESOL 2001 [NOM–059–ECOL–2001], p. 4). This designation prohibits taking of the species, unless specifically permitted, as well as prohibits any activity that intentionally destroys or adversely modifies its habitat [SEDESOL 2000 (LGVS) and 2001 (NOM–059–ECOL–2001)]. Additionally, in 1988, the Mexican Government passed a regulation that is similar to the National Environmental Policy Act of the United States (42 U.S.C. 4321 *et seq.*). This Mexican regulation requires an environmental assessment of private or government actions that may affect wildlife and/or their habitat (SEDESOL 1988 [LGEEPA]).

The Mexican Federal agency known as the Instituto Nacional de Ecología (INE) is responsible for the analysis of the status and threats that pertain to species that are proposed for listing in the Norma Oficial Mexicana NOM–059, and if appropriate, the nomination of species to the list. INE is generally considered the Mexican counterpart to the United States' Fish and Wildlife Service. INE recently developed the Method of Evaluation of the Risk of Extinction of the Wild Species in Mexico (MER) which unifies the criteria of decision on the categories of risk and permits the use of specific information fundamental to listing decisions. The MER is based on four independent, quantitative criteria: (1) Size of the distribution of the taxon in Mexico; (2) state of the habitat with respect to natural development of the taxon; (3) intrinsic biological vulnerability of the taxon; and (4) impacts of human activity on the taxon. INE began to use the MER in 2006; therefore, all species previously listed in the NOM–059 were based solely on expert review and opinion in many cases. Specifically, until 2006, the listing process under INE consisted of a panel of scientific experts who convened as necessary for the purpose of defining and assessing the status and threats that affect Mexico's native species that are considered to be at risk and applying those factors to the definitions of the various listing categories. In 1994, the Mexican gartersnake was placed on the NOM–059 [SEDESOL 1994 (NOM–059–ECOL–1994), p. 46] as a threatened species as determined by a panel of scientific experts. However, we are uncertain of the specific information that was used as the basis for the listing in Mexico and were unable to obtain any information that was used to validate the Federal listing of the Mexican gartersnake in Mexico.

Our review of the existing governmental regulatory mechanisms that pertain to the management of the northern Mexican gartersnake or its habitat in the United States leads us to conclude that the protections afforded by existing regulations may be insufficient to adequately address the declining status of the subspecies in the United States. However, the Mexican gartersnake (inclusive of the northern Mexican gartersnake) is considered a Federally-threatened species in Mexico. Although we do not have sufficient information to analyze the efficacy of existing regulatory mechanisms in Mexico, the best available data does not support the conclusion that the species is likely to become in danger of extinction within the foreseeable future due to the threats posed by the other factors. Therefore, uncertainty with respect to the efficacy of existing regulatory mechanisms is not dispositive as to the listing status of the subspecies, and it is not a threatened species on the basis of the lack of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence in the United States

Marcy's checkered gartersnake (*Thamnophis marcianus marcianus*) may have ecological implications in the decline and future conservation of the northern Mexican gartersnake in southern Arizona. Marcy's checkered gartersnake is a semi-terrestrial species that is able to co-exist to some degree with riparian and aquatic nonnative predators. This is largely due to its ability to forage in more terrestrial habitats, specifically in the juvenile size classes (Rosen and Schwalbe 1988, p. 31; Rosen et al. 2001, pp. 9–10). In every age class, the northern Mexican gartersnake forages in aquatic habitats where bullfrogs, nonnative sportfish, and crayfish also occur, which increases not only the encounter rate between the species but also the juvenile mortality rate of the northern Mexican gartersnake. Marcy's checkered gartersnake is a potential benefactor of this scenario. As northern Mexican gartersnake numbers decline within a population, space becomes available for occupation by checkered gartersnakes. Marcy's checkered gartersnake subsequently maintains pressure on the carrying capacity (the maximum number of a given species that an area can maintain based upon available resources) for an area and could potentially accelerate the decline of the northern Mexican gartersnake (Rosen and Schwalbe 1988, p. 31).

Rosen et al. (2001, pp. 9–10) documented the occurrence of Marcy's checkered gartersnakes out-competing and replacing northern Mexican gartersnakes at the San Bernardino National Refuge and surrounding habitats of the Black Draw. They suspected that the drought from the late 1980s through the late 1990s played a role in the degree of competition for aquatic resources, provided an advantage to the more versatile Marcy's checkered gartersnake, and expedited the decline of the northern Mexican gartersnake. The ecological relationship between these two species, in combination with other factors described above that have adversely affected the northern Mexican gartersnake prey base and the suitability of occupied and formerly occupied habitat, may be contributing to the decline of this species.

We were unable to obtain any information on other natural or manmade factors affecting the continued existence of the northern Mexican gartersnake in Mexico.

Finding

We have carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the northern Mexican gartersnake. We reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following our 90-day petition finding and consulted with recognized northern Mexican gartersnake experts and other Federal, State, and Mexican resource agencies. Because specific and direct survey information is significantly limited concerning the presence and potential effect of the threats discussed in this finding to the subspecies in Mexico, much of our discussion is based on extrapolation of how we understand these threats to affect the subspecies in the United States. Furthermore, based on the information available concerning the threats in Mexico we can not conclude that the subspecies is likely to become endangered throughout its range in Mexico. Although we acknowledge that several threats are affecting the subpecies in the United States, we have determined that the portion of the subspecies' range in the United States does not constitute a significant portion of the range of the subspecies or a DPS. On the basis of the best scientific and commercial information available, we determine that it is not likely that the northern Mexican gartersnake is likely to become an endangered species within the foreseeable future and that listing of the northern Mexican gartersnake throughout its range in the United States and Mexico based on its rangewide status is not warranted.

In making this finding, we respectfully acknowledge that the Mexican government has found *Thamnophis eques* to be in danger of disappearance in the short-or medium-term future in their country from the destruction and modification of its habitat and/or from the effects of shrinking population sizes and has therefore listed the species as Threatened, under the listing authority of SEMARNAT (SEDESOL 2001). However, as discussed at length in Factor D above, we also note that the level of information required to list a species in Mexico may not be as rigorous as that required to list a species in the United States under the Endangered Species Act. Our conclusion that listing is not warranted under the Act is based on: (1) The apparent differences in listing protocols; (2) the significantly limited amount of information available on the status of and threats to the northern Mexican gartersnake in Mexico in comparison to our knowledge of the same in the United States; and most importantly (3) the relatively large percentage (70 to 80 percent) of the subspecies' historic distribution in Mexico for which we have little to no information about with respect to status and threats.

In making this Finding, we also recognize there have been declines in the distribution and abundance of the northern Mexican gartersnake within its distribution in the United States which are primarily attributed to individual and community interactions with nonnative species that occur in every locality where northern Mexican gartersnakes have been documented in the United States. As discussed in Factor C above, the documented mechanisms for which nonnative interactions occur include: (1) Direct predation on northern Mexican gartersnakes by nonnative species; and (2) the effects of a diminished prey base via nonnative species preying upon and competing with native prey species (Meffe 1985, pp. 179–185; Rosen and Schwalbe 1988, pp. 28–31; 1995, p. 452; 2002b, pp. 223–227; Bestgen and Propst 1989, pp. 409–410; Clarkson and Rorabaugh 1989, pp. 531, 535; Marsh and Minckley 1990, p. 265; Stefferud and Stefferud 1994, p. 364; Rosen et al. 1995, pp. 257–258; 1996, pp. 2, 11–12; 2001, pp. 2, 21–22; Degenhardt et al. 1996, p. 319; Fernandez and Rosen 1996, pp. 21–33; Weedman and Young 1997, pp. 1, Appendices B, C; Inman et al. 1998, p. 17; Rinne et al. 1998, pp. 4–6; Fagan et al. 2005, pp. 38–39; Olden and Poff 2005, pp. 82–87; Holycross et al.2006, pp. 12–15; Brennan and Holycross 2006, p. 123). However, we again note that the portion of the historic distribution of the northern Mexican gartersnake in the United States represents approximately 20 to 30 percent of its rangewide distribution. Furthermore, we were unable to obtain substantial information regarding the status of the northern Mexican gartersnake in Mexico (representing approximately 70 to 80 percent of its rangewide distribution).

Throughout the range of the northern Mexican gartersnake, but most accurately within its distribution in the United States, literature documents the cause and effect relationship of disturbances to the trophic structure (food chain) of native riparian and aquatic communities. The substantial decline of primary native prey species, such as leopard frogs and native fish, has contributed significantly to the decline of a primary predator, the northern Mexican gartersnake. In this

respect, the northern Mexican gartersnake is considered an indicator species, or a species that can be used to gauge the condition of a particular habitat, community, or ecosystem. The synergistic effect of nonnative species both reducing the prey base of, and directly preying upon, northern Mexican gartersnakes has placed significant pressure upon the viability and sustainability of extant northern Mexican gartersnake populations and has led to significant fragmentation and risks to the continued viability of extant populations. The evolutionary biology of the northern Mexican gartersnake, much like that of native fish and leopard frogs, has left the species without adaptation to and defenseless against the effect of nonnative species invasions.

We further recognize that in addition to the deleterious effects of nonnative species invasions, the decline of the northern Mexican gartersnake has been exacerbated by historical and ongoing threats to its habitat in the United States. The threats identified and discussed above in detail in Factor A, ''The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range,'' effectively summarize our knowledge of the current and future status of its riparian and aquatic habitat in the United States. Chiefly, these threats include: (1) The modification and loss of ecologically valuable cienegas (Hendrickson and Minckley 1984, p. 161; Stromberg et al. 1996, p. 113); (2) urban and rural development (Medina 1990, p. 351; Girmendock and Young 1997, pp. 45–47; Voeltz 2002, p. 88; Wheeler et al. 2005, pp. 153–154); (3) road construction, use, and maintenance (Rosen and Lowe 1994, pp. 143, 146–148; Waters 1995, p. 42; Carr and Fahrig 2001, pp. 1074–1076; Hels and Buchwald 2001, p. 331; Smith and Dodd 2003, pp. 134–138; Angermeier et al. 2004, p. 19; Shine et al. 2004, pp. 9, 17–19; Andrews and Gibbons 2005, p. 772; Wheeler et al. 2005, pp. 145, 148–149; Roe et al. 2006, pp. 163–166); (4) human population growth (Girmendock and Young 1993, p. 47; American Rivers 2006; Arizona Republic, March 16, 2006); (5) groundwater pumping, surface water diversions, and drought (Abarca and Weedman 1993, p. 2; Girmendock and Young 1993, pp. 45–52; Sullivan and Richardson 1993, pp. 35–42; Stromberg et al. 1996, pp. 124–127; Boulton et al. 1998, pp. 60–62; Rinne et al. 1998, pp. 7–11; Voeltz 2002, p. 88; Philips and Thomas 2005; Webb and Leake 2005, pp. 307–308; American Rivers 2006; Boulton and Hancock 2006, p. 139); (6) improper livestock grazing (Sartz and Tolsted 1974, p. 354; Kauffman and Krueger 1984, pp. 433–434; Szaro et al. 1985, pp. 361–363; Weltz and Wood 1986, p. 367–368; Clary and Webster 1989, pp. 1–3; Clary and Medin 1990, pp. 1–6; Orodho et al. 1990, p. 9; Fleischner 1994; pp. 631–632; Trimble and Mendel 1995, p. 233; Waters 1995, pp. 22–24; Girmendock and Young 1997, p. 47; Pearce et al. 1998, p. 302; Belsky et al. 1999, p. 1; Voeltz 2002, p. 88; Krueper et al. 2003, pp. 607, 613–614); (7) catastrophic wildfire and wildfire in non-fire adapted communities (Rinne and Neary 1996, p. 135; Esque and Schwalbe 2002, pp. 165, 190); and (8) undocumented immigration and international border enforcement and management activities (Segee and Neeley 2006, pp. 5–7; USFWS 2006, pp. 91–105).

In our discussion under Factors A through E above, we have provided a comprehensive, in-depth analysis of all known threats that have or continue to affect the status of the northern Mexican gartersnake in the United States, including those which have not yet been documented but where potential effects exist. As a result of our assessment, we note that certain land use activities such as road construction and use, direct mortality from livestock grazing, undocumented immigration and international border enforcement and management activities, and some types of development, pose a more significant risk to highly fragmented, low density populations of northern Mexican gartersnakes. As noted on several occasions above, in these types of situations where the viability of a known northern Mexican gartersnake population is clearly at risk, the loss of a single reproductive female due to these threats is of concern. However, these types of threats are less significant to the northern Mexican gartersnake when the status of these at-risk populations improves through the implementation of conservation activities. We also remain optimistic that our local, State, and Federal partners in wildlife conservation will be proactive in monitoring populations and implementing conservation measures to ensure that apparent declines of the northern Mexican gartersnake in the United States are reversed and that this species remains a member of our native riparian and aquatic communities. But we do not rely upon any future conservation actions in making this finding.

Notwithstanding our extensive discussion of the past and ongoing threats affecting this species, and the evidence of range contraction within the United States, neither the existence of the threats nor past range contraction means that a species meets the definition of a threatened or endangered species under the Act. Based on our evaluation of the best available data, we conclude that the northern Mexican gartersnake is not likely to become an endangered species in all or a significant portion of its range in the foreseeable future.

References Cited

A complete list of all references cited in this document is available upon request from the Field Supervisor at the Arizona Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this document is the Arizona Ecological Services Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 14, 2006.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 06–7784 Filed 9–25–06; 8:45 am]

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Federal Register

Tuesday,
September 26, 2006

Part III

Department of Defense

Department of the Army, Corps of Engineers

Proposal To Reissue and Modify Nationwide Permits; Notice

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[ZRIN 0710–ZA02]

Proposal To Reissue and Modify Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is soliciting comments for the reissuance of the existing nationwide permits (NWPs), general conditions, and definitions, with some modifications. The Corps is also proposing to issue six new NWPs and one new general condition. The reissuance process starts with today's publication of the proposed NWPs in the **Federal Register** for a 60-day comment period. The purpose of this **Federal Register** notice is to solicit comments on the proposed new and modified NWPs, as well as the NWP general conditions and definitions. Shortly after the publication of this **Federal Register** notice, each Corps district will publish a public notice to solicit comments on their proposed regional conditions for the new and modified NWPs. The comment period for these district public notices will be 45 days.

DATES: Submit comments on or before November 27, 2006.

ADDRESSES: You may submit comments, identified by docket number COE–2006–0005 and/or ZRIN 0710–ZA02, by any of the following methods:

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

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE–2006–0005, and/or the ZRIN number, 0710–ZA02, in the subject line of the message.

Fax: 202–761–0140.

Mail: U.S. Army Corps of Engineers, Attn: CECW–OR/MVD (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2006–0005 and/or ZRIN 0710–ZA02. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or by e-mail at *david.b.olson@usace.army.mil* or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/*.

SUPPLEMENTARY INFORMATION:

Background

The current nationwide permits (NWPs), which were published in the January 15, 2002, issue of the **Federal Register** (67 FR 2020) expire on March 18, 2007. With this **Federal Register** notice, we are beginning the process for reissuing the NWPs so that the reissued NWPs will be in effect as the current NWPs expire.

Section 404(e) of the Clean Water Act provides the statutory authority for the Secretary of the Army, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States. Activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental effects when performed separately, and cause only minimal cumulative adverse effect on the aquatic environment. Nationwide permits can also be issued to authorize activities pursuant to Section 10 of the Rivers and Harbors Act of 1899. The NWP program is designed to provide timely authorizations for the regulated public while protecting the Nation's aquatic resources.

One goal of today's notice is to simplify the text of the reissued NWPs. Since NWPs were first issued in 1977, the NWP program has become increasingly complex. With each issuance or reissuance of NWPs, the text of the permits and the general conditions has become lengthier, and in some cases, redundant language was added that may make them more difficult to comprehend. Compliance with the NWPs and their general conditions is more difficult if users of those permits cannot easily understand the requirements of the NWPs and what they authorize. Simplifying the text will facilitate compliance with the NWPs and thus help protect the aquatic environment.

Federal agencies are required by Executive Order 12866, Regulatory Planning and Review, to draft regulations that are simple and easy to understand, to minimize uncertainty. This principle is also applicable to the NWPs, which are now considered to be rules under the Administrative Procedures Act (APA). In addition, a Presidential Memorandum issued on June 1, 1998, requires Federal agencies to use plain language in government writing, so that rules and other documents are clear to the public and others.

We are proposing to revise the text of the NWPs, general conditions, and definitions so that they are clearer, more concise, and can be more easily understood by the regulated public, government personnel, and interested parties, while retaining terms and conditions that protect the aquatic environment. Making the text of the NWPs clearer and easier to understand will also facilitate compliance with these permits, which will benefit the aquatic environment. This proposal also reflects the Corps support of the administration's goal of improving regulatory efficiency, by making the

NWPs easier to read and understand. The text of the proposed NWPs has been streamlined by removing redundant language and applying a standard format to most NWPs. We are proposing to arrange the NWP general conditions in a different order, so that the conditions that provide environmental protection are first, followed by administrative and procedural general conditions.

Today's proposal to reissue the existing NWPs with some modifications and to issue six new NWPs reflects the Corps commitment to its environmental protection mission and to aquatic resource protection. The NWP program allows the Corps to authorize activities with minimal adverse environmental impacts in a timely manner and protect the aquatic environment. The NWP program also allows the Corps to focus its limited resources on more extensive evaluation of projects that have the potential for causing environmentally damaging adverse effects.

Through the NWPs, impacts to the aquatic environment may also receive additional protection through regional conditions, case-specific special conditions, and case-specific discretionary authority to require individual permits. Nationwide permits and other general permits help protect the aquatic environment because permit applicants often reduce project impacts to meet the restrictive requirements of general permits and receive authorization more quickly than they would through the individual permit process.

Twenty-six of the NWPs proposed for reissuance require pre-construction notification (PCN) for certain activities. Fifteen of those NWPs require PCNs for all activities. Four of the six proposed new NWPs require PCNs. Three of those four new NWPs require PCNs for all activities. Altogether, PCN requirements have been added or expanded for seven permits, relative to the requirements in the current permits. Existing PCN requirements have been dropped in one permit (NWP 5), and reduced in another (NWP 12), because the conditions for authorization under these permits are adequate to ensure minimal individual and cumulative effects without the previously required PCNs. PCN requirements give the Corps the opportunity to evaluate certain proposed NWP activities on a case-by-case basis to ensure that they will have no more than minimal adverse effects on the aquatic environment, individually and cumulatively. This case-by-case review often results in adding case-specific conditions to the NWP authorization to ensure that impacts to the aquatic environment are minimal. Review of PCNs may also result in the Corps asserting discretionary authority to require an individual permit if the district engineer determines, based on the information provided in the notification, that adverse impacts will be more than minimal, either individually or cumulatively, or there are sufficient concerns for any of the Corps public interest review factors.

Regional conditions may be imposed by division engineers to take into account regional differences in aquatic resource functions and services across the country and to restrict the use of NWPs to protect those resources. Through regional conditions, a division engineer can modify an NWP to require submission of PCNs for certain activities. Regional conditions may also restrict or prohibit the use of an NWP in certain waters or geographic areas, if the use of that NWP in those waters or areas might result in more than minimal individual or cumulative adverse effects to the aquatic environment.

District engineers may impose special conditions on NWP authorizations to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. In addition, special conditions will often include compensatory mitigation requirements to reduce the project impacts to the minimal level. Compensatory mitigation may include the restoration, establishment, enhancement, and/or preservation of aquatic habitats, as well as the establishment and maintenance of riparian areas next to streams and other open waters. Compensatory mitigation can be provided through permittee-responsible mitigation, mitigation banks, or in-lieu fee programs.

Process for Reissuing the NWPs

The NWPs reissued on January 15, 2002, became effective on March 18, 2002, and expire on March 18, 2007. The reissuance process starts with today's publication of the proposed NWPs in the **Federal Register** for a 60-day comment period. Requests for a public hearing must be submitted in writing to the address in the **ADDRESSES** section of this notice. These requests must state the reason(s) for holding a public hearing. If we determine that a public hearing or hearings would assist in making a decision on the issuance of the proposed new NWPs, reissuance of existing NWPs, or the NWP general conditions or definitions, a 30-day advance notice will be published in the **Federal Register** to advise interested parties of the date(s) and location(s) for the public hearing(s). Any announcement of public hearings would also be posted as a supporting material in the docket at *www.regulations.gov* as well as the Corps regulatory home page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/citizen.htm*

Concurrent with this **Federal Register** notice, Corps district offices will issue public notices to solicit comments on proposed regional conditions. In their district public notices, district engineers may also propose to suspend or revoke some or all of these NWPs if they have issued, or are proposing to issue, regional general permits, programmatic general permits, or section 404 letters of permission for use in lieu of NWPs. The comment period for these district public notices will be 45 days.

After the comment period has ended, we will review the comments received in response to this **Federal Register** notice. Then we will draft the final NWPs, and those final draft NWPs will be subjected to another review by interested Federal agencies. The final issued NWPs will be published in the **Federal Register** by January 2007. These final NWPs will become effective 60 days after their publication. This schedule provides a 60-day period for state and tribal Clean Water Act Section 401 water quality certifications (WQCs), as well as state Coastal Zone Management Act (CZMA) consistency decisions. Within this 60-day period, division engineers will also approve regional conditions and issue supplemental decision documents. Supplemental decision documents address the environmental considerations related to the use of NWPs in a Corps district. The supplemental decision documents will certify that the NWPs, with any regional conditions or geographic revocations, will only authorize activities within that Corps district that result in minimal individual and cumulative adverse effects on the aquatic environment. The regional conditioning and WQC/CZMA processes are discussed below.

Compliance With Section 404(e) of the Clean Water Act

The proposed NWPs are issued in accordance with Section 404(e) of the Clean Water Act. These NWPs authorize categories of activities that are similar in nature. The ''similar in nature'' requirement does not mean that activities authorized by an NWP must be identical to each other. We believe that the ''categories of activities that are similar in nature'' requirement of section 404(e) is to be interpreted broadly, for practical implementation of

this general permit program. Nationwide permits, as well as other general permits, are intended to reduce administrative burdens on the Corps and the regulated public, by efficiently authorizing activities that have minimal adverse environmental effects.

As for the minimal adverse effects provision of section 404(e), the various terms and conditions of these NWPs, including the provisions in the NWP regulations at 33 CFR 330.1(d) and 33 CFR 330.4(d) that allow district engineers to exercise discretionary authority, ensure compliance with this requirement. A decision document will be prepared for each NWP to address the requirements of the National Environmental Policy Act and generally discuss the anticipated impacts the NWP will have on the Corps public interest review factors. For those NWPs that may authorize discharges of dredged or fill material into waters of the United States, a 404(b)(1) Guidelines analysis will be provided in the decision document. The 404(b)(1) Guidelines analysis will be conducted in accordance with the procedures at 40 CFR 230.7. The preliminary decision documents for the proposed NWPs are available on the internet at: *www.regulations.gov* (docket ID number COE–2006–0005). We are soliciting comments on these preliminary decision documents, and any comments received will be considered when preparing the final decision documents for the NWPs.

Decision of U.S. Court of Appeals for the District of Columbia Circuit

In its July 29, 2005, decision in *National Association of Homebuilders* v. *U.S. Army Corps of Engineers* (Nos. 04–5009, 04–5010, and 04–5011), the U.S. Court of Appeals for the District of Columbia Circuit determined that NWPs are rules under the APA, and are subject to the Regulatory Flexibility Act (RFA). In the ''Administrative Requirements'' section of this preamble, we have addressed the requirements of the RFA. We have also performed other rulemaking analyses that are required by other statutes and executive orders. Those analyses are also provided in the ''Administrative Requirements'' section of this preamble.

National Environmental Policy Act Compliance

We have prepared preliminary decision documents for each proposed NWP. Each decision document contains an environmental assessment (EA) and a Finding of No Significant Impact (FONSI). If the proposed NWP authorizes discharges of dredged or fill material into waters of the United States, the decision document will include a 404(b)(1) Guidelines analysis in accordance with 40 CFR 230.7. These decision documents will consider the environmental effects of each NWP from a national perspective. Division engineers will issue supplemental decision documents to evaluate regional effects on the aquatic environment and other public interest review factors. Those supplemental decision documents will discuss regional conditions imposed by division engineers to protect the aquatic environment and ensure that any adverse effects resulting from NWP activities will be no more than minimal.

The assessment of cumulative effects occurs at two levels: national and regional (district). However, modifications at the district level are issued by the appropriate division engineer. There are eight Corps division offices in the United States, with 38 district offices. A division office may oversee as many as seven districts (Lakes and Rivers Division) or as few as two district offices (Pacific Ocean Division).

At the national level, the decision documents issued by Corps Headquarters include the cumulative effects assessments required by NEPA and, if the NWP authorizes discharges of dredged or fill material into waters of the United States, the 404(b)(1) Guidelines. The 404(b)(1) Guidelines at 40 CFR 230.7(b) require an evaluation of the potential individual and cumulative impacts of the category of activities authorized under the NWP.

The supplemental decision documents issued by division engineers include cumulative effects assessments at the regional (district) level, for each district within the division. For those NWPs that authorize section 404 activities, the supplemental decision documents will also discuss local concerns relating to the Section 404(b)(1) Guidelines, if the national decision documents do not adequately address those issues. If the NWP is not revoked in a district, the supplemental decision document includes a certification that the use of the NWP in that district, with any applicable regional conditions (*i.e.*, applicable in a specific district), will result in minimal cumulative adverse environmental effects. The supplemental decision documents are prepared by Corps districts, but must be approved and formally issued by the appropriate division engineer, since the NWP regulations at 33 CFR 330.5(c) state that the division engineer has the authority to modify, suspend, or revoke NWP authorizations for any specific geographic area within his division. Regional conditions are considered NWP modifications. Therefore, when the process is completed, each district will have approved supplemental decision documents for each NWP, and those supplemental decision documents will assess cumulative effects within that district.

District engineers may also recommend that the division engineer exercise discretionary authority to modify, suspend, or revoke case-specific NWP authorizations within a district to ensure that only minimal cumulative adverse effects on the aquatic environment result from activities authorized by that NWP. Evaluations by a district engineer may result in the division engineer modifying, suspending, or revoking NWP authorizations in a particular geographic region or watershed at a later time, if the use of an NWP in a particular area will result in more than minimal cumulative or individual adverse effects on the aquatic environment. Special conditions added to NWP authorizations on a case-by-case basis by district engineers, such as compensatory mitigation requirements, help ensure that the NWPs authorize only activities that result in minimal individual and cumulative adverse effects on the aquatic environment.

Acreage Limits and Pre-Construction Notification Thresholds

We are proposing to retain the current acreage limits for the NWPs, although we are seeking comment on adding an acreage limit for NWP 21, which currently has no acreage limit. We are also proposing to move the provisions of NWP 39 that authorize residential developments to NWP 29 and place a ½ acre limit on the proposed NWP 29. Currently NWP 29 has a ¼ acre limit for single unit residences, but this NWP can be used in all non-tidal waters, including non-tidal wetlands that are adjacent to tidal waters. Single unit residential projects are also permitted to use NWP 39, with a ½ acre limit, if they affect only non-tidal waters, but NWP 39 cannot be used to authorize these activities in non-tidal wetlands adjacent to tidal waters. The revised NWP 29 will have a ½ acre limit, but will only authorize discharges into non-tidal waters, and this NWP could not be used to authorize discharges in non-tidal wetlands that are adjacent to tidal waters. All residential projects impacting non-tidal wetlands adjacent to tidal waters, including single unit residences, will now require authorization by individual permit or

regional general permit. The Corps believes this additional level of environmental protection is warranted for non-tidal wetlands adjacent to tidal waters because of concerns regarding environmental impacts of residential development in coastal areas.

Proposed NWP A, Emergency Repair Activities, has no explicit acreage limit but will be limited to restoring damaged structures, fills, or uplands to the pre-event ordinary high water mark, in cases where regulated activities in waters of the United States are necessary to conduct the restoration. Proposed NWP B, which would authorize discharges in certain types of ditches and canals, has a one acre limit, and proposed NWP C has no acreage limit for conducting time-sensitive repairs of pipelines. Proposed NWP D, Commercial Shellfish Aquaculture Activities, is limited to existing aquaculture activities. The Corps is seeking comment on whether an acreage limit or some other type of limit (*e.g.*, on the total volume of fill material that may be discharged) is needed to ensure that these existing activities have no more than minimal adverse effects. As proposed, this NWP will require a PCN if the activity covers more than 25 acres, or if more than 10 acres is covered with submerged aquatic vegetation. The proposed NWP authorizing coal remining activities (NWP E) is limited to sites where more than 60 percent of the site was previously mined. Proposed NWP F, which authorizes underground coal mining activities, has a ½ acre limit. We are seeking comments on the proposed limits for these NWPs.

We are proposing to simplify the PCN thresholds for NWP 12 by reducing the number of criteria triggering the requirement to submit PCNs from seven to two, since the 1/10 acre PCN threshold will normally capture the activities addressed by the PCN thresholds we are proposing to remove. For NWP 13, PCNs will be required for proposed activities that involve discharges of dredged or fill material into special aquatic sites. We are also proposing to eliminate the PCN thresholds for NWPs 39, 40, 42, and 43. All activities authorized by these permits will now require PCNs.

We are proposing to remove the PCN requirement for NWP 5, which authorizes scientific measuring devices, and rely on the current 25 cubic yard limit for discharges of dredged or fill material to ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. We are also proposing to drop some of the PCN requirements for special situations under NWP 12. Specifically, PCNs would no longer be required for: (1) Mechanized landclearing of forested wetlands in the utility line right-of-way; (2) utility lines constructed in waters of the United States that are greater than 500 linear feet in length; (3) utility lines constructed in waters of the United States where the utility line is parallel to a stream; (4) permanent access roads constructed in waters of the United States for a distance of greater than 500 feet; and (5) permanent access roads constructed in waters of the United States with impervious materials, provided the total losses of waters of the United States are less than 1/10 acre. For those NWP activities that do not require submission of PCNs to district engineers, division engineers can impose regional conditions to require PCNs. We are soliciting comments on the proposed PCN thresholds for the NWPs.

Ephemeral Streams

On June 19, 2006, the Supreme Court issued its decision in the case of *Rapanos et ux, et al,* v. *United States.* This decision raises questions about the jurisdiction of the Clean Water Act, including Section 404, over some intermittent and ephemeral streams and their adjacent wetlands. The Corps will assess jurisdiction regarding such waters on a case-by-case basis in accordance with evolving case law and any future guidance that may be issued by appropriate Executive Branch agencies (*e.g.*, the Department of Justice). The discussion that follows applies to all ephemeral and intermittent streams and adjacent wetlands that remain jurisdictional following *Rapanos.*

We are proposing to provide greater protection for ephemeral streams. For those NWPs that have a 300 linear foot limit for the loss of stream bed, we are proposing to apply that linear foot limit to perennial, intermittent, and ephemeral streams. The 300 linear foot limit is found in the terms of NWPs 29, 39, 40, and 42. For proposed activities resulting in the loss of more than 300 linear feet of intermittent and/or ephemeral stream bed, the district engineer can waive the linear foot limit, if he determines that the proposed activity will result in minimal individual and cumulative adverse effects on the aquatic environment. Waivers of the 300 linear foot limit for the loss of intermittent and ephemeral streams must be in writing.

In the 2002 NWPs, the 300 linear foot limit applied only to perennial and intermittent stream beds, and the 300 linear foot limit could be waived for losses of intermittent stream bed. A waiver could not be issued for impacts resulting in the loss of greater than 300 linear feet of perennial streams (and we are not proposing to change this provision). For ephemeral streams, no waiver process was necessary because impacts to ephemeral streams were not counted towards the 300 linear foot limit for determining compliance with the NWPs.

Applying the linear foot limit to losses of ephemeral stream bed will also simplify administration of the NWP program. It is often difficult to distinguish between intermittent and ephemeral streams in the field. By applying the same thresholds and limits to impacts resulting in the loss of intermittent and ephemeral streams, it will not be necessary to identify which stream reaches are intermittent and which are ephemeral. Many topographic maps do not show the locations of intermittent and ephemeral streams, which results in greater reliance on site visits or information from permit applicants to implement permit conditions related to the 300 linear foot limit.

For those NWPs that have both an acreage limit and a linear foot limit for stream bed impacts, the acreage of stream impacts (*i.e.*, the length of the stream bed filled or excavated times the average width of the stream, from OHWM to OHWM) applies towards that acreage limit. For example, if a proposed NWP 39 activity involves filling 1/10 acre of non-tidal wetlands and 100 linear feet of a stream bed with an average width of 10 feet, the acreage loss of waters of the United States for that activity is 0.123 acre.

As discussed below, we are also proposing to modify the definition of ''loss of waters of the United States'' to include filling or excavating of ephemeral stream beds when determining whether proposed activities exceed the threshold limits of the NWPs.

Compliance With the Endangered Species Act

In its April 6, 2005, decision in *National Wildlife Federation et al.* v. *Les Brownlee (No. 03–1392)*, the U.S. District Court for the District of Columbia determined that the Corps is obligated to consult with the U.S. Fish and Wildlife Service on the effects of the NWPs. In response to that decision, the Corps will conduct Endangered Species Act Section 7(a)(2) consultation. Corps districts will consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) for the species that occur in their districts.

Essential Fish Habitat

The NWP Program's compliance with the essential fish habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act will be achieved through EFH consultations between Corps districts and NMFS regional offices. Corps districts will request EFH consultations with the NMFS regional office in cases where activities authorized by NWP may adversely affect EFH. The purpose of these regional consultations is to determine if implementation of the proposed NWPs and regional conditions within a particular region may have an adverse effect on EFH. These consultations will be conducted according to the EFH consultation regulations at 50 CFR 600.920.

Regional Conditioning of Nationwide Permits

Under Section 404(e), NWPs can only be issued that result in no more than minimal individual and cumulative adverse effects on the aquatic environment. An important mechanism for ensuring compliance with this requirement is an effective regional conditioning process. Coordination with Federal and State agencies and Indian Tribes, and the solicitation of public comments, assist division and district engineers in identifying and developing appropriate regional conditions for the NWPs. Effective regional conditions protect local aquatic ecosystems and helps ensure that the NWPs authorize only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment, and are in the public interest.

There are two types of regional conditions: (1) Corps regional conditions and (2) water quality certification/Coastal Zone Management Act consistency determination regional conditions.

Corps regional conditions may be added to NWPs by division engineers after a public notice and comment process and coordination with other Federal, State, and local agencies.

Examples of Corps regional conditions include:

- Restricting the types of waters of the United States where the NWPs may be used (*e.g.*, fens, bogs, bottomland hardwoods, etc.) or prohibiting the use of some or all of the NWPs in those types of waters or in specific watersheds.
- Restricting or prohibiting the use of NWPs in an area covered by a Special Area Management Plan, or an Advanced Identification study with associated regional general permits.
- Adding pre-construction notification (PCN) requirements to NWPs to require notification for all work in certain watersheds or certain types of waters of the United States, or lowering the PCN threshold.
- Reducing NWP acreage limits in certain types of waters of the United States, or specific waterbodies;
- Revoking certain NWPs on a geographic or watershed basis;
- Restricting activities authorized by NWPs to certain times of the year in a particular waterbody, to minimize the adverse effects of those activities on fish or shellfish spawning, wildlife nesting, or other ecologically cyclical events.
- Conditions necessary to ensure compliance with the Endangered Species Act and essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act.

Corps regional conditions approved by division engineers cannot remove or weaken any of the terms and conditions of the NWPs, including general conditions and pre-construction notification requirements. In other words, Corps regional conditions can only be more restrictive than the original NWP terms and conditions.

Regional conditions may also be added to the NWPs as a result of water quality certifications (WQCs) issued by states, Indian Tribes, or the U.S. EPA, as well as state Coastal Zone Management Act (CZMA) consistency determinations.

At approximately the same time as the publication of this **Federal Register** notice, each Corps district will issue an initial public notice. Those initial public notices will include Corps regional conditions proposed by our district offices, and will also request comments or suggestions for additional Corps regional conditions. The initial public notice may also include, for informational purposes only, any proposed state or tribal WQC/CZMA regional conditions. However, public comment on the state or tribal WQC/CZMA regional conditions is handled through a separate state or tribal administrative procedures process. The public should not address such comments to the Corps.

In response to the district's initial public notice, interested parties may suggest additional Corps regional conditions, or suggest suspension or revocation of NWPs in certain geographic areas, such as specific watersheds or waterbodies. Such comments should include data to support the need for any suggested modifications, suspensions, or revocations of NWPs.

Before the effective date of NWPs, the division engineer will issue supplemental decision documents for each NWP. These supplemental decision documents will address the NWP regional conditions. Each supplemental decision document will also include a statement by the division engineer, which will certify that the NWP, with approved regional conditions, will authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment.

After the division engineer approves the Corps regional conditions, each Corps district will issue a final public notice for the NWPs. The final public notice will announce both the final Corps regional conditions and any final WQC/CZMA regional conditions. The final public notices will also announce the final status of water quality certifications and CZMA consistency determinations for the NWPs. Corps districts may adopt additional regional conditions in future public notices (following public notice and comment), if they identify a need for such conditions.

Information on regional conditions and revocation can be obtained from the appropriate district engineer, as indicated below. Furthermore, this and additional information can be obtained on the Internet at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/district.htm* by clicking on the appropriate link for the Corps district office.

In cases where a Corps district has issued a regional general permit that authorizes similar activities as one or more NWPs, the district will clarify the use of the regional general permit versus the NWP(s) during the regional conditioning process. For example, the division engineer may revoke the applicable NWP(s) so that only the regional general permit may be used to authorize those activities.

Water Quality Certification/Coastal Zone Management Act Consistency Determination for Nationwide Permits

State or Tribal water quality certification, or waiver thereof, is required by Section 401 of the Clean Water Act, for activities authorized by NWPs which result in a discharge into waters of the United States. In addition, any state with a federally-approved CZMA plan must agree with the Corps determination that activities authorized by NWPs which are within, or will affect any land or water uses or natural resources of the state's coastal zone, are

consistent with the CZMA plan to the maximum extent practicable. Water quality certifications and/or CZMA consistency determinations may be issued without conditions, issued with conditions, or denied for specific NWPs.

We believe that, in general, the activities authorized by the NWPs will not violate State or Tribal water quality standards and will be consistent with state CZMA plans. The NWPs are conditioned to ensure that adverse environmental effects will be minimal and address the types of activities that would be routinely authorized if evaluated under the individual permit process. We recognize that in some states or Tribal lands there will be a need to add regional conditions, or individual state or Tribal review for some activities, to ensure compliance with water quality standards and/or consistency with CZMA plans. As a practical matter, we intend to work with states and Tribes to ensure that NWPs include the necessary conditions so that they can issue water quality certifications or CZMA consistency concurrences. Therefore, each Corps district will initiate discussions with their respective state(s) and Tribe(s), as appropriate, to discuss issues of concern and identify regional modification and other approaches to address the scope of waters, activities, discharges, and PCNs, as appropriate, to resolve these issues. Note that in some states the Corps has issued state programmatic general permits (SPGPs), and within those states some or all of the NWPs may be suspended or revoked by division engineers. Concurrent with today's proposal, district engineers may be proposing modification or revocation of the NWPs in states where SPGPs will be used in place of some or all of the NWPs.

Section 401 of the Clean Water Act

This **Federal Register** notice serves as the Corps application to the Tribes, States, or EPA, where appropriate, for water quality certification of the activities authorized by these NWPs. The Tribes, States, and EPA, where appropriate, are requested to issue, deny, or waive water quality certification pursuant to 33 CFR 330.4(c) for these NWPs.

If a state denies a water quality certification for an NWP within that state, then the Corps will deny NWP authorization for the affected activities within that state without prejudice. However, when applicants request approval of such activities, and the Corps determines that those activities meet the terms and conditions of the NWP, the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any project specific conditions the Corps determines are necessary for NWP authorization. The Corps will notify the applicant that they must obtain a project specific water quality certification, or waiver thereof, before they are authorized to start work in waters of the United States. That is, NWP authorization will be contingent upon obtaining the necessary water quality certification or waiver thereof from the State, Tribe, or EPA where appropriate. Anyone wanting to perform such activities where pre-construction notification to the Corps is not required has an affirmative responsibility to first obtain a project-specific water quality certification or waiver thereof from the Tribe, State, or EPA before proceeding under the NWP. This requirement is provided at 33 CFR 330.4(c).

Section 307 of the Coastal Zone Management Act (CZMA)

This **Federal Register** notice serves as the Corps determination that the activities authorized by these NWPs are, to the maximum extent practicable, consistent with state CZMA programs. This determination is contingent upon the addition of state CZMA conditions and/or regional conditions, or the issuance by the state of an individual consistency concurrence, where necessary. States are requested to agree or disagree with the consistency determination following 33 CFR 330.4(d) for these NWPs.

The Corps' CZMA consistency determination only applies to NWP authorizations for activities that are within, or affect, any land, water uses or natural resources of a State's coastal zone. NWP authorizations for activities that are not within or would not affect a State's coastal zone do not require a Corps CZMA consistency determination and thus are not contingent on a State's agreement with the Corps' consistency determinations.

If a State disagrees with the Corps consistency determination for an NWP, then the Corps will deny authorization for the activities within or that would affect the coastal zone without prejudice. However, when applicants request approval of such activities, and the Corps determines that those activities meet the terms and conditions of the NWP, the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any project specific conditions the Corps determines are necessary for NWP authorization. The Corps will notify the applicant that they must obtain a project specific CZMA consistency determination before they are authorized to start work in waters of the United States. That is, NWP authorization will be contingent upon obtaining the necessary CZMA consistency concurrence from the State. Anyone wanting to perform such activities where pre-construction notification to the Corps is not required has an affirmative responsibility to present a consistency certification to the appropriate State agency for concurrence. Upon concurrence with such consistency certifications by the state, the activity would be authorized by the NWP. This requirement is provided at 33 CFR 330.4(d).

Nationwide Permit Verifications

Certain NWPs require the permittee to submit a PCN, and thus request confirmation from the district engineer that an activity complies with the terms and conditions of an NWP, prior to commencing the proposed work. The requirement to submit a PCN is identified in the NWP text. Pre-construction notification requirements may added to NWPs by division engineers through regional conditions. In cases where pre-construction notification is not required, a project proponent may submit a PCN voluntarily, if he or she wants assurance that the activity is authorized by an NWP. An NWP verification is a response to a PCN that confirms that a particular activity is authorized by an NWP.

In response to an NWP verification request (PCN), the district engineer reviews the information submitted by the prospective permittee. If the district engineer determines that the activity complies with the terms and conditions of the NWP, he will notify the permittee. Special conditions, such as compensatory mitigation requirements, may be added to the NWP authorization to ensure that the activity results in minimal individual and cumulative adverse effects on the aquatic environment and other public interest factors. The special conditions are incorporated into the NWP verification, along with the NWP text and the NWP general conditions.

If the district engineer reviews the NWP verification request and determines that the proposed activity does not comply with the terms and conditions of an NWP, he will notify the project proponent and provide instructions for applying for authorization under a regional general permit or an individual permit. District engineers will respond to NWP

verification requests within 45 days of receiving a complete PCN. Except for NWP 21, if the project sponsor has not received a reply from the Corps within 45 days, she may assume that the project is authorized, consistent with the information in the PCN. For NWP 21 (Surface Coal Mining), the project sponsor may not begin work before receiving an NWP verification.

Contact Information for Corps District Engineers

Alabama

Mobile District Engineer, ATTN: CESAM–RD, 109 St. Joseph Street, Mobile, AL 36602–3630.

Alaska

Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 6898, Elmendorf AFB, AK 99506–6898.

Arizona

Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 532711, Los Angeles, CA 90053–2325.

Arkansas

Little Rock District Engineer, ATTN: CESWL–RO, P.O. Box 867, Little Rock, AR 72203–0867.

California

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922.

Colorado

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435.

Connecticut

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Delaware

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East Philadelphia, PA 19107–3390.

Florida

Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32232–0019.

Georgia

Savannah District Engineer, ATTN: CESAS–OP–F, P.O. Box 889, Savannah, GA 31402–0889.

Hawaii

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440.

Idaho

Walla Walla District Engineer, ATTN: CENWW–RD, 201 North Third Avenue, Walla Walla, WA 99362–1876.

Illinois

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004.

Indiana

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059.

Iowa

Rock Island District Engineer, ATTN: CEMVR–OD–P, P.O. Box 2004, Rock Island, IL 61204–2004.

Kansas

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896.

Kentucky

Louisville District Engineer, ATTN: CELRL–OP–F, P.O. Box 59, Louisville, KY 40201–0059.

Louisiana

New Orleans District Engineer, ATTN: CEMVN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267.

Maine

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Maryland

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Massachusetts

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Michigan

Detroit District Engineer, ATTN: CELRE–RG, P.O. Box 1027, Detroit, MI 48231–1027.

Minnesota

St. Paul District Engineer, ATTN: CEMVP–OP–R, 190 Fifth Street East, St. Paul, MN 55101–1638.

Mississippi

Vicksburg District Engineer, ATTN: CEMVK–OD–F, 4155 Clay Street, Vicksburg, MS 39183–3435.

Missouri

Kansas City District Engineer, ATTN: CENWK–OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896.

Montana

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

Nebraska

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

Nevada

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, Sacramento, CA 95814–2922.

New Hampshire

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

New Jersey

Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390.

New Mexico

Albuquerque District Engineer, ATTN: CESPA–OD–R, 4101 Jefferson Plaza NE, Albuquerque, NM 87109–3435.

New York

New York District Engineer, ATTN: CENAN–OP–R, 26 Federal Plaza, New York, NY 10278–0090.

North Carolina

Wilmington District Engineer, ATTN: CESAW–RG, P.O. Box 1890, Wilmington, NC 28402–1890.

North Dakota

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

Ohio

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070.

Oklahoma

Tulsa District Engineer, ATTN: CESWT–RO, 1645 S. 101st East Ave, Tulsa, OK 74128–4609.

Oregon

Portland District Engineer, ATTN: CENWP–OD–G, P.O. Box 2946, Portland, OR 97208–2946.

Pennsylvania

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Rhode Island

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

South Carolina

Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919.

South Dakota

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

Tennessee

Nashville District Engineer, ATTN: CELRN–OP–F, 3701 Bell Road, Nashville, TN 37214.

Texas

Galveston District Engineer, ATTN: CESWG–PE–R, P.O. Box 1229, Galveston, TX 77553–1229.

Utah

Sacramento District Engineer, ATTN: CESPK–CO–R, 1325 J Street, CA 95814–2922.

Vermont

New England District Engineer, ATTN: CENAE–R, 696 Virginia Road, Concord, MA 01742–2751.

Virginia

Norfolk District Engineer, ATTN: CENAO–OP–R, 803 Front Street, Norfolk, VA 23510–1096.

Washington

Seattle District Engineer, ATTN: CENWS–OP–RG, P.O. Box 3755, Seattle, WA 98124–3755.

West Virginia

Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070.

Wisconsin

St. Paul District Engineer, ATTN: CEMVP–OP–R, 190 Fifth Street East, St. Paul, MN 55101–1638.

Wyoming

Omaha District Engineer, ATTN: CENWO–OD–R, 106 South 15th Street, Omaha, NE 68102–1618.

District of Columbia

Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715.

Pacific Territories (American Samoa, Guam, & Commonwealth of the Northern Mariana Islands)

Honolulu District Engineer, ATTN: CEPOH–EC–R, Building 230, Fort Shafter, Honolulu, HI 96858–5440.

Puerto Rico and Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ–RD, P.O. Box 4970, Jacksonville, FL 32232–0019.

Request for Comment

We are proposing to reissue all nationwide permits, general conditions, and definitions. Substantive changes to the nationwide permits, general conditions, and definitions are discussed below, but we are soliciting comments on all the nationwide permits, general conditions, and definitions. Minor grammatical changes, the removal of redundant language, and other small changes are not discussed in the preamble below. Therefore, commenters should carefully read each proposed NWP, general condition, and definition in this notice.

Discussion of Proposed Modifications to Existing Nationwide Permits

The proposed changes to the existing NWPs fall into two categories:

Category 1 (Cat 1)—Proposed clarification of an existing NWP by making minor changes to the text of the NWP. It does not change the scope of activities authorized by the existing NWP.

Category 2 (Cat 2)—Proposed modification of an existing NWP that changes the scope of activities authorized by that NWP, or its substantive requirements.

If an existing NWP is not listed in this section of the preamble, we are proposing to reissue the NWP without changing it.

We are proposing to modify many of the NWPs so that they follow a standard format: A description of activities the NWP authorizes, followed by a description of activities the NWP does not authorized (if applicable). Any pre-construction notification requirements are provided in a separate paragraph. Any ''notes'' for the NWP are provided at the end of the NWP. In many NWPs we are proposing to remove explicit references to the NWP regulations or general conditions, to simplify the text of those NWPs since the regulations and general conditions apply to all NWPs that authorize activities addressed by a particular provision. For example, general condition 3 requires that activities in spawning areas during spawning season be avoided to the maximum extent practicable. This requirement applies to all NWPs that may authorize activities in spawning areas. In cases where specific requirements or actions are necessary to ensure that a particular activity complies with NWP general conditions, district engineers should add special conditions to the NWP authorization for that activity. For example, for an NWP activity that will occur in a stream or other waterbody with spawning areas, special conditions may need to be added to the NWP authorization that impose time-of-year restrictions for conducting that activity, to minimize adverse effects to those spawning areas. If the area in the vicinity of the project site does not contain spawning areas, then this general condition would not apply to that NWP activity.

NWP 3. *Maintenance.* (Cat 2) We are proposing to restructure and simplify this NWP by shifting some of the activities currently authorized by NWP 3 to the proposed new NWP A, Emergency Repair Activities. Specifically we are proposing to remove the last two sentences of paragraph (i) and the entire paragraph (iii) that are in the current NWP 3 to the proposed new NWP A. We are also proposing to remove the definition of ''currently serviceable'' from the first paragraph of this NWP and place that definition in the ''Definitions'' section, because that term is also used in NWP 41, ''Reshaping Existing Drainage Ditches'' and proposed NWP C, ''*Pipeline Safety Program* Designated Time Sensitive Inspections and Repairs.'' The term ''currently serviceable'' means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

We are proposing to move the provisions regarding the removal of accumulated sediments from outfall and intake structures and associated canals from the current NWP 7 (which authorizes construction of outfall and associated intake structures) to paragraph (b) of the proposed NWP 3. The 200 foot linear limit for the removal of accumulated sediments in existing NWP 3 would not apply to situations where sediments are blocking or restricting outfall or intake structures, or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. Pre-construction notification is required for all activities authorized under paragraph (b) of this NWP. The proposed changes to NWP 3 will consolidate within a single NWP the authorization for removal of accumulated sediments from existing structures and from canals associated with intake and outfall structures.

To simplify the text of this NWP, we are proposing to remove the explicit references to the ''water quality'' and ''management of water flows'' general conditions, although these general conditions still apply. We are also proposing to add language to paragraph (c), to clarify that if temporary fills, structures, or work are required to conduct the maintenance activity, then separate authorization may be required. For example, it may be necessary to discharge dredged or fill material into waters of the United States to construct a cofferdam, so that the maintenance activity can be completed. The authorization for the temporary fills, structures, or work may be provided by NWP 33, Temporary Construction, Access, and Dewatering. We are proposing to modify the notification provision of this NWP to require information about original design capacities and configurations of structures and other features where maintenance dredging is proposed. That provision was adapted from the requirements for the current NWP 7 and will allow the district engineer to ensure compliance with the requirement that limits the removal of sediment to the minimum necessary to restore the waterway to its approximate dimensions when the structure was built.

NWP 4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* (Cat 2) We are proposing to remove the text authorizing shellfish seeding, since that activity would be authorized by proposed NWP D (if the activity is an existing commercial shellfish aquaculture operation) or NWP 27 (if it is conducted for restoration activities).

NWP 5. *Scientific Measurement Devices.* (Cat 2) We are proposing to remove the PCN requirement for discharges of 10 to 25 cubic yards for the construction of small weirs and flumes, however, we would still retain the 25 cubic yard limit for such construction. Division engineers can regionally condition this NWP to require PCNs for certain activities, including discharges that exceed a specified threshold for the construction of small weirs and flumes, where necessary to ensure minimal adverse effects.

NWP 6. *Survey Activities.* (Cat 2) We are proposing to add exploratory trenching to the list of examples of activities authorized by this NWP, as well as a requirement to restore the trenched area to its pre-construction elevations upon completion of the work. District engineers have used this NWP to authorize exploratory trenching, with minimal adverse effects on the aquatic environment. In the text of this NWP, we are proposing a definition of ''exploratory trenching.'' We are also proposing to modify this NWP to authorize the construction of temporary pads used for survey activities, provided the discharge does not exceed 25 cubic yards. The construction of temporary pads is often necessary to provide proper levels for equipment used for core sampling.

NWP 7. *Outfall Structures and Associated Intake Structures.* (Cat 2) We are proposing to change the title of this NWP to more clearly describe what it authorizes. As discussed in the section on the proposed changes to NWP 3, we are proposing to remove the provisions regarding the removal of accumulated sediments from outfall and intake structures and associated canals, and place them in paragraph (b) of NWP 3. This proposed change will simplify NWP 7, and the removal of accumulated sediments may be authorized by NWP 3 instead.

NWP 8. *Oil and Gas Structures on the Outer Continental Shelf.* (Cat 1) We are proposing to change the title of this NWP to more clearly articulate what it authorizes. We are also proposing to modify this NWP to require pre-construction notification for all activities, to allow district engineers to review potential effects on navigation and national security. Requiring PCNs for all activities will also provide district engineers the opportunity to review compliance with fairway regulations, and exercise discretionary authority where limits of shipping safety fairways or traffic separation schemes have not been designated or where changes may occur.

NWP 12. *Utility Line Activities.* (Cat 2) We are proposing several modifications to this NWP. For this proposed modification of this NWP, the ½ acre limit still applies to each single and complete project, as defined at 33 CFR 330.2(i) and the ''Definitions'' section of the NWPs.

To reduce duplication in the NWPs, we are proposing to modify this NWP by removing the provision for the construction of access roads. Permanent or temporary access roads may be authorized by NWPs 14 or 33, respectively, or by individual permits or regional general permits. As a result of this proposed change, Note 2 of the current NWP 12 would be removed.

We are proposing to move the term that requires mitigation for permanent adverse effects to the functions and services of waters of the United States to paragraph (g) of the ''mitigation'' general condition (GC 20). District engineers may require compensatory mitigation for such impacts, if necessary, to ensure that the utility line activity results in minimal individual and cumulative adverse effects on the aquatic environment.

We are also proposing to simplify the PCN thresholds for this NWP, by requiring notification only for those utility line activities that require a section 10 permit or that involve discharges of dredged or fill material resulting in the permanent or temporary loss of greater than 1/10 acre of waters of the United States.

We are proposing to redesignate Note 3 as Note 1, and move the first part of the former Note 1 to the main text of NWP 12. The second part of former Note 1 would become Note 2 of the proposed modification of NWP 12.

NWP 13. *Bank stabilization.* (Cat 2) We are proposing to modify this NWP to clarify that district engineers may authorize bank stabilization activities longer than 500 linear feet, or that result in the discharge of more than one cubic yard of material per running foot below the plane of the ordinary high water mark or high tide line. Bank stabilization activities that exceed either of these thresholds require pre-construction notification. In response to PCNs, district engineers can issue written waivers of these limits provided the proposed activities will result in minimal individual and cumulative adverse effects on the aquatic environment.

We are also proposing to modify this NWP by requiring PCNs for bank stabilization activities that involve discharges of dredged or fill material into special aquatic sites, so that district engineers can authorize those activities if they determine that the individual and cumulative adverse effects on the aquatic environment are minimal. This will replace the current prohibition against the placement of materials in any special aquatic site, including wetlands. In some circumstances, it may be more beneficial to the watershed to stabilize eroding banks, even though small amounts of fringe wetlands or mudflats may be impacted by the bank stabilization activity. District engineers will exercise discretionary authority to require an individual permit if the proposed work would result in more than minimal adverse effects to special aquatic sites.

We are proposing to remove the provision requiring that the ''activity is part of a single and complete project'', since that requirement applies to all NWPs. The phrase ''single and complete project'' is defined at 33 CFR 330.2(i) and the ''Definitions'' section of the NWPs. In place of the general statement

that the NWP may not be used to channelize a water of the United States, we are also proposing to clarify that NWP 13 does not authorize stream channelization activities.

NWP 14. *Linear Transportation Projects.* (Cat 1) We are proposing to restructure this NWP to make it easier to understand, but the general scope of authorized activities is unchanged. The acreage limits and PCN thresholds are the same as before. In the first paragraph of this NWP, we are proposing to replace the word ''crossings'' with ''projects,'' to be consistent with the title of this NWP.

We are proposing to add a new condition to this NWP, to limit stream channel modifications to the minimum necessary to construct or protect linear transportation projects. We are also proposing to add language clarifying that NWP 14 does not authorize temporary construction, access, and dewatering activities; those activities may be authorized by NWP 33. That language is intended to support our objective to reduce duplication in the NWPs, since NWPs 14 and 33 can be combined to authorize single and complete linear transportation projects that involve temporary construction impacts, provided there is compliance with the ''use of multiple nationwide permits'' general condition (GC 24).

We are proposing to remove the explicit requirement that the PCN include a compensatory mitigation proposal. The compensatory mitigation requirements for the NWPs are addressed in the ''mitigation'' general condition (GC 20).

To simplify this NWP, we are also proposing to remove other redundant language: (1) The text requiring delineations of special aquatic sites to be submitted with PCNs, which is addressed by paragraph (b)(4) of the ''pre-construction notification'' general condition (GC 27); (2) the text requiring that the width of the fill be limited to the minimum size necessary, which is addressed by the ''mitigation'' general condition (GC 20); (3) the references to the ''management of water flows'' and ''water quality'' general conditions; and (4) the requirement that the linear transportation project be a single and complete project, since that requirement applies to all NWPs (see 33 CFR 330.2(i)).

NWP 16. *Return Water From Upland Contained Disposal Areas.* (Cat 1) We are proposing to rearrange the text of this NWP so that it will be consistent with the format of the other NWPs. We are not proposing any changes to the terms of this NWP.

NWP 17. *Hydropower Projects.* (Cat 1) We are proposing to rearrange the text of this NWP, without modifying any of its terms or its scope.

NWP 18. *Minor Discharges.* (Cat 2) To enhance protection of the aquatic environment, we are proposing to modify this NWP by applying the 1/10 acre limit to all losses of waters of the United States, not just special aquatic sites. This proposed change will also help simplify this NWP. We are also proposing to eliminate the second sentence of paragraph (b) of this NWP, since the concepts in that sentence are already addressed in the definition of ''loss of waters of the United States.'' We are proposing to remove the text requiring a delineation of special aquatic sites, since it will be addressed in paragraph (b)(4) of the ''pre-construction notification'' general condition (GC 27). We are also proposing to remove the language relating to the requirement that the discharge be part of a single and complete project, since that requirement applies to all NWPs.

NWP 19. *Minor Dredging.* (Cat 1) We are proposing to remove the phrase ''as part of a single and complete project,'' since that requirement applies to all NWPs and it is not necessary to include that phrase in the text of this NWP.

NWP 21. *Surface Coal Mining Operations.* (Cat 1) We are proposing to reissue NWP 21 to authorize discharges of dredged or fill material into waters of the United States associated with surface coal mining operations such as contour mining, mountaintop mining, and area mining. While surface coal mining operations occur throughout the United States, the majority of mines that create excess spoil material are located in the Appalachian coalfields region, many in steep slope terrains. These types of mining frequently result in excess spoil material being created that may not safely be placed back on the mine site. Other permanent impacts may include permanent stream diversions and/or relocations, fill for coal processing plants, and coal processing waste areas. Temporary impacts to waters of the United States frequently include temporary stream relocations, road crossings, and sediment ponds. Surface coal mining activities may also involve disturbances to stream channels. Coal deposits underlie many streams at shallow depths and mining activities routinely divert and relocate watercourses to remove the coal.

An integrated permit processing procedure is envisioned by the Joint Procedures Framework Memorandum of Understanding signed by the Corps, U.S. EPA, U.S. FWS and Office of Surface Mining (OSM) on February 8, 2005. It is a collaborative process in which the Surface Mining Control and Reclamation Act authority chooses to be the lead agency in coordinating interagency review of applications for surface coal mining operations, while preserving the authorities and responsibilities of each agency for permit decisions. This should result in concurrent reviews by the agencies, reduce duplication, and allow for joint pre-application and public meetings and joint site visits. To date at least one state (Ohio) has initiated an integrated permit process, and several other states, such as Washington, are having discussions.

This NWP is used to provide section 404 authorization for surface coal mining activities that have also been authorized by the Office of Surface Mining (OSM) or states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). One of the objectives of NWP 21 is to reduce duplication between the SMCRA and Section 404 permitting processes when authorizing surface coal mining projects. In previous versions of NWP 21, there has not been a limit on either the acreage or linear feet of waters and streams that could be impacted. This was based partly on the belief that the analyses and environmental protection performance standards required by SMCRA, in conjunction with PCN review, are generally sufficient to ensure that NWP 21 activities result in minimal individual and cumulative adverse effects on the aquatic environment. Under SMCRA requirements, surface coal mine operators must minimize adverse impacts to fish and wildlife habitat and material damage to the hydrologic balance within the project area. They must also prevent material damage to the hydrologic balance in surrounding areas. OSM is in the process of developing revisions to its excess spoil disposal rules that would provide additional protection for streams.

However, in processing PCNs for NWP 21, the Corps does not rely solely on the SMRCA process to ensure compliance with the requirements of the Clean Water Act (CWA). Additional measures, such as compensatory mitigation to offset losses of aquatic resource functions, are often needed to ensure that NWP 21 activities result in minimal individual and cumulative adverse effects on the aquatic environment. The SMCRA process is used to identify where surface coal mining activities will occur, and in Appalachia the SMCRA process is used

to identify the number and location of valley fills. The PCN process is used to determine what compensatory mitigation is needed to satisfy the 404(b)(1) Guidelines and ensure that individual and cumulative impacts are minimal. While activities performed to satisfy SMCRA requirements may be considered in determining compensatory mitigation requirements under Section 404, there is no presumption that these activities by themselves are sufficient. Through an April 1999 Memorandum of Understanding (MOU) signed by the COE, EPA, OSM, FWS, and the West Virginia Department of Environmental Protection (WVDEP), the agencies agreed to conduct joint permit application reviews for surface coal mining projects in West Virginia which impacted streams draining watersheds of 250 acres or greater and these activities were required to obtain individual permits. Partly as a result of the MOU, many surface coal mining projects in the Huntington District are now authorized under individual permits. The MOU was rescinded after the Mountaintop Mining/Valley Fill Programmatic Environmental Impact Statement was finalized.

In 2002, the Corps attempted to address concerns about the impacts of NWP 21 by requiring that all NWP 21 projects, of any size, file a PCN with the Corps and wait for written authorization from the Corps before beginning work. In contrast, most NWPs allow the project sponsor to begin work 45 days after filing a complete PCN, unless the sponsor has heard explicitly from the Corps that the work is not authorized.

To further strengthen its process for reviewing PCNs, on March 19, 2004, the Corps issued a standard operating procedure (SOP) for NWP 21 processing. This SOP was developed to improve consistency, and to enhance predictability and certainty. The procedures in the SOP make the NWP 21 PCN review process similar to the individual permit review process, such as the requirement for agency coordination on all proposed NWP 21 activities. The SOP lists the types of information needed by the Corps to make minimal impact determinations for proposed NWP 21 activities. Functional assessments appropriate to the region in which a proposed NWP 21 activity is located are required to assess stream quality and wetland impacts. The SOP also discusses requirements for compensatory mitigation projects, including monitoring requirements and financial assurances, in cases where compensatory mitigation is necessary to ensure that an NWP 21 activity results in minimal individual and cumulative adverse effects on the aquatic environment. Further guidance on compensatory mitigation for impacts to aquatic resources resulting from surface coal mining activities was issued by the Corps on May 7, 2004.

However, we have continued to hear concerns from some stakeholders about the lack of an acreage limit for NWP 21. In response, we are seeking comment on the need for an acreage, or other type, of limit for this NWP. Commenters should address the appropriate scientific and environmental basis for determining whether there is a need for a limit, and discuss types of possible limits (*e.g.*, acreage or stream length impacted, watershed drained). Commenters should also indicate whether it is appropriate to maintain or modify the current notification requirements if a limit is added, since these were adopted partially in response to concerns about the lack of a limit.

The terms and conditions of NWP 21, in conjunction with SMCRA requirements, the PCN review process, and any compensatory mitigation required under general condition 20, will ensure that this NWP authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment.

We are proposing to remove the text stating that the district engineer may require a bond to ensure the success of mitigation, since the district engineer has the discretion to impose that requirement on any NWP activity where mitigation is required. As with the current NWP 21, compensatory mitigation for impacts resulting in the loss of aquatic resources that is required by OSM or the state may be considered when determining compensatory mitigation for NWP 21 activities. In accordance with our proposed revisions to the ''pre-construction notification'' general condition (GC 27), all NWP PCNs require submission of delineations of waters of the United States, including special aquatic sites (see paragraph (b)(4) of that general condition).

Division engineers can regionally condition this NWP to impose an acreage or linear foot limit or other special conditions, if there are concerns for the aquatic environment in a particular district, watershed, or other geographic region.

NWP 22. *Removal of Vessels.* (Cat 2) We are proposing rearrange the text of this NWP so that it is in a format similar to the other NWPs. We are also proposing to require a PCN if the vessel removal activity involves discharges of dredged or fill material into special aquatic sites. We are proposing to move the term addressing vessel disposal in waters of the United States to the ''Note'' at the end of the NWP. We are proposing to clarify that vessel disposal in waters of the United States requires separate authorization, if a Corps permit is required.

NWP 23. *Approved Categorical Exclusions.* (Cat 1) We are proposing to modify this NWP by reorganizing the text to make it easier to read. We are proposing to add the phrase ''including pre-construction notification requirements'' to paragraph (c) of this NWP to clarify that some activities eligible for NWP authorization may require submission of PCNs to district engineers prior to commencing the activity. We are also proposing to change the Corps office designation from CECW–OR to CECW–CO to reflect organizational changes at Corps Headquarters.

In the ''Notification'' provision, we are proposing to add a sentence to explain that there are Regulatory Guidance Letters (RGLs) that list the approved activities that require submission of PCNs. Prospective permittees should review the appropriate RGL to determine if an approved activity requires submittal of a PCN to the district engineer prior to beginning the activity. The current activities that have been approved (*i.e.*, the Chief of Engineers has concurred that they are categorically excluded) for use of NWP 23 are provided in RGL 05–07.

We are also proposing to add a ''Note'' to this NWP, to clarify that agencies may submit requests to the Office of the Chief of Engineers to include additional activities as approved for authorization under NWP 23. Upon receipt of such requests, we will conduct a public notice and comment process to determine whether the proposed activities are in fact categorically excluded. Additional activities approved for use of NWP 23 would be announced in an RGL, which would be posted at the internet address indicated in the ''Note.''

NWP 24. *Indian Tribe or State Administered Section 404 Programs.* (Cat 2) We are proposing to modify this NWP to include Indian Tribes. Section 518(e) of the Clean Water Act authorizes the U.S. EPA Administrator to treat an Indian Tribe as eligible for assuming the section 404 permit program. Currently, only two States (Michigan and New Jersey) and no Indian Tribes are approved to administer the section 404 program, and we are proposing to add a note to list those states. We are also proposing to move the text clarifying that certain structures in navigable

waters do not require section 10 permits to a note.

NWP 27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities.* (Cat 2) We are proposing to change the title of this NWP to more accurately reflect the types of activities it authorizes, since aquatic habitats other than streams and wetlands can be restored, established, or enhanced by activities authorized by this NWP. The term ''creation'' would be replaced with ''establishment,'' to conform with the terminology in Regulatory Guidance Letter 02–02 for wetland project types and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.'' We are proposing to modify this NWP to prohibit the conversion of natural wetlands to another aquatic use, but the relocation of non-tidal wetlands on the project site would still be authorized provided certain conditions are met. In addition, we are proposing to add shellfish seeding to the list of examples of authorized activities, since shellfish seeding is used to restore oyster populations.

We are also proposing to modify this NWP to require permittees to submit copies of: Binding wetland enhancement, restoration, or establishment agreements; NRCS documentation for voluntary wetland restoration, enhancement, or establishment actions; or Surface Mining Control and Reclamation Act (SMCRA) permits issued by the Office of Surface Mining or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP. Standard PCNs are not required for activities conducted pursuant to one of these instruments (except reversion activities; see below), but the submission of these already prepared documents will allow the Corps to ensure that the conditions for use of the NWP have been satisfied, with minimal burden to the project proponent.

We are proposing to replace ''values'' with ''services'' because ecosystem services provide more objective measures of the importance of aquatic resource functions to human populations. Services are the benefits that humans derive from the functions performed by wetlands and other aquatic resources. Examples of wetland services include flood damage reduction, water quality improvement, and opportunities for viewing birds and other wildlife. Aquatic resource restoration, establishment, and enhancement activities authorized by this NWP are likely to provide ecosystem services that benefit human populations. Values of aquatic resources are difficult to describe objectively, and are usually dependent on the point of view of the person making the assessment. Values may relate to either monetary or non-monetary measures, whereas services can be described in physical terms that are easier to evaluate and address, where necessary, in NWP authorization letters and special permit conditions.

We are proposing to modify the reversion provision of this NWP by adding the Farm Service Agency (FSA) and appropriate designated state cooperating agencies of the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, FSA, National Marine Fisheries Service, and National Ocean Service to the list of agencies that may execute wetland restoration, enhancement, or establishment agreements with landowners. This NWP authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies. There may be cases where the designated state cooperating agency has taken over the operational aspects of executing wetland restoration, enhancement, or establishment agreements with landowners for those federal agencies. The Conservation Reserve Enhancement Program (CREP) administered by FSA may involve wetland restoration, enhancement, and/or establishment activities, and this program may be delegated to state agencies for implementation. A CREP contract between the landowner and the administering agency may be for a term of 10 to 15 years. We are also proposing to add the phrase ''or on uplands'' to the third sentence of this paragraph, since wetlands may be established on uplands as a result of an agreement between the landowner and another government agency.

We are also proposing to modify this NWP by moving the requirement to notify the district engineer prior to conducting any reversion activities to the ''Notification'' provision. The ''Notification'' provision requires the permittee or appropriate Federal or State agency to notify the district engineer in accordance with general condition 27. For reversion activities, the permittee must show that the activity qualifies for reversion by providing documentation showing that a prior agreement has expired, or that the reversion activity is otherwise authorized. This documentation may consist of either: (1) A copy of the original wetland enhancement, restoration, or establishment agreement between the landowner and the NRCS, FSA, FWS, or appropriate designated state cooperating agency that shows the expiration date, if the agreement has an expiration date; (2) the NRCS documentation for voluntary wetland enhancement, restoration, and establishment actions demonstrating compliance with NRCS regulations; or (3) a copy of the SMCRA permit issued by the OSM or applicable state agency.

We are proposing to modify the ''Note'' at the end of this NWP, by removing the first sentence. Since the first paragraph of this NWP states that it authorizes only those activities that result in a net increase in aquatic resource functions and services (except for authorized reversion activities), it is redundant to restate this requirement in the Note. We are also proposing to remove the text stating that compensatory mitigation is required for impacts to waters of the United States caused by the authorized construction of compensatory mitigation projects, including mitigation banks and in-lieu fee programs.

In addition, we are proposing to remove the last sentence of the ''Note,'' which states that NWP 27 can be used to authorize the construction of a mitigation bank only when that bank has been approved in accordance with the procedures in the interagency mitigation banking guidance issued on November 28, 1995 (60 FR 58605). This provision is contrary to the 1995 guidance, which states that a bank sponsor may proceed, at his or her own risk, with the construction of the mitigation bank after receiving the Department of the Army permit, if the mitigation banking instrument has not yet been approved.

NWP 29. *Residential Developments.* (Cat 2) We are proposing to combine NWP 29 and the provisions of NWP 39 pertaining to residential developments into a single nationwide permit that authorizes single unit residences (*e.g.*, single family homes) and multiple unit residential developments. In other words, we are proposing that NWP 29 authorize both single unit and multiple unit residential developments while NWP 39 would authorize commercial and institutional developments because residential developments differ from commercial and institutional

developments. In addition, residential developments are often subject to different state and local requirements. We are seeking comments on the appropriateness of having separate NWPs to authorize residential developments and commercial and institutional developments.

We are proposing to require PCNs for all activities authorized by this NWP, to ensure that those activities result in minimal individual and cumulative adverse effects to the aquatic environment and other public interest review factors, such as floodplain values.

The proposed acreage limit is ½ acre, and that acreage limit includes any losses of waters of the United States resulting from filling or excavating stream beds. We are also proposing to impose a 300 linear foot limit on the loss of stream bed. For intermittent and ephemeral stream beds, a district engineer can waive the 300 linear foot limit on a case-by-case basis, if he determines that the adverse effects on the aquatic environment are minimal, individually and cumulatively. These waivers must be issued in writing by the district engineer. The 300 linear foot limit cannot be waived for perennial stream beds.

The proposed modification of this NWP provides more protection of the aquatic environment. The proposed NWP can be used in a narrower scope of waters than the current NWP 29. The current NWP 29 authorizes discharges of dredged or fill material into all non-tidal waters of the United States, including those non-tidal wetlands that are adjacent to tidal waters. The proposed modification of NWP 29 does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. The current NWP 39 authorizes both single unit and multiple unit residential developments with a ½ acre limit for discharges of dredged or fill material into non-tidal waters, except for non-tidal wetlands adjacent to tidal waters. In effect, the current NWP 29 is being eliminated, and we are proposing to replace it with the provisions of the current NWP 39 that authorize single and multiple unit residential developments.

We are proposing to remove the text requiring permittees to minimize on- and off-site impacts and avoid flooding, since those requirements are addressed by the ''mitigation'' general condition (GC 20) and the ''management of water flows'' general condition (GC 9). We are proposing to remove the text requiring the maintenance of vegetated buffers next to open waters, since paragraph (d) of general condition 20 states that district engineers may require the establishment and maintenance of riparian areas next to streams and other open waters. We are proposing to eliminate the text defining the acreage loss of waters of the United States, since there is a definition of ''loss of waters of the United States'' in the ''Definitions'' section of the NWPs.

We are also proposing to eliminate the condition restricting the use of NWP 29 to those individuals constructing single family homes for personal use, as well as the definitions for ''individual'' and ''parcel of land.'' We believe that it is inappropriate to establish different permits for single and multiple residential development because the impacts to the aquatic environment are determined by the permit conditions themselves (*e.g.*, ½ acre limit) and not the type of residential development or the type of permittee. Each proposed NWP 29 activity will be evaluated through the PCN process to determine if the activity qualifies for NWP authorization.

This NWP can be used to authorize discharges of dredged or fill material into non-tidal waters of the United States (other than non-tidal wetlands adjacent to tidal waters) to construct building foundations and pads, as well as attendant features. The examples of attendant features listed in this NWP were taken from the current NWP 39. The scope of applicable waters is the same as the current NWP 39. We are proposing to retain the residential subdivision provision from the current NWP 39.

In response to a PCN, the district engineer may impose special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, allows for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

NWP 30. *Moist Soil Management for Wildlife.* (Cat 2) We are proposing to modify this NWP by removing the phrase ''performed on non-tidal Federally-owned or managed, State-owned or managed property, and local government agency-owned or managed property, for''. Removal of this phase will allow any landowner to use this NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States for the purpose of managing wildlife habitat and feeding areas. We do not believe this NWP should be restricted to government agencies, since many private landowners have an interest in attracting and supporting various species of wildlife, and can do these activities without causing more than minimal adverse environmental effects.

We are also proposing to remove the phrase ''[t]he repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and'' since those activities may be authorized by NWP 3. In its place, we are proposing to add an explanatory ''Note'' at the end of the NWP. For the reasons provided in the preamble discussion of the definition of ''riparian areas,'' we are proposing to replace the phrase ''vegetated buffers'' with ''riparian areas.''

NWP 31. *Maintenance of Existing Flood Control Facilities.* (Cat 1) We are proposing to remove the last sentence of the first paragraph of this NWP, which discussed certain types of maintenance activities that do not require section 404 permits, since that issue is more appropriately addressed through the Corps current definition of ''discharge of dredged material'' at 33 CFR 323.2(d).

We are proposing to add ''levees'' to the list of features that can be maintained through the authorization provided by this NWP, since levees are often integral parts of flood control facilities. Discharges of dredged or fill material in waters of the United States for levee maintenance may be authorized by this NWP, provided the levees are included in the maintenance baseline.

NWP 32. *Completed Enforcement Actions.* (Cat 1) We are proposing to eliminate the phrase ''For either (i), (ii), or (iii) above,'' from the last paragraph of this NWP. This phrase is unnecessary because permittees must comply with all applicable terms and conditions of any NWP. We are also proposing to remove the phrase ''or fails to complete the work by the specified completion date'' since the completion date should be specified in the court decision, consent decree, or judicial/non-judicial settlement agreement.

NWP 33. *Temporary Construction, Access, and Dewatering.* (Cat 1) We are proposing to divide the first sentence of this NWP into two sentences, to clarify that temporary structures or work in navigable waters of the United States or discharges of dredged or fill material in waters of the United States associated with construction activities that do not require permits from the Corps or the U.S. Coast Guard, as well as those that do require and have obtained such permits, are authorized by this NWP. We are also proposing to move the requirement for a restoration plan from the ''pre-construction notification''

general condition (general condition 13 of the 2002 NWPs) to the ''Notification'' paragraph of this NWP. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The restoration plan should also describe reasonable measures for avoidance and minimization of adverse effects to aquatic resources. We are proposing to remove the sentence that states that the district engineer will add special conditions to ensure minimal adverse effects, since the addition of special conditions where necessary to ensure minimal adverse effects is a condition of all NWPs.

NWP 34. *Cranberry Production Activities*. (Cat 1) We are proposing to rearrange the text of this NWP, to conform with the general format of the proposed NWPs, and to eliminate the phrase ''provided the activity meets all of the following criteria:'' since activities must comply with all terms and conditions of an NWP. We are also proposing to remove the text requiring PCNs to include delineations of special aquatic sites, since that requirement is addressed by paragraph (b)(4) of the proposed modification of the ''pre-construction notification'' general condition (GC 27).

We are proposing to modify this NWP to clarify that an existing cranberry production operation needs to submit a pre-construction notification only once during the period that this NWP is valid. The NWP authorization would apply to on-going discharges of dredged or fill material into waters of the United States, provided the 10 acre limit is not exceeded.

NWP 36. *Boat Ramps*. (Cat 2) We are proposing to modify this NWP to allow district engineers to issue, on a case-by-case basis after reviewing pre-construction notifications, waivers to the 50 cubic yard limit for discharges of dredged or fill material into waters of the United States to construct a boat ramp. We are also proposing to allow district engineers to issue waivers to the 20 foot width limit for boat ramps. These waivers can be issued only if, after reviewing a pre-construction notification, the district engineer determines that the adverse effects on the aquatic environment and other factors of the public interest will be minimal. These waivers must be issued in writing by the district engineer.

We are proposing to modify this NWP to require pre-construction notification if the proposed boat ramp involves discharges of more than 50 cubic yards of dredged or fill material into waters of the United States, or if the proposed boat ramp is greater than 20 feet wide.

We are also proposing to remove the text prohibiting the use of material that may cause unacceptable chemical pollution, since that issue is addressed by the ''suitable material'' general condition (GC 6).

NWP 37. *Emergency Watershed Protection and Rehabilitation.* (Cat 1) We are proposing to rearrange the text of this NWP to conform with the format of the proposed modified NWPs, but it will not change the scope of activities authorized by this NWP.

NWP 38. *Cleanup of Hazardous and Toxic Waste.* (Cat 1) We are proposing to modify this NWP by moving the requirement to submit a delineation of waters of the United States to paragraph (b)(4) of the ''pre-construction notification'' general condition (GC 27). We are also proposing to move the last sentence of this NWP to a ''Note'' at the end of the NWP.

NWP 39. *Commercial and Institutional Developments.* (Cat 2) We are proposing to remove residential developments as an authorized activity from this NWP and modify NWP 29 to authorize both single unit and multiple unit residential developments. We believe that NWP 39 should be modified to authorize only commercial and institutional developments because those types of developments differ from residential developments in a number of ways. Commercial and institutional developments are often subject to different state and local requirements than residential developments, such as storm water management and infrastructure requirements. Planning and zoning requirements for residential, commercial, and institutional developments may also be different, which can affect where they are located in a watershed. We are soliciting comments on limiting NWP 39 to authorizing discharges of dredged or fill material into waters of the United States to construct or expand commercial and institutional developments.

We are proposing to modify this NWP to require PCNs for all activities, to ensure that those activities result in minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors, such as floodplain values. Since PCNs will be required for all activities authorized by this NWP, we are proposing to eliminate the reporting requirement in paragraph (i) of the current NWP 39. For the same reason, we are also proposing to eliminate the ''Note'' from this NWP.

We are also proposing to modify the 300 linear foot limit for the loss of stream bed to apply that limit to ephemeral streams. We are proposing to allow district engineers to waive the 300 linear foot limit, if the loss of intermittent or ephemeral stream bed will have minimal individual and cumulative adverse effects on the aquatic environment. These waivers must be issued in writing by the district engineer.

Another modification we are proposing is to move the requirement to submit a delineation of waters of the United States to paragraph (b)(4) of the ''pre-construction notification'' general condition (GC 27). Since we are proposing to modify this NWP to require PCNs for all activities and because the ''mitigation'' general condition (GC 20) requires permittees to avoid and minimize adverse effects to the maximum extent practicable on the project site, we are proposing to remove the text requiring submittal of a written avoidance and minimization statement and a compensatory mitigation proposal with the PCN. District engineers will review PCNs to ensure that all practicable on-site avoidance and minimization has been accomplished. In response to a PCN, the district engineer may require compensatory mitigation to ensure that the authorized activity results in minimal adverse environmental effects (see 33 CFR 330.1(e)(3)).

We are proposing to remove the text requiring the permittee to establish and maintain, to the maximum extent practicable, riparian areas next to streams and other open waters on the project site, since this issue is addressed by paragraph (e) of general condition 20, which applies to all NWPs, including NWP 39.

We are proposing to remove the references to the general conditions relating to water quality and the management of water flows, since those general conditions apply, as appropriate, to all NWPs.

In response to a PCN, the district engineer may impose special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, allows for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

NWP 40. *Agricultural Activities.* (Cat 2) We are proposing to modify this NWP by eliminating the distinction between permittees that are U.S. Department of Agriculture (USDA) program participants and those permittees who

are not USDA program participants. Participants in USDA programs, as well as non-participants, are eligible to use this NWP for agricultural activities. NRCS would no longer need to determine the applicability of this NWP to authorize agricultural activities resulting in discharges of dredged or fill material into waters of the United States.

We are proposing to modify this NWP to require PCNs for all activities, for case-by-case review by district engineers to ensure that those activities result in minimal individual and cumulative adverse effects to the aquatic environment and other public interest review factors.

We are also proposing to modify this NWP to authorize the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, where the pond is necessary for agricultural production. This NWP would authorize the construction of farm ponds that do not qualify for the Clean Water Act Section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2) of the Act. This NWP does not authorize the construction of ponds on non-agricultural land, or the construction of recreational or ornamental ponds. We are proposing to limit discharges of dredged or fill material for the construction of farm ponds to non-tidal waters, other than perennial streams and non-tidal wetlands adjacent to tidal waters, to ensure that the construction of the farm pond results in minimal individual and cumulative adverse effects on the aquatic environment. The construction of ponds in perennial streams is more likely to cause more than minimal adverse effects on the aquatic environment, by disrupting stream geomorphic processes, as well as ecological functions of streams.

Since we are proposing to modify this NWP to require PCNs for all activities, we are removing the explicit requirement to submit a compensatory mitigation plan with the PCN. In response to a PCN, the district engineer may require compensatory mitigation (see 33 CFR 330.1(e)(3)) to ensure that the authorized work results in minimal adverse effects on the aquatic environment. The ''mitigation'' general condition (GC 20) also addresses compensatory mitigation requirements for all NWPs. Any compensatory mitigation required for activities authorized by this NWP that requires section 404 authorization may be authorized by this NWP or NWP 27.

We are proposing to remove the definition of ''farm tract'' and the conditions limiting the use of NWPs 39 and 40 on a particular site, since district engineers will receive PCNs for all activities authorized by this NWP. District engineers will review PCNs for those NWPs to ensure that the proposed work results in minimal individual and cumulative adverse environmental effects.

NWP 41. *Reshaping Existing Drainage Ditches.* (Cat 2) We are proposing to modify this NWP to clarify that it authorizes only the reshaping of drainage ditches constructed in waters of the United States where the purpose of reshaping the ditch is to improve water quality. As a result of this modification, we are also proposing to remove the sentence which states why compensatory mitigation is not required for the activities authorized by this NWP.

The purpose of this NWP is to encourage landowners who need to maintain drainage ditches constructed in waters of the United States to do so in a manner that benefits the aquatic environment. The maintenance of a drainage ditch to its current configuration is exempt under Section 404(f)(1)(C) of the Clean Water Act, and does not require a DA permit. This exemption does not authorize reshaping of existing drainage ditches, so this NWP authorizes reshaping activities that benefit the aquatic environment. This NWP was first issued on March 9, 2000, (65 FR 12818) to authorize, to the extent that a section 404 permit is required, the grading of the banks of a currently serviceable ditch to gentler (shallower) slopes than its current or original configuration. Reshaping a drainage ditch so that it has shallower side slopes can help improve water quality by decreasing the velocity of water flowing through the ditch and by spreading out water flow over a greater area of soil surface. It should also provide more area for plants to become established and grow within the ditch. These changes are likely to help improve water quality by increasing water contact with vegetation and soil microbes, to facilitate the removal of nutrients and other chemical compounds through biogeochemical processes. Slower water flow rates through the ditch should also decrease erosion, also improving water quality.

We are proposing to remove the prohibition against permanent sidecasting of excavated material into waters of the United States, where the excavated material results from the ditch reshaping activity. In cases where there are jurisdictional wetlands or other waters next to the ditch to be reshaped, this prohibition is likely to cause many landowners to maintain the ditch at its originally designed configuration to qualify for the exemption, since the 404(f)(1)(C) exemption allows discharges of dredged or fill material into waters of the United States resulting from ditch maintenance activities.

Since one of the conditions of this NWP states that the centerline of the ditch must remain in approximately the same place, we do not believe that it is necessary to state that this NWP does not authorize stream relocation projects.

NWP 42. *Recreational Facilities.* (Cat 2) We are proposing to simplify this NWP by removing the term which limits its use to those recreational facilities that are integrated into the existing landscape and do not substantially change pre-construction grades or deviate from natural landscape contours. That particular term is problematic in many areas of the United States, especially those regions where the project area for a proposed recreational facility is predominantly uplands. The construction of recreational facilities that result in minimal individual and cumulative adverse effects on the aquatic environment should be authorized by this NWP, regardless of the amount of changes to pre-construction grades or natural landscape contours in areas not subject to regulatory jurisdiction under Section 404 of the Clean Water Act.

We are also proposing to modify this NWP to require PCNs for all activities, so that district engineers will be able to review proposed recreational facilities to ensure that they result in minimal individual and cumulative adverse effects on the aquatic environment.

We are also proposing to remove the text requiring submission of a compensatory mitigation proposal with a PCN, since GC 20 addresses compensatory mitigation requirements for all NWPs. We are proposing to remove the text that explicitly requires water quality management measures, since such measures may be required by district engineers for any NWP on a case-by-case basis in accordance with the ''water quality'' general condition (GC 21).

We are proposing to modify the 300 linear foot limit for the loss of stream bed, by applying that limit to ephemeral streams. We are also proposing to allow district engineers to waive the 300 linear foot limit, if the stream bed is intermittent or ephemeral and the individual and cumulative adverse effects on the aquatic environment are minimal. These waivers must be issued in writing by the district engineer.

This NWP can be used to authorize the construction of ski areas and golf

courses, as long as those activities result in minimal adverse environmental effects and are in the public interest. We are also proposing to expand this NWP to authorize playing fields and basketball and tennis courts. The condition prohibiting the use of this NWP to authorize hotels, restaurants, stadiums, racetracks, arenas, and similar facilities would be retained. District engineers will evaluate PCNs to determine if proposed recreational facilities are authorized by this NWP.

In response to a PCN, the district engineer may impose special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, allows for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

NWP 43. *Stormwater Management Facilities.* (Cat 2) We are proposing to modify this NWP to require PCNs for the construction or expansion of stormwater management facilities, but not for maintenance activities. District engineers will review those PCNs to ensure that proposed activities result in minimal individual and cumulative adverse effects on the aquatic environment and other public interest review factors, including floodplain values.

We are proposing to modify the 300 linear foot limit for the loss of stream bed by applying that limit to ephemeral streams. We are also proposing to allow district engineers to waive the 300 linear foot limit if the stream bed is intermittent or ephemeral and the filling and/or excavation of that stream bed will result in minimal individual and cumulative adverse effects on the aquatic environment. These waivers must be issued in writing by the district engineer.

In addition, we are proposing to remove the requirement for prospective permittees to submit maintenance plans, since the NWP limits maintenance activities to restoring the stormwater management facility to its original design capacity. We are also proposing to remove the requirement to submit compensatory mitigation proposals with PCNs, since mitigation requirements are addressed by GC 20. General condition 20 requires permittees to avoid and minimize impacts to waters of the United States on the project site to the maximum extent practicable, so we are proposing to remove the requirement for submitting an avoidance and minimization statement with the PCN. District engineers will review PCNs to determine if avoidance and minimization has been accomplished to the maximum extent practicable.

We are also proposing to remove the text requiring compliance with the ''management of water flows'' general condition (GC 9), since that general condition generally applies, as appropriate, to all NWPs. We are proposing to remove the requirement for maintenance excavation to be conducted in accordance with an approved maintenance plan, since the maintenance of an existing stormwater management facility is limited to its original design capacity and therefore it is likely to result in minimal adverse effects to the aquatic environment.

NWP 44. *Mining Activities.* (Cat 2) We are proposing to simplify this NWP, and modify it to authorize all types of mining activities except for coal mining. Surface coal mining activities may be authorized by NWP 21. Other types of coal mining activities may be authorized by the proposed new NWP E (Coal Remining Activities) or NWP F (Underground Coal Mining Activities). This NWP would continue to authorize aggregate mining and hard rock/mineral mining activities. We are proposing to retain the ½ acre limit for this NWP. Pre-construction notifications are required for all activities authorized by this NWP, so we do not believe that it is necessary to partition the types of waters where certain types of mining activities can occur. District engineers will review PCNs to ensure that proposed mining activities will result in minimal adverse effects on the aquatic environment, individually and cumulatively, and will exercise discretionary authority if the adverse effects are more than minimal. This NWP authorizes only discharges of dredged or fill material into non-tidal waters of the United States, and does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

The PCN must include a copy of the reclamation plan, if reclamation is required by other statutes. We are proposing to remove the requirement to submit an avoidance and minimization statement, because the ''mitigation'' general condition (GC 20) requires avoidance and minimization of adverse effects to waters of the United States to the maximum extent practicable on the project site. We are proposing to remove the references to the general conditions relating to the ''shellfish beds'' and ''spawning areas'' general conditions (GC 6 and GC 3), since those conditions apply, to the extent appropriate, to all NWPs. We believe that the terms requiring measures to prevent increases in stream gradient and water velocities, and minimizing turbidity, should be removed and the prevention or reduction of such impacts is more appropriately addressed through the NWP general conditions (*e.g.*, GCs 3, 9, and 12), as well as the site-specific review and any case-specific special conditions added to NWP authorizations by district engineers. If the district engineer reviews a PCN and determines that the proposed mining activity will result in more than minimal adverse effects to stream gradient, water velocities, and turbidity, he will exercise discretionary authority and require an individual permit for the activity.

We are also proposing to remove the references to the ''water quality'' general condition (GC 21) and the ''management of water flows'' general condition (GC 9), since those general conditions apply, as appropriate, to all NWPs. We believe that restrictions for hard rock/mineral mining, including beneficiation and mineral processing, are more appropriately addressed through special conditions to NWP verifications, or by regional conditions imposed by division engineers.

In response to a PCN, the district engineer may impose special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, allows for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

Discussion of Proposed New Nationwide Permits

NWP A. *Emergency Repair Activities.* We are proposing to remove paragraph (iii) from the current NWP 3 and issue a new NWP to authorize emergency repair activities. This will simplify NWP 3, and limit that NWP to routine maintenance activities. This proposed NWP requires PCNs for all activities. The PCN must be submitted within 12 months of the date of the damage. This 12 month period is intended to establish that the damage or loss of upland occurred in the recent past, and that the proposed activity is not intended to reclaim lost lands due to gradual erosion processes. The work must be completed within two years of submitting the PCN.

The proposed NWP also authorizes bank stabilization activities to protect the restored uplands, as long as the bank stabilization activity does not extend beyond the ordinary high water mark

(OHWM) that existed before the damaging event occurred. Bank stabilization activities that extend beyond the pre-event OHWM may be authorized by NWP 13, a regional general permit, or an individual permit.

We are proposing to replace the 50 cubic yard limit for minor dredging to remove obstructions from the adjacent waterbody with a condition limiting minor dredging to the minimum necessary to restore bottom contours of the waterbody to their pre-event state. District engineers will review PCNs involving minor dredging for emergency repair activities, to ensure that the authorized work will result in minimal adverse environmental effects. We are also proposing to add a condition which states that project proponents may be required to obtain separate DA authorization, if temporary structures or discharges are necessary to conduct the rehabilitation or repair activity. Separate DA authorization would be required for temporary structures installed in navigable waters of the United States and/or temporary discharges of dredged or fill material into waters of the United States that are necessary to conduct emergency repair activities. The separate DA authorization may be provided by NWP 33, a regional general permit, or an individual permit.

In the ''Note'' at the end of this NWP, we are proposing to modify text taken from paragraph (iii) of NWP 3 to clarify that restoring uplands up to the OHWM in non-tidal waters or the high tide line in tidal waters after a storm, flood, or other discrete event does not require a section 404 permit. If discharges of dredged or fill material to restore uplands lost as a result of a discrete event occur landward of the OHWM or high tide line, and there are no jurisdictional waters or wetlands landward of the OHWM or high tide line, a section 404 permit is not required because there would be no discharge of dredged or fill material into waters of the United States. In response to a PCN, the district engineer will determine, on a case-by-case basis, the location of the OHWM and the high tide line. In the ''Note,'' we are also proposing to include a reference to 33 CFR 328.5, which addresses changes in limits to waters of the United States.

In response to a PCN, the district engineer can exercise discretionary authority and require an individual permit if the proposed activity will result in more than minimal adverse effects on the aquatic environment, individually and cumulatively.

NWP B. *Discharges into Ditches and Canals.* We are proposing a new NWP to authorize discharges of dredged or fill material into certain types of ditches and canals that are determined to be waters of the United States. The proposed NWP will allow a landowner to return his or her land to its prior condition, but only in those cases where the ditches or canals meet all three criteria specified in the NWP. To qualify for this NWP, those ditches and canals must be: (1) Constructed in uplands, (2) receive water from another water of the United States, and (3) divert water to another water of the United States. These three criteria will limit the use of this NWP to those ditches and canals that generally provide few aquatic resource functions. This proposed NWP does not authorize discharges of dredged or fill material into ditches or canals that were constructed in waters of the United States, such as streams.

We are proposing a one acre limit for this NWP. We believe the one acre limit will authorize those activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Division engineers can regionally condition this NWP to lower the acreage limit or otherwise limit its use. We are proposing to require a PCN if the dredged or fill material will be discharged into more than 500 linear feet of ditch or canal. This proposed NWP is limited to activities that only require section 404 authorization. An individual permit, regional general permit, or another NWP would be needed to authorize discharges of dredged or fill material into ditches and canals that are determined to be navigable waters of the United States under section 10 jurisdiction.

We are seeking comments on this proposed new NWP, including its terms and conditions, such as the proposed one acre limit.

NWP C. *Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.* We are proposing a new NWP to authorize the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that are determined to be time-sensitive in accordance with the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP), including its criteria at 49 CFR parts 192 and 195. This NWP would authorize time-sensitive pipeline inspection, repair, rehabilitation, or replacement activities in all waters of the United States, including navigable waters.

The proposed NWP would significantly improve a participating pipeline operator's ability to complete inspection and repair activities, and reduce environmental impacts due to pipeline ruptures. An Interagency Committee (IAC) was convened to implement Section 16 of the Pipeline Safety Improvement Act of 2002 (*see* 49 U.S.C. 60133). The proposed NWP will help satisfy the requirements of this act. The environmental compliance and enforcement programs of the agencies participating in the interagency committee would also help ensure compliance with environmental statutes such as the Endangered Species Act and Section 106 of the National Historic Preservation Act.

Although many of these activities could be authorized by NWPs 3 or 12, we are proposing to issue this NWP so that a time-sensitive inspection and/or repair that meets PHP criteria can proceed without submitting a PCN to the district engineer. To ensure that this NWP would allow these inspections and repairs to proceed in a timely manner, division engineers are not authorized to regionally condition this NWP. This proposed NWP requires project proponents to: (1) Participate in PHP's early notification program, (2) utilize the Pipeline Repair and Environmental Guidance System (PREGS), (3) follow the agreed upon Recommended Best Management Practices (RMBPs), and (4) submit post-construction reports within 7 days of completing the work via PREGS. District engineers can monitor the pipeline inspection and/or repair activity and the use of this NWP through the post-construction reporting in PREGS to ensure that the NWP authorizes activities that have minimal individual and cumulative adverse effects on the aquatic environment. Suspension or revocation of this NWP may occur only if the division engineer has formally determined, in accordance with the procedures at 33 CFR 330.5(c), that the NWP would result in more than minimal adverse environmental effects, either individually or cumulatively, within a particular district, watershed, or other geographic region. District engineers must follow the procedures at 33 CFR 330.5(d) to suspend or revoke a case-specific authorization under this NWP.

The Pipeline and Hazardous Materials Safety Administration and the IAC developed PREGS. Participating pipeline operators and agencies have access to PREGS. This system will provide early notification to participating agencies for upcoming pipeline inspection and repair activities.

The RBMPs have been developed through the IAC to address habitat and resource issues at the national level. These RBMPs apply to pipeline inspection and repair activities, as well as post-activity remediation actions. The RMBPs are available on PREGS.

Pipeline operators are expected to use the RBMPs while conducting inspection and repair activities.

Activities authorized by this NWP must comply with the ''endangered species'' general condition (GC 17) and the ''historic properties'' general condition (GC 18). If a proposed pipeline inspection and/or repair activity may affect endangered or threatened species or critical habitat, section 7 consultation is required. Activities that may affect historic properties require consultation under Section 106 of the National Historic Preservation Act. We are coordinating with PHP to determine who will be the lead federal agency for ESA and section 106 consultation.

NWP D. *Commercial Shellfish Aquaculture Activities.* We are proposing a new NWP to authorize continued operation of existing commercial shellfish aquaculture activities in navigable waters of the United States. This NWP would support the U.S. Department of Commerce's Aquaculture Policy, which is intended to ''assist in the development of a highly competitive, sustainable aquaculture industry in the United States that will meet growing consumer demand for aquatic foods and products that are of high quality, safe, competitively priced and are produced in an environmentally responsible manner with maximum opportunity for profitability in all sectors of the industry.'' The proposed new NWP also supports the National Aquaculture Act of 1980, as amended (16 U.S.C. 2801 *et seq.*), which declared that aquaculture development is in the national interest, and included requirements for Federal agencies to address barriers to aquaculture development.

This NWP authorizes structures or work in navigable waters of the United States, as well as discharges of dredged or fill material into all waters of the United States. Examples of commercial shellfish species for which this NWP could be used to authorize aquaculture activities include oysters, clams, geoducks, mussels, and scallops. The proposed NWP does not authorize commercial aquaculture activities for crustaceans or finfish.

This NWP does not authorize the expansion of existing commercial aquaculture activities or facilities, however we are soliciting comment on this limitation. We are also soliciting comments on whether to impose a limit on the quantity of dredged or fill material that could be discharged into navigable waters, on the acreage of the facility as a whole or of submerged aquatic vegetation, and/or on the types of activities authorized. For example, discharges of dredged or fill material may be necessary to prepare a suitable substrate for shellfish seeding. Should this activity be authorized by the NWP?

There are different types of shellfish seed that can be used to increase shellfish production. Shellfish seed may consist of immature individual shellfish, an individual shellfish attached to a shell or shell fragment (*i.e.,* spat on shell) and shellfish shells or shell fragments placed into waters to provide a substrate for attachment by free swimming shellfish larvae (*i.e.,* natural catch).

To ensure that activities authorized by this NWP result in minimal individual and cumulative adverse effects on the aquatic environment, we are proposing to require pre-construction notification if: (1) The project area is greater than 25 acres; (2) more than 10 acres of the project area is occupied by submerged aquatic vegetation; (3) the permittee intends to relocate existing operations into portions of the project area not previously used for aquaculture activities; or (4) dredge harvesting is conducted in areas inhabited by submerged aquatic vegetation. For the purposes of this NWP, we are proposing to define the project area as the area of navigable waters of the United States occupied by the aquaculture operation. In most cases, the project area will consist of a site for which the operator has obtained a permit, license, or lease from a state or local agency specifically authorizing aquaculture activities in that particular location. The project area may include areas in which there has been no previous aquaculture activity and/or areas that periodically are allowed to lie fallow as part of the normal operation of the facility. Relocation of existing operations into portions of the project area not previously used for aquaculture activities will require a pre-construction notification. Because shellfish require healthy ecosystems for their growth and productivity, in addition to providing the aquatic ecosystem services of improved water quality and increased food production, we believe that there is generally a net overall increase in aquatic resource functions in estuaries or bays where shellfish are produced. We are requesting comments on the potential beneficial and adverse effects that commercial shellfish aquaculture activities have on the aquatic environment. We are also seeking comment on this proposed PCN threshold, including the appropriateness of attempting to quantify these aquatic operations in terms of acres, ecosystem health, shellfish productivity, or some other threshold to ensure minimal adverse effects.

Commercial shellfish aquaculture activities often take place in, and are found to co-exist with, intertidal areas that are occupied by submerged aquatic vegetation (*i.e.,* vegetated shallows). To minimize adverse effects to this type of aquatic habitat, we are proposing to require PCNs if more than 10 acres of the project area is occupied by submerged aquatic vegetation.

This proposed NWP does not authorize the cultivation of new species. In other words, the NWP does not authorize aquaculture activities for those species that were not previously cultivated by the existing commercial shellfish aquaculture activity. The commercial production of a shellfish species that has not been previously commercially produced by the existing facility may be authorized by an individual permit or a regional general permit.

We are proposing that division engineers complete reviews of commercial shellfish aquaculture activities in the estuaries or bays in their areas on a recurring basis, in coordination with interested agency and shellfish producers as appropriate. These reviews would occur at least every 5 years in conjunction with the NWP reissuance cycle, but may occur more frequently.

This NWP is limited to work associated with the continued operation of existing commercial shellfish projects, many of which have been in place for hundreds of years. We feel the potential for adverse environmental impacts from such existing operations is minimal, and we support the objectives of the U.S. Department of Commerce's Aquaculture Policy to increase shellfish productivity in this country. Although new projects are not authorized initially by this NWP, once authorized by another form of Department of the Army permit, such as a regional general permit or an individual permit, the commercial shellfish activities may continue in accordance with the terms and conditions of the issued permit and/or this NWP until expired. We are committed to conducting reviews of commercial shellfish activities to validate, collect data, and ensure that the Corps is authorizing only those activities that result in minimal individual or cumulative adverse effects on the aquatic environment with this NWP or other general permits for aquaculture activities. These reviews will begin as soon as possible (but no later than 2007) in all coastal divisions, and will involve Federal, State and local

agencies, stakeholders and the general public to help the Corps develop regional and special conditions to mitigate impacts to the aquatic environment or other aspects of the public interest which may result from commercial shellfish aquaculture activities.

This NWP authorizes the continued operation of existing commercial shellfish aquaculture activities. Those activities may have been previously authorized by another form of DA authorization. The construction period for a DA permit is the period of time where the permittee is authorized to conduct work in navigable waters of the United States and/or discharge dredged or fill material into waters of the United States. Once the DA permit expires, further authorization is not required to maintain the structures or fills, but if additional work in navigable waters or discharges of dredged or fill material in jurisdictional waters are necessary for the continued operation of those activities, then another DA permit is required. The proposed NWP provides the DA authorization for the continued operation of previously authorized commercial shellfish aquaculture activities. For example, the continued operation of an aquaculture activity may involve removing and replacing structures in navigable waters of the United States on a recurring basis.

New commercial shellfish aquaculture activities or the substantial modification (*e.g.,* the culture of different species) of existing commercial shellfish aquaculture activities in waters of the United States may be authorized by individual permits or regional general permits.

NWP E. *Coal Remining Activities.* We are proposing this new NWP to authorize the restoration of mine sites throughout the United States that are causing physical and/or chemical impacts to waters of the United States. Many of these sites were abandoned or closed prior to the 1977 Surface Mining Control and Reclamation Act (SMRCA) and are currently on state lists for reclamation, although funding is limited. Other sites could include bond forfeitures on active mine sites and ''no cost'' abandoned mine land projects under SMCRA (*e.g.,* government sponsored construction projects). In some cases, due to changes in technology, additional coal may be excavated as part of the reclamation process. In other cases, these sites may be combined with adjacent unmined areas to put together a project that is economically viable. The net result of these larger projects is that sources of pollution to downstream waters, including acid mine drainage and sources of sediment, will be eliminated or substantially diminished when the site is reclaimed. The integrated permit processing procedure and its potential applicability to this NWP is addressed above in the preamble discussion for NWP 21.

As a result of the reclamation activity on these remined areas, local water quality would be improved. Reclamation activities may also involve the construction of emergent wetlands to help improve the quality of water from mines. Net increases in aquatic functions may be determined through available assessment methods, including functional assessments. Assessments may be used to compare ecosystem functions and site conditions that existed prior to remining to the ecosystem functions and site conditions that are predicted to be in place at the site after reclamation has been completed. Reclamation activities may result in the establishment of permanent structures or fills, to sustain ecological functions at the site. Such permanent structures or fills may include treatment wetlands, permanent water diversion structures, and permanent impoundments. Permanent roads may also be constructed, to facilitate site access and maintenance of the reclaimed site.

This NWP authorizes discharges of dredged or fill material into non-tidal waters of the United States. This NWP may be used on sites where the ratio of previously mined areas to new coal removal areas is greater than 60 percent, therefore, we are proposing to allow up to 40 percent of the mine site to include unmined areas. In addition, to qualify for authorization under this NWP, we are requiring that the applicant clearly demonstrate that the overall project, including the reclamation activity and any new mining, will result in a net increase in aquatic resource functions. Such increases in aquatic resource functions will be identified through local functional assessment methods that have been approved for use by the Corps district in that region.

In response to a PCN, the district engineer may impose special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

NWP F. *Underground Coal Mining Activities.* We are proposing a new NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States resulting from underground coal mining activities. This type of mining involves excavating rock and soil on the surface to expose the coal seam and providing access for people, equipment, and ventilation facilities, a process referred to as ''facing up.'' In steep terrain, excavated material from these ''face-up'' areas may result in small fills if the excavation is limited to providing coal seam access or larger fills if facilities such as fill for coal processing plants and coal processing waste areas are needed. Underground mining may also create fills from excavating non-coal waste rock underground. The mine operator may have to place fill in small streams adjacent to the preparation facility in order to dispose of coal waste from the cleaning and preparation of coal. Similarly, the operator of a preparation facility may need an impoundment in an adjacent stream valley for withdrawal of cleaning process water. The integrated permit processing procedure and its potential applicability to this NWP is addressed in the preamble discussion for NWP 21.

Examples of activities that may be authorized by this NWP include, but are not limited to, treatment facilities for controlling water pollution during mining and reclamation (*e.g.,* acid mine drainage impoundments, sedimentation ponds), access and haul roads, diversion ditches, support facilities, processing areas, and mined waste impoundments or embankments. This NWP would also authorize permanent structures or fills that would remain after reclamation activities have been completed (*e.g.,* permanent diversion structures to minimize erosion and prevent water from contacting toxin-producing deposits).

The proposed NWP has a ½ acre limit, and is limited to discharges of dredged or fill into non-tidal waters of the United States. The NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

The proposed NWP does not authorize coal preparation and processing activities outside of the mine site; those activities may be authorized by NWP 21. Pre-construction notification is required for all activities authorized by this NWP, and if reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification.

Discussion of Proposed Modifications to Nationwide Permit General Conditions

We are proposing to add a ''Note'' to the list of NWP general conditions, to ensure that prospective permittees are aware that they must comply with the general conditions for the NWPs, as well as any regional conditions imposed by division engineers and special conditions added by district engineers. The proposed note encourages prospective permittees to contact the appropriate Corps district office to determine if regional conditions have been added to an NWP. The proposed note also encourages prospective permittees to contact the appropriate Corps district office to determine the status of water quality certification and/or Coastal Zone Management Act consistency for any NWP they wish to use.

We are also proposing to place the general conditions in a different order, to make them easier to read and to facilitate compliance. The general conditions relating to various environmental concerns and public interest review factors are listed first, and are followed by the general conditions relating to administrative requirements.

GC 1. *Navigation.* (Remaining as general condition 1.) We are proposing to modify this general condition by adding two provisions. First, we are proposing to add paragraph (b), which requires permittees to install any safety lights and signals required by the U.S. Coast Guard.

Second, we are proposing to add paragraph (c), which is intended to address future and current conflicts between Corps water resources development projects and structures or other work in navigable waters authorized by Corps permits. There may be cases where activities authorized by DA permits interfere with navigation or any existing or future operation of the United States, and need to be removed. In May 2000, we issued guidance requiring district engineers to add this language as a general condition to all DA permits, including nationwide permit and regional general permit verifications, that authorize activities under Section 10 of the Rivers and Harbors Act of 1899.

Adding paragraph (c) to this general condition will help ensure that permittees are aware that they may need to remove authorized structures or work if the structures or work interfere with free navigation in navigable waters of the United States. This provision applies to all NWPs that authorize section 10 activities, including those that do not require pre-construction notification.

GC 2. *Aquatic Life Movements.* (Formerly general condition 4.) We are proposing to modify the phrase ''necessary life cycle movements,'' by adding ''when known'' following it, to reflect the fact that necessary life cycle movements are not always well understood for the wide variety of indigenous aquatic species inhabiting waters of the United States. This condition still prohibits the substantial disruption of known life cycle movements of aquatic life.

GC 3. *Spawning Areas.* (Formerly general condition 20.) To simplify this general condition, we are proposing to remove the phrase ''including structures or work in navigable waters of the U.S. or discharges of dredged or fill material'' because it merely lists the general types of activities authorized by NWP under sections 10 and 404.

GC 4. *Migratory Bird Breeding Areas.* (Formerly general condition 23.) We are modifying this general condition to cover migratory birds generally (not just waterfowl) that use aquatic habitat as breeding areas. To simplify this general condition, we are proposing to remove the phrase ''including structures or work in navigable waters of the U.S. or discharges of dredged or fill material'' because it merely lists the general types of activities authorized by NWP under sections 10 and 404.

GC 5. *Shellfish Beds.* (Formerly general condition 17.) To simplify this general condition, we are proposing to remove the phrase ''including structures or work in navigable waters of the U.S. or discharges of dredged or fill material'' because it merely lists the general types of activities authorized by NWP under sections 10 and 404. We are also adding a reference to new NWP D, which explicitly authorizes discharges related to existing commercial shellfish aquaculture activities, which will generally include shellfish beds.

GC 6. *Suitable Material.* (Formerly general condition 18.) To simplify this general condition, we are proposing to remove the phrase ''including structures or work in navigable waters of the U.S. or discharges of dredged or fill material'' because it merely lists the general types of activities authorized by NWP under sections 10 and 404.

GC 7. *Water Supply Intakes.* (Formerly general condition 16.) We are proposing to add the phrase ''or improvement'' after the word ''repair'' since it may be necessary for water authorities to modify their intake structures to comply with new regulations or other reasons. To simplify this general condition, we are proposing to remove the phrase ''including structures or work in navigable waters of the U.S. or discharges of dredged or fill material'' because it merely lists the general types of activities authorized by NWP under sections 10 and 404.

GC 8. *Adverse Effects from Impoundments.* (Formerly general condition 22.) We are proposing to remove the last sentence of this general condition, because it merely lists the general types of activities authorized by NWP under sections 10 and 404.

GC 9. *Management of Water Flows.* (Formerly general condition 21.) We are proposing to simplify this general condition, to require permittees to maintain the pre-construction course, condition, capacity, and location of open waters to the maximum extent practicable. Exceptions to this requirement may be made if the primary purpose of the NWP activity is to impound water or if the activity benefits the aquatic environment. For example, stream restoration activities authorized by NWP 27 may alter the pre-construction course, condition, capacity, and location of streams, while providing important aquatic resource functions and services.

GC 10. *Fills within 100-Year Floodplains.* (Formerly general condition 26.) We are proposing to modify this general condition to simply require permittees to comply with applicable state or local floodplain management requirements that have been approved by the Federal Emergency Management Agency (FEMA). As discussed below, instead of the prohibitions imposed by the versions of this general condition that were present in the 2000 and 2002 nationwide permits, we are proposing to address impacts to 100-year floodplains through the case-by-case review that occurs through the PCN process.

This general condition was initially adopted in 2000 and modified in 2002. In the 2002 NWPs, this general condition prohibited the use of NWPs 39, 40, 42, 43, and 44 to authorize discharges of dredged or fill material in waters of the United States resulting in permanent above-grade fills within mapped 100-year floodplains located below headwaters. It also prohibited the use of NWPs 39, 40, 42, and 44 to authorize discharges of dredged or fill material in waters of the United States resulting in permanent above-grade fills within mapped floodways above headwaters.

As noted in other sections of this preamble, we are proposing to require PCNs for all activities authorized by NWP 29 (the proposed modification of which includes residential development

activities authorized by the NWP 39 issued in 2002), as well as NWPs 39, 40, 42, and 44. We are also proposing to require PCNs for NWP 43 activities resulting in the construction or expansion of stormwater management facilities (only maintenance of existing facilities is exempted from the PCN requirement). Thus, any activity that was previously prohibited in the 100-year floodplain by this general condition will now require a PCN.

During the PCN review process, district engineers consider adverse impacts to the aquatic environment, as well as other public interest review factors, including floodplain values and flood hazards (see 33 CFR 330.1(e)(2)). If an NWP activity results in more than minimal adverse effects to the aquatic environment or any other public interest review factor, the district engineer will exercise discretionary authority and require an individual permit. Potential impacts to flood hazards and floodplain values that may be more than minimal can be assessed in greater depth during the individual permit review process. In such cases, the Corps will defer to the FEMA-approved state or local floodplain management requirements.

Where there are regional concerns regarding development activities in 100-year floodplains involving discharges of dredged or fill material into waters of the United States, division engineers can regionally condition certain NWPs to restrict or prohibit use of those NWPs to authorize activities in those floodplains.

One of the environmental benefits of the NWP program is that it provides incentives for project proponents to avoid and minimize impacts to the waters of the United States to qualify for an expedited NWP authorization instead of applying for individual permits, which generally require greater costs and time to obtain. Prohibiting the use of NWPs 39, 40, 42, 43, and 44 removes that incentive to reduce impacts to qualify for general permit authorization. If required to obtain individual permits, project proponents may propose larger activities with greater impacts to waters of the United States within 100-year floodplains.

Modifying this general condition will increase government efficiency, by promoting conformity with other federal, state, and local programs. At the Federal level, the Federal Emergency Management Agency (FEMA) is the lead Federal agency for floodplain management. FEMA programs, such as the National Flood Insurance Program (NFIP) and other floodplain management activities, as well as State and local government land use planning and zoning efforts, allow floodplain development. The NFIP imposes construction standards and requirements for structures built in 100-year floodplains. Those standards and requirements must be met to qualify for flood insurance. State and local governments may impose more restrictive standards and requirements than the NFIP.

To harmonize the NWP program with FEMA's floodplain management programs, we are proposing to revise this general condition. Adverse effects to public interest review factors, especially floodplain values and flood hazards, will be evaluated during the PCN review process for NWPs 29, 39, 40, 42, 43, and 44, as well as other NWPs, to the extent appropriate. Management of floodplain development is more appropriately achieved through state and local government land use planning, which can address impacts to both the aquatic and terrestrial components of 100-year floodplains.

GC 11. *Equipment.* (Formerly general condition 5.) We are proposing to add the phrase ''or mudflats'' to minimize soil disturbance in these special aquatic sites.

GC 12. *Soil Erosion and Sediment Controls.* (Formerly general condition 3.) We are not proposing any changes to this general condition.

GC 13. *Removal of Temporary Fills.* (Formerly general condition 24.) We are proposing to replace the phrase ''their preexisting elevation'' with ''pre-construction conditions'' to clarify that temporarily filled areas are to be restored to the condition they were in prior to construction.

GC 14. *Proper Maintenance.* (Formerly general condition 2.) We are not proposing any changes to this general condition.

GC 15. *Wild and Scenic Rivers.* (Formerly general condition 7.) We are not proposing any changes to this general condition.

GC 16. *Tribal Rights.* (Formerly general condition 8.) We are not proposing any changes to this general condition.

GC 17. *Endangered Species.* (Formerly general condition 11.) We are proposing to add a sentence to paragraph (a) of this general condition to state that no activity which may affect a listed species or critical habitat is authorized by NWP unless Section 7 consultation addressing the effects of the proposed activity has been completed. The district engineer is responsible for making the ''may effect'' determination.

We are also proposing to modify this general condition by adding a provision that requires district engineers to notify prospective permittees within 45 days whether the proposed activity ''may affect'' or will have ''no effect'' to listed species and designated critical habitat. The proposed modification also states that applicants cannot begin proposed activities until: (1) They are notified by the Corps that those activities will result in ''no effect'' on listed species or critical habitat, or (2) Section 7 consultation has been completed (see 33 CFR 330.4(f)(2)). The purpose of the proposed provision is to facilitate compliance with the Endangered Species Act and keep prospective permittees informed of the status of their pre-construction notifications.

GC 18. *Historic Properties.* (Formerly general condition 12.) We are proposing to modify this general condition by adding a provision that requires district engineers to notify prospective permittees within 45 days whether consultation under Section 106 of the National Historic Preservation Act is required. The purpose of the proposed provision is to facilitate section 106 compliance and keep prospective permittees informed of the status of their pre-construction notifications.

We are also proposing to remove the reference to Appendix C to 33 CFR part 325, where our regulations for the protection of historic properties are currently located. On April 25, 2005, we issued revised interim guidance for implementing Appendix C with the Advisory Council on Historic Preservation's revised regulations at 36 CFR part 800. We believe this general condition should have a more general reference to the Corps Regulatory Program's current procedures for section 106 compliance, since we are using Appendix C, the revised interim guidance, and other guidance for section 106 compliance. We are in the process of revising regulatory program procedures for Section 106 compliance.

GC 19. *Designated Critical Resource Waters.* (Formerly general condition 25). This general condition is being simplified but not substantively changed. We are removing wild and scenic rivers and critical habitat for threatened or endangered species from the list of waters to which this general condition applies, because general conditions 15 and 17 already address these waters and the previous version of this general condition merely stated that these other general conditions must be complied with. District engineers will pay particular attention to critical resource waters in determining whether special permit conditions are needed, or whether discretionary authority to

require individual permits should be exercised.

GC 20. *Mitigation.* (Formerly general condition 19.) As discussed above, we are proposing to modify several NWPs (*e.g.*, NWPs 39, 40, and 42) which may authorize discharges of dredged or fill material into wetlands, to require PCNs for all activities. For some wetland impacts authorized by NWPs, such as discharges of dredged or fill material resulting in the loss of small amounts of wetlands, it may not be practicable or appropriate to require compensatory mitigation for those losses. Therefore, we are establishing a threshold of 1/10 acre for compensatory mitigation requirements. For projects that cause losses that exceed this threshold, compensatory mitigation will generally be required. For losses below this threshold, district engineers will review PCNs to determine if compensatory mitigation is necessary to ensure that the work authorized by NWP results in minimal adverse effects on the aquatic environment, individually and cumulatively. Permit applicants whose projects will exceed the 1/10 acre loss threshold must include a description in their PCN of how they intend to satisfy the mitigation requirement.

We are also proposing to remove the paragraph that defines practicable mitigation and provides examples of appropriate and practicable mitigation. As discussed elsewhere in this notice, we are proposing to add a definition of the term ''practicable'' to the ''Definitions'' section of the NWPs, so we do not believe it is necessary to include the definition in this general condition.

We are proposing to modify paragraph (d) of this general condition, to clarify that compensatory mitigation cannot be used to increase the acreage losses allowed by the acreage limits of the NWPs.

For the reasons stated in the preamble discussion for the definition of ''riparian areas'' we are proposing to change the term ''vegetated buffer'' to ''riparian areas.'' District engineers will make case-by-case determinations as to whether the establishment and maintenance of riparian areas is necessary, either in-lieu of or in addition to, wetlands compensatory mitigation, if both open waters and wetlands exist on the project site. Those determinations are based on consideration of watershed needs.

We are also proposing to remove the paragraph stating that compensatory mitigation plans submitted with a PCN may be either conceptual or detailed, because that provision is in paragraph (e) of the ''pre-construction notification'' general condition (GC 27). Conditioning NWP verifications to require the submission of detailed compensatory mitigation plans prior to commencing work in waters of the United States is also addressed by the ''pre-construction notification'' general condition.

We are also proposing to add a new paragraph to this general condition, stating that district engineers may require mitigation when certain functions and services of waters of the United States are permanently adversely affected by NWP activities. This paragraph was adapted from a term in the NWP 12 issued in 2002.

GC 21. *Water Quality.* (Formerly general condition 9.) We are proposing to simplify this general condition by removing paragraph (b) and adding a sentence which states that the district engineer may require water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

GC 22. *Coastal Zone Management.* (Formerly general condition 10.) We are proposing to modify this general condition to clarify that additional measures may be required to ensure that the authorized activity is consistent with State coastal zone management requirements.

GC 23. *Regional and Case-by-Case Conditions.* (Formerly general condition 6.) We are proposing to add U.S. EPA to the list of agencies issuing water quality certifications, since that agency issues water quality certifications in areas where there are no state or tribal water quality standards. We are also proposing to add language clarifying that the state issues Coastal Zone Management Act consistency determinations.

GC 24. *Use of Multiple Nationwide Permits.* (Formerly general condition 15.) The only modification we are proposing is to change the example from a parenthetical expression to a complete sentence.

GC 25. *Transfer of Nationwide Permit Verifications.* We are proposing a new NWP general condition to address the transfer of NWP verifications when the project site is transferred from the project proponent who received the original NWP verification to a new project proponent. The new project proponent may have purchased the project site for the verified NWP activity.

The NWP verification would be transferred to the new owner if the permittee submits a letter to the appropriate Corps district office, and the transferee signs the statement provided in this general condition. The district office would then validate the transfer by sending a confirmation letter to the new permittee.

GC 26. *Compliance Certification* (Formerly general condition 14.) We are proposing only minor grammatical changes to this general condition.

GC 27. *Pre-construction Notification.* (Formerly general condition 13.) We are proposing to simplify this general condition by deleting text that is redundant with the terms of specific NWPs. As part of our efforts to make the NWPs easier to understand, if there is information required to be submitted with a PCN that is only applicable to a particular NWP, those requirements are indicated in the ''Notification'' paragraph of that NWP.

We are proposing to add a sentence to paragraph (a)(3) of this general condition, to clarify that the permittee cannot begin the NWP activity until consultations required by Section 7 of the Endangered Species Act (ESA) and/or Section 106 of the National Historic Preservation Act (NHPA) are completed. The NWP regulations state that if the prospective permittee notifies the district engineer that Federally-listed endangered or threatened species or critical habitat might be affected or are in the vicinity of the project, he or she cannot begin work until notified by the district engineer that the requirements of the ESA have been satisfied (see 33 CFR 330.5(f)(2)). There is a similar provision for compliance with Section 106 of the NHPA at 33 CFR 330.5(g)(2).

We are proposing to modify paragraph (b)(3), which lists the required contents of pre-construction notifications, by deleting the word ''brief'' and clarifying that PCNs must include descriptions of proposed NWP activities that are sufficiently detailed for the district engineer to determine that any adverse impacts to the aquatic environment are minimal, both individually and cumulatively, and to develop any special conditions, including compensatory mitigation, that may be needed to ensure that this requirement is satisfied. We believe that providing more detailed descriptions of proposed NWP activities will facilitate reviews of PCNs.

In paragraph (b)(4), we are also proposing to require that PCNs include delineations of special aquatic sites and other waters of the United States on the project site. We believe that more complete delineations will help expedite reviews of PCNs, by indicating clearly the proposed impacts to waters of the United States. We are also proposing to modify this paragraph to clarify that there may be extended delays if the permittee asks the Corps to

conduct the delineation and the project site is large or contains many wetland areas.

In paragraph (b)(5), we are proposing to add a requirement for the prospective permittee to submit a statement describing how the mitigation requirement will be satisfied for those activities resulting in the loss of greater than 1/10 acre of wetlands.

We are proposing to add a provision to paragraph (d) to clarify the agency coordination process for NWP 37 PCNs. This provision states that emergency watershed protection and rehabilitation activities can proceed immediately, and a district engineer will consider comments received in response to agency coordination of the PCN (*i.e.*, for NWP 37 activities resulting in the loss of greater than 1/2 acre of waters of the United States) when determining if the case-specific NWP 37 authorization should be modified, suspended, or revoked.

In addition, we are proposing to drop one NWP general condition.

GC 27. *Construction Period.* This general condition was first adopted in 2002. During the implementation of the 2002 NWPs, questions arose that have required us to revisit this general condition. Section 404(e)(2) of the Clean Water Act places a five-year limit on general permits issued under section 404. General condition 27 allowed a district engineer to place any completion date on an NWP verification, based on the amount of time a project proponent estimated would be necessary to finish constructing the NWP activity and consideration of the public interest. This general condition did not specify any limits to these completion dates, in effect providing the district engineer with the authority to state that the NWP activity was authorized for any period of time.

The NWP regulations contain a provision that allows permittees to continue work for one year in reliance on an NWP authorization, if that NWP has expired or been modified or revoked, as long as the activity was under construction or under contract to commence construction (see 33 CFR 330.6(b)). If that work cannot be completed within that one-year time period, then the permittee would have to obtain another DA authorization. We believe this provision is sufficient to address the concern with projects that may not be completed before an NWP expires.

Proponents of NWP activities that will require substantial amounts of time to complete (greater than one year beyond the expiration of currently applicable NWPs) should consider whether it would be more advantageous to pursue an individual permit authorization. There is greater flexibility in construction periods that can be authorized by individual permits. An individual permit authorization can also be extended, as long as the district engineer determines that the time extension would be consistent with applicable regulations and would not be contrary to the public interest.

Discussion of Proposed Modifications to Existing Nationwide Permit Definitions

We are proposing changes to some of the NWP definitions. If a definition is not discussed below, we are not proposing any substantive changes to that definition.

Best Management Practices. We are proposing to modify this definition by removing the last sentence, since it does not help define this term. Instead, this sentence describes a potential consequence of implementing best management practices.

Compensatory Mitigation. We are proposing to modify this definition by removing the phrase ''For the purposes of Section 10/404, compensatory mitigation is'' because the definitions in this section apply only to the NWP program. Therefore, it is not necessary to refer to section 10 or section 404. We are also proposing to replace ''creation'' with ''establishment (creation)'' to be consistent with the wetland project types described in Regulatory Guidance Letter 02–02.

Creation. We are proposing to remove this term, and use the definition of ''establishment (creation)'' in its place.

Currently serviceable. We are proposing to move this definition from NWP 3 to the ''Definitions'' section, since this definition applies to more than one NWP (*i.e.*, NWPs 3 and 41, as well as proposed new NWP C).

Enhancement. We are proposing to modify this definition to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.''

Establishment (creation). We are proposing to modify this definition to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.'' This term would also be applied to the development of aquatic resources at upland or deepwater sites.

Farm tract. We are proposing to remove this definition, since this term is not used in the proposed NWPs.

Flood fringe. We are proposing to remove this definition, since this term is not used in the proposed NWPs.

Floodway. We are proposing to remove this definition, since this term is not used in the proposed NWPs.

Loss of waters of the United States. We are proposing to modify this definition by replacing the phrase ''above-grade, at-grade, or below-grade fills'' with ''discharges of dredged or fill material'' to be consistent with the definitions of ''fill material'' and ''discharge of fill material'' issued on May 9, 2002 (67 FR 31129) at 33 CFR 323.2. We are also proposing to eliminate the sentence stating that impacts to ephemeral streams are not included in the linear foot limits for stream impacts in NWPs 39, 40, 42, and 43, because of the proposed changes to those NWPs. For those NWPs with 300 linear foot limits for filling or excavating stream bed, ephemeral streams will be included when determining compliance with that limit. As discussed elsewhere in this notice, the district engineer can issue a written waiver to those linear foot limits for ephemeral and intermittent streams on a case-by-case basis if the proposed work will have minimal individual and cumulative adverse effects on the aquatic environment. We are proposing to add a sentence to this definition to clarify that activities exempt from section 404 permit requirements are not included when calculating the loss of waters of the United States.

Open water. We are proposing to change this definition by adding a sentence that describes what an ordinary high water mark is.

Permanent above-grade fill. We are proposing to remove this definition, since this term is not used in the proposed NWPs.

Practicable. We are proposing to move this definition from the current ''mitigation'' general condition (GC 20) to the ''Definitions'' section of the NWPs.

Pre-construction notification. We are proposing to add this definition to clarify the various circumstances under which a PCN may be submitted.

Preservation. We are proposing to modify this definition to be consistent with the definition for ''protection/maintenance (preservation)'' in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's

Wetlands 2006: Two Years of Progress Implementing the President's Goal.''

Re-establishment. We are proposing to add this definition, to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.''

Rehabilitation. We are proposing to add this definition, to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.''

Restoration. We are proposing to modify this definition to be consistent with the wetland project type described in Regulatory Guidance Letter 02–02 and the definition in the Council on Environmental Quality's April 2006 report entitled ''Conserving America's Wetlands 2006: Two Years of Progress Implementing the President's Goal.''

Riparian areas. We are proposing to replace the definition of ''vegetated buffers'' with a definition of ''riparian areas'' since the latter term more accurately reflects what is normally required as mitigation for NWP activities where there are streams and other open waters on a project site. Since 1996, we have placed more emphasis in the NWP program on protecting streams and other open waters. Also, with the issuance of Regulatory Guidance Letter 02–02, we have taken a watershed approach to compensatory mitigation, which includes consideration of the ecological functions provided by riparian areas.

In two of the NWPs issued on December 13, 1996 (61 FR 65874), specifically NWPs 29 and 30, we began requiring the establishment and maintenance of vegetated buffers next to open waters, such as streams, to preclude water quality degradation from erosion and sedimentation. That requirement was added to some of the NWPs issued on March 9, 2000 (65 FR 12818). The 2000 NWPs clarified that vegetated buffers could be required only for perennial or intermittent streams or other open waters on the site. The vegetated buffer requirement does not apply to other aquatic resources, such as wetlands.

Since the requirements of past NWPs, as well as the current NWPs, have focused on using vegetated areas next to open waters such as streams to ensure that certain NWP activities result in minimal adverse effects on the aquatic environment, the term ''riparian area'' is more accurate, and more clearly conveys to the regulated public a specific type of mitigation that may be required for some NWPs. The term ''vegetated buffer'' is a vague term, because it can apply to any vegetated area next to some feature in the landscape.

In 2002, the National Research Council (NRC) published a report entitled ''Riparian Areas: Functions and Strategies for Management.'' The proposed definition of ''riparian areas'' was adapted with modifications from the definition developed by the NRC.

Stream channelization. We are proposing to simplify this definition, by generally considering man-made changes to a stream's course, condition, capacity, or location to be stream channelization activities.

Structure. We are proposing to add this definition to the NWPs. The examples in this definition were adapted from 33 CFR 322.2(b).

Vegetated buffer. For the reasons discussed in the preamble discussion of the proposed definition of ''riparian area'' we are proposing to remove this definition.

Waterbody. We are proposing to modify this definition to clarify that a waterbody is a jurisdictional water of the United States, and that it would have flowing or standing water during years with normal patterns of precipitation to the extent that an ordinary high water mark or other indicators of jurisdiction can be determined. The waterbody would include wetland areas. We are also proposing to amend this definition by adding a sentence that describes what an ordinary high water mark is. We are proposing to modify this definition so that a waterbody and its adjacent wetlands would be considered together as a single aquatic unit. The purpose of this definition is not to identify which waterbodies are jurisdictional, but to clarify how adjacent waters of the United States are grouped into waterbodies, especially for the purposes of implementing 33 CFR 330.2(i), which addresses single and complete projects for the NWPs.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of ''we'' in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

The proposed NWPs will increase the number of permittees who are required to submit a PCN. The content of the PCN is not changed from the current NWPs, but the paperwork burden will increase because of the increased number of PCNs submitted. The Corps estimates the increased paperwork burden at 4,500 hours per year. This is based on an average burden to complete and submit a PCN of 10 hours, and an estimated 450 additional projects that will require PCNs. Prospective permittees who are required to submit a pre-construction notification (PCN) for a particular NWP, or who are requesting verification that a particular activity qualifies for NWP authorization, may use the current standard Department of the Army permit application form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires on April 30, 2008).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is a ''significant regulatory action'' and the draft was submitted to OMB for review.

Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The proposed issuance and modification of NWPs does not have federalism implications. We do not believe that the proposed NWPs will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed NWPs will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposal.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed issuance and modification of NWPs on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The statues under which the Corps issues, reissues, or modifies nationwide permits are Section 404(e) of the Clean Water Act (33 U.S.C. 1344(e)) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under section 404, Department of the Army (DA) permits are required for discharges of dredged or fill material into waters of the United States. Under section 10, DA permits are required for any structures or other work that affect the course, location, or condition of navigable waters of the United States. Small entities proposing to discharge dredged or fill material into waters of the United States and/or conduct work in navigable waters of the United States must obtain DA permits to conduct those activities, unless a particular activity is exempt from those permit requirements. Individual permits and general permits can be issued by the Corps to satisfy the permit requirements of these two statutes. Nationwide permits are a form of general permit issued by the Chief of Engineers.

Nationwide permits automatically expire and become null and void if they are not modified or reissued within five years of their effective date (see 33 CFR 330.6(b)). Furthermore, Section 404(e) of the Clean Water Act states that general permits, including NWPs, can be issued for no more than 5 years. If the current NWPs are not reissued, they will expire on March 18, 2007, and small entities and other project proponents would be required to obtain alternative forms of DA permits (*i.e.*, standard permits, letters of permission, or regional general permits) for activities involving discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States. Regional general permits that authorize similar activities as the NWPs may be available in some geographic areas, so small entities conducting regulated activities outside those geographic areas would have to obtain individual permits for activities that require DA permits.

Nationwide permits help relieve regulatory burdens on small entities who need to obtain DA permits. They provide an expedited form of authorization, provided the project proponent meets all terms and conditions of the NWPs. In FY 2003, the Corps issued 35,317 NWP verifications, with an average processing time of 27 days. Those numbers do not include activities that are authorized by NWP, where the project proponent was not required to submit a pre-construction notification or did not voluntarily seek verification that an activity qualified for NWP authorization. The average processing times for the 4,035 standard permits and the 3,040 letters of permission issued during FY 2003 were 187 days and 89 days, respectively. The NWPs proposed for reissuance, as well as the proposed new NWPs, are expected to result in a slight increase in the numbers of activities potentially qualifying for NWP authorization. The estimated numbers of activities qualifying for NWP authorization are provided in the draft decision documents that were prepared for each NWP. The revised NWPs are not expected to significantly increase cost or paperwork burden for authorized activities (relative to the current NWPs), including those conducted by small businesses.

When compared to the compliance costs for individual permits, most of the terms and conditions of the proposed NWPs are expected to result in decreases in the costs of complying with the permit requirements of sections 10 and 404. The anticipated decrease in compliance cost results from the lower cost of obtaining NWP authorization instead of standard permits. Unlike standard permits, NWPs authorize activities without the requirement for public notice and comment on each proposed activity.

Another requirement of Section 404(e) of the Clean Water Act is that general permits, including nationwide permits, authorize only those activities that result in minimal adverse environmental effects, individually and cumulatively. The terms and conditions of the NWPs, such as acreage or linear foot limits, are imposed to ensure that the NWPs authorize only those activities that result in minimal adverse effects on the aquatic environment and other public interest review factors.

After considering the economic impacts of the proposed nationwide permits on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. Small entities may obtain required DA authorizations through the NWPs, in cases where there are applicable NWPs authorizing those activities and the proposed work will result in minimal adverse effects on the aquatic environment and other public interest review factors. The terms and conditions of the revised NWPs will not impose substantially higher costs on small entities than those of the existing NWPs. If an NWP is not available to authorize a particular activity, then another form of DA authorization, such as an individual permit or regional general permit, must be secured. However, as noted above, we expect a slight increase in the number of activities than can be authorized through NWPs, because we are adding several new NWPs, and we are removing some limitations in existing NWPs and replacing them with PCN requirements that will allow the district

engineer to judge whether any adverse effects of the proposed project are more than minimal, and authorize the project under an NWP if they are not.

We are interested in the potential impacts of the proposed NWPs on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed NWPs do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed NWPs are generally consistent with current agency practice, do not impose new substantive requirements and therefore do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposal is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed NWPs contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed issuance and modification of NWPs is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed NWPs are not subject to this Executive Order because they are not economically significant as defined in Executive Order 12866. In addition, the proposed NWPs do not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The phrase ''policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The proposed NWPs do not have tribal implications. It is generally consistent with current agency practice and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, Executive Order 13175 does not apply to this proposal. However, in the spirit of Executive Order 13175, we specifically request comment from tribal officials on the proposed rule.

Environmental Documentation

A preliminary decision document, which includes a draft environmental assessment and Finding of No Significant Impact (FONSI) has been prepared for each proposed NWP. These preliminary decision documents are available at: *www.regulations.gov* (docket ID number COE–2006–0005). They are also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314–1000.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing the final NWPs and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The proposed NWPs are not a ''major rule'' as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed NWPs are not expected to negatively impact any community, and therefore are not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed NWPs are 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.

Authority

We are proposing to issue new NWPs, modify existing NWPs, and reissue NWPs without change under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*)

Dated: September 18, 2006.

Don T. Riley,

Major General, U.S. Army, Director of Civil Works.

Nationwide Permits, Conditions, Further Information, and Definitions

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B. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Section 10)

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

3. *Maintenance.* (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make repair, rehabilitation, or replacement are authorized.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (*e.g.*, bridges, culverted road crossings, water intake

structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) Separate authorization is required for temporary structures or work in navigable waters of the United States or temporary discharges of dredged or fill material into waters of the United States, if those activities are necessary to conduct the maintenance activity and are not exempt from permit requirements. This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404.)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404.)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (Sections 10 and 404.)

6. *Survey Activities.* Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term ''exploratory trenching'' means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping and sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404.)

7. *Outfall Structures and Associated Intake Structures.* Activities related to the construction of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404.)

8. *Oil and Gas Structures on the Outer Continental Shelf.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. *Utility Line Activities.* Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½ acre of waters of the United States.

This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A ''utility line'' is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term ''utility line'' does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6″ to 12″ of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity does not result in the loss of greater than ½ acre of those waters. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct substation facilities.

This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

This permit does not authorize the construction or maintenance of access roads. The construction of permanent maintenance roads may be authorized by NWP 14 and the construction of temporary construction roads may be authorized by NWP 33.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required, or (2) the discharge will result in the permanent or temporary loss of greater than 1/10 acre of waters of the United States. (See general condition 27.) (Sections 10 and 404.)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (*i.e.*, section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit.

13. *Bank Stabilization.* Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The bank stabilization activity is no more than 500 feet in length, unless this criterion is waived in writing by the district engineer;

(c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;

(d) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area;

(e) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,

(f) The activity is not a stream channelization activity.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.) (Sections 10 and 404.)

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation projects (*e.g.*, roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than ½-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than ⅓-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. This NWP does not authorize temporary construction, access, and dewatering necessary to construct the linear transportation project; those activities may be authorized by NWP 33.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge causes the loss of greater than 1/10 acre of waters of the United States; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404.)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

15. *U.S. Coast Guard Approved Bridges.* Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and

temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual section 404 permit or a regional general section 404 permit. (Section 404.)

16. *Return Water From Upland Contained Disposal Areas.* Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

17. *Hydropower Projects.* Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

18. *Minor Discharges.* Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge will not cause the loss of more than 1/10 acre of waters of the United States; and

(c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404.)

19. *Minor Dredging.* Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (*i.e.*, section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). (Sections 10 and 404.)

20. *Oil Spill Cleanup.* Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404.)

21. *Surface Coal Mining Operations.* Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or are currently being processed as part of an integrated permit processing procedure.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404.)

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) if there is a discharge of dredged or fill material in a special aquatic site, including wetlands. (See general condition 27.) The permittee cannot commence the activity until informed by the district engineer that compliance with the ''Historic Properties'' general condition is completed.

Note: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Corps permit is required for vessel disposal in waters of the United States, a separate Department of the Army authorization will be required.

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 *et seq.*), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW–CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404.)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW–CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. Current activities approved for authorization under this NWP are found in the Corps' Regulatory Guidance Letters, which are available at: *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglsindx.htm*

24. *Indian Tribe or State Administered Section 404 Programs.* Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

Note 2: Those activities that do not involve a State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94–587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)).

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a section 10 permit if located in navigable waters of the United States. (Section 404)

26. [Reserved]

27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities.* Activities in waters of the United States associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the establishment of tidal and non-tidal wetlands and riparian areas, the restoration of non-tidal streams, and the restoration and enhancement of non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: The removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP does not authorize the conversion of a stream or natural wetlands to another aquatic use, such as the establishment of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and services. For example, this NWP may authorize the establishment of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by establishing that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS pursuant to NRCS regulations; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (*i.e.*, prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding wetland enhancement, restoration, or establishment agreement; (2) the NRCS documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification. Except as provided below, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.)

Except for reversion activities, pre-construction notification is not required for:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies;

(2) Voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS pursuant to NRCS regulations; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable state agency.

However, the permittee should submit a copy of the appropriate documentation. (Sections 10 and 404.)

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

28. *Modifications of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Section 10.)

29. *Residential Developments.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence or a multiple unit residential development. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed ½ acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404.)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments or other open water bodies. (Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3.

31. *Maintenance of Existing Flood Control Facilities.* Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) Were previously authorized by the Corps by individual permit, general permit, by 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the ''maintenance baseline,'' as described in the definition below. Activities, including the discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline, are authorized under this NWP. This NWP does not authorize the removal of sediment and associated vegetation from the natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (*e.g.*, depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that

the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 27). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site. (Sections 10 and 404.)

32. *Completed Enforcement Actions.* Any structure, work, or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The unauthorized activity affected no more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404.)

33. *Temporary Construction, Access, and Dewatering.* Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work and discharges, including cofferdams, necessary for construction activities not subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The pre-construction notification must include a mitigation plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. (Sections 10 and 404.)

34. *Cranberry Production Activities.* Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. For an existing cranberry production operation, the pre-construction notification needs only to be submitted once during the period that this NWP is valid, and the NWP would authorize that existing operation, provided the 10-acre limit is not exceeded. (See general condition 27.) (Section 404.)

35. *Maintenance Dredging of Existing Basins.* Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is deposited at an upland site and proper siltation controls are used. (Section 10.)

36. *Boat Ramps.* Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs, unless the 50 cubic yard limit is waived in writing by the district engineer;

(b) The boat ramp does not exceed 20 feet in width, unless this criterion is waived in writing by the district engineer;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging may be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 27.) (Sections 10 and 404.)

37. *Emergency Watershed Protection and Rehabilitation.* Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); or

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3).

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). (Sections 10 and 404.)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404.)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

39. *Commercial and Institutional Developments.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404.)

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, unless for drainage ditches constructed in intermittent and ephemeral streams, this 300 linear foot limit is waived in writing by the district engineer.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404.)

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal

wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity nor can it expand the area drained by the ditch as originally designed (*i.e.*, the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the United States).

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 27.) (Section 404.)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (*e.g.*, football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404.)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Maintenance activities are limited to restoring the original design capacities of the stormwater management facility.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404.)

44. *Mining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than ½-acre of non-tidal wetlands. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404.)

A. *Emergency Repair Activities.* This NWP authorizes the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

This NWP also authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date that a PCN is filed, unless this condition is waived by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

Minor dredging is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. If temporary structures and discharges, including cofferdams, are necessary to conduct the repair, rehabilitation, or replacement of structures or fills, separate authorization is required.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 27) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Sections 10 and 404.)

Note: Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.)

B. *Discharges in Ditches and Canals.* Discharges of dredged or fill material into ditches and canals that are constructed in uplands, receive water from another water of the United States, divert water to another water of the United States, and are determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into ditches or canals constructed in streams or other waters

of the United States, or in streams that have been relocated in uplands.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if the dredged or fill material will be discharged into more than 500 linear feet of ditch or canal. (See general condition 27.) (Section 404.)

C. *Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.* Activities required for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP) within the U.S. Department of Transportation as time-sensitive (see 49 CFR parts 192 and 195) and additional maintenance activities done in conjunction with the time-sensitive inspection and repair activities. All activities must meet the following criteria:

(a) Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary structures, work and discharges, including cofferdams, are necessary for construction activities or access fills or dewatering of construction sites;

(b) Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a french drain effect);

(c) Temporary fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary structures and fills must be removed upon completion of the activity and the affected areas returned to pre-construction conditions;

(d) In wetlands, the top 6'' to 12'' of the trench should normally be backfilled with topsoil from the trench so that there is no change in preconstruction contours;

(e) To the maximum extent practicable, the restoration of open waters must be to the pre-construction course, condition, capacity, and location of the waterbody;

(f) Any exposed slopes and stream banks must be stabilized immediately upon completion of the project;

(g) Additional maintenance activities done in conjunction with the time-sensitive inspection or repair must not result in additional losses of waters of the United States; and,

(h) The permittee is a participant in the Pipeline Repair and Environmental Guidance System (PREGS).

Reporting: The permittee must submit a post construction report to the PHP within seven days after completing the work. The report must be submitted electronically to PHP via PREGS. The report must contain the following information: project sites located in waters of the United States, temporary access routes, stream dewatering sites, temporary fills and temporary structures identified on a map of the pipeline corridor; photographs of the pre- and post-construction work areas located in waters of the United States; and a list of best management practices employed for each pipeline segment shown on the map. (Section 10 and 404.)

D. *Commercial Shellfish Aquaculture Activities.* This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, and other structures necessary for the continued operation of the aquaculture activity. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize the expansion of the project area for the commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (*i.e.*, species not previously cultivated by the existing commercial shellfish aquaculture activity).

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The project area is greater than 25 acres; (2) more than 10 acres of the project area is occupied by submerged aquatic vegetation; (3) the permittee intends to relocate existing operations into portions of the project area not previously used for aquaculture activities; or (4) dredge harvesting is conducted in areas inhabited by submerged aquatic vegetation. (See general condition 27.) (Sections 10 and 404.)

Note: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

E. *Coal Remining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal, provided the activities are already authorized by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or are currently being processed as part of an integrated permit processing procedure. Areas previously disturbed by mining activities include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being remined and reclaimed.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404.)

F. *Underground Coal Mining Activities.* Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or are currently being processed as part of an integrated permit processing procedure.

The discharge must not cause the loss of greater than 1/2 acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404.)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements, if known, of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (*e.g.*, excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and D.

6. *Suitable Material.* No activity may use unsuitable material (*e.g.*, trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (*e.g.*, stream restoration or relocation activities).

10. *Fills Within 100–Year Floodplains.* The activity must comply with any applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. *Removal of Temporary Fills.* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction conditions.

14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a ''study river'' for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (*e.g.*, National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which ''may affect'' a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed

activity ''may affect'' or will have ''no effect'' to listed species and designated critical habitat and will notify the applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. Applicants shall not begin work until the Corps has provided notification the proposed activities will have ''no effect'' on listed species or critical habitat, or until Section 7 consultation has been completed.

(c) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(d) Authorization of an activity by a NWP does not authorize the ''take'' of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with ''incidental take'' provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal ''takes'' of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at *http://www.fws.gov/* and *http://www.noaa.gov/fisheries.html* respectively.

18. *Historic Properties.* (a) No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the district engineer has complied with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act (NHPA).

(b) The prospective permittee must notify the district engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the district engineer that the requirements of the NHPA have been satisfied and that the activity is authorized. The district engineer will notify the permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required and will occur under the NWP process, the district engineer will notify the permittee that he or she cannot begin work until consultation is completed.

(c) Information on the location and existence of historic resources can be obtained from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the pre-construction notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

19. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity result in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project with greater than 1/2 acre of loss of waters, even if mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with NWPs.

(e) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (*e.g.*, conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (*e.g.*, riparian areas or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In those cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(g) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed ⅓-acre.

25. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

• ''When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.''

_____

(Transferee)

_____

(Date)

26. *Compliance Certification.* Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

27. *Pre-Construction Notification.*

(a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) If 45 days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the District or Division Engineer. However, the permittee cannot begin the activity until any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f) and general condition 17) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g) and general condition 18) is completed. Also, work cannot begin under NWP 21 until the permittee has received written approval from the Corps. If the District or Division Engineer notifies the permittee in writing that an individual permit is required within 45 days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and any necessary compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetland areas. Furthermore, the 45 day period

will not start until the delineation has been completed and submitted to the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied.

(6) For an activity that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(7) For an activity that may affect a historic property listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) *Agency Coordination:* The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring pre-construction notification to the district engineer that result in the loss of greater than ½-acre of waters of the United States, the district engineer will immediately provide (*e.g.*, via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the district engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations.

Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(e) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a proposed mitigation plan with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the

adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration, establishment, enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland or deepwater site. Establishment results in a gain in aquatic resource area.

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland (*i.e.*, a water of the United States) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (*i.e.*, spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) can be determined. An OHWM is a line on the shore established by the fluctuations of water and indicated by physical characteristics or other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)). Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of ''open waters'' include rivers, streams, lakes, and ponds.

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper

areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to a waterbody. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas are adjacent to streams, lakes, and estuarine-marine shorelines and provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

Single and complete project: The term ''single and complete project'' is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the ''single and complete project'' (*i.e.*, a single and complete crossing) will apply to each crossing of a separate water of the United States (*i.e.*, a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (*i.e.*, by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (*i.e.*, water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). An OHWM is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)). If a jurisdictional wetland is adjacent—meaning bordering, contiguous, or neighboring—to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of ''waterbodies'' include streams, rivers, lakes, ponds, and wetlands.

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Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 53, 56, 145, 146 and 147
Low Pathogenic Avian Influenza; Voluntary Control Program and Payment of Indemnity; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 53, 56, 145, 146, and 147

[Docket No. APHIS–2005–0109]

RIN 0579–AB99

Low Pathogenic Avian Influenza; Voluntary Control Program and Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to establish a voluntary program for the control of the H5/H7 subtypes of low pathogenic avian influenza in commercial poultry under the auspices of the National Poultry Improvement Plan (the Plan). The control program was voted on and approved by the voting delegates at the Plan's 2004 National Plan Conference. We are also providing for the payment of indemnity for costs associated with eradication of the H5/H7 subtypes of low pathogenic avian influenza in poultry. The H5/H7 subtypes of low pathogenic avian influenza can mutate into highly pathogenic avian influenza, a disease that can have serious economic and public health consequences. This combination of a control program and indemnity provisions is necessary to help ensure that the H5/H7 subtypes of low pathogenic avian influenza are detected and eradicated when they occur within the United States.

DATES: This interim rule is effective on September 26, 2006. We will consider all comments that we receive on or before November 27, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' 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–2005–0109 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–2005–0109, 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–2005–0109.

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: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (NPIP, also referred to below as ''the Plan'') is a cooperative Federal-State-industry mechanism that consists of a variety of programs intended to prevent and control certain poultry diseases. Participation in all Plan programs is voluntary, but flocks, hatcheries, and dealers of breeding poultry must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs.

The Plan identifies States, flocks, hatcheries, and dealers that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that have tested clean of certain diseases or that have been produced under appropriate disease-prevention conditions. Prior to the publication of this interim rule, the regulations in 9 CFR parts 145 and 147 (referred to below as the regulations) contained the provisions of the Plan.

In this interim rule, we are amending the regulations to establish a voluntary control program for the H5/H7 subtypes of low pathogenic avian influenza (H5/H7 LPAI) in commercial poultry—specifically, in table-egg layers, meat-type chickens, and meat-type turkeys. This program will be administered under the auspices of the NPIP. Until now, the Plan has only addressed disease issues, including avian influenza (AI), in flocks of breeding poultry. To accommodate the addition of commercial poultry to the NPIP, this interim rule establishes a new part 146, titled ''National Poultry Improvement Plan for Commercial Poultry,'' in 9 CFR chapter I, subchapter G. This voluntary control program is intended to complement the voluntary control programs for AI in breeding poultry—specifically, table-egg layer, meat-type chicken, meat-type turkey, and waterfowl, exhibition poultry, and game bird breeding flocks—that are currently contained in part 145 of the Plan's provisions.

This interim rule also establishes a new part 56, titled ''Control of H5/H7 Low Pathogenic Avian Influenza,'' in 9 CFR chapter I, subchapter B, to provide for the payment of indemnity for costs associated with the eradication of H5/H7 LPAI. The regulations in part 56 provide the authority to pay indemnity for 100 percent of costs associated with the eradication of H5/H7 LPAI to most poultry owners. To provide owners of large commercial poultry flocks and current participants in the Plan for breeding poultry with an incentive to participate in the voluntary control programs for AI in parts 145 and 146, this interim rule provides the authority to pay indemnity for only 25 percent of costs associated with eradication of H5/H7 LPAI to those poultry owners if they do not participate in those voluntary control programs.

The regulations in part 56 also provide the authority to pay indemnity to States that participate in the Plan for 100 percent of certain costs associated with their efforts to eradicate outbreaks of H5/H7 LPAI. For States that do not participate in the plan, the regulations authorize the payment of indemnity for 25 percent of those costs.

The reasons we are establishing the voluntary control program for commercial poultry and providing for the payment of indemnity in case of outbreaks of H5/H7 LPAI, and the provisions of the control program and indemnity regulations, are described below.

Increasing Threat of AI

AI is an infectious disease of birds caused by type A strains of the influenza virus. The disease, which was first identified in Italy more than 100 years ago, occurs worldwide. All birds are thought to be susceptible to infection with AI, though some species are more resistant to infection than

others. Wild waterfowl, shorebirds, and gulls serve as a natural host and reservoir for AI viruses. Fifteen subtypes of influenza virus are known to infect birds, thus providing an extensive reservoir of influenza viruses potentially circulating in bird populations. In addition, the hemagglutinin (H) protein on each subtype of the AI virus can theoretically be partnered with any one of nine neuraminidase (N) surface proteins; thus, there are potentially nine different forms of each subtype. (For example, the nine forms of subtype H5 would be notated as H5N1, H5N2, H5N3, etc., through H5N9.)

AI viruses can be classified into low pathogenic and highly pathogenic forms based on the severity of the illness they cause. Most AI virus strains are low pathogenic and typically cause few or no clinical signs in infected birds. The World Organization for Animal Health (also known as the OIE), an international body that, among other things, classifies animal diseases, considers subtypes of LPAI other than H5 and H7 to be low-risk diseases and does not require outbreaks of them to be reported by OIE members, of which the United States is one. (Diseases whose outbreaks OIE members are required to report to the OIE are often referred to as notifiable diseases, referring to the process by which members notify the OIE. The OIE has approved changes in its classification scheme for LPAI that became effective on January 1, 2006; further discussion of these changes can be found under the heading ''Trade Restrictions and OIE Guidelines Related to H5/H7 LPAI'' later in this document.) While it can, in rare cases, be transmitted from birds to humans, the LPAI virus poses no threat to human health.

However, the LPAI virus can mutate into a highly contagious and rapidly fatal disease, resulting in severe epidemics. The more severe form of the disease is known as highly pathogenic avian influenza (HPAI). To date, all outbreaks of the highly pathogenic form have been caused by influenza A viruses of subtypes H5 and H7.

During the past 20 years, several examples of H5 and H7 LPAI viruses mutating into HPAI viruses have been documented worldwide (table 1).

TABLE 1.—INSTANCES IN WHICH LPAI VIRUSES OF SUBTYPES H5 AND H7 MUTATED INTO HPAI VIRUSES

Location	Year
Pennsylvania, United States	1983–1984
Mexico	1994–1995
Italy	1999
Chile	2002
British Columbia, Canada	2004

Evidence continues to accumulate that LPAI viruses of the H5 and H7 subtypes, if permitted to circulate in poultry populations, can mutate into HPAI viruses; the larger the number of birds infected with H5/H7 LPAI, the more likely it is that the virus will mutate into HPAI in one of them.

HPAI is characterized by sudden onset, severe illness, and rapid death, with a mortality rate that can approach 100 percent. HPAI is listed by the OIE as a notifiable disease, meaning that outbreaks of HPAI must be reported by OIE members. Diseases listed as notifiable are those that exhibit some combination of potential for international spread, potential for significant morbidity or mortality among populations not exposed to the disease, and potential for transmission to humans (and, if that potential is present, potential for severe consequences of infection in humans). The OIE also takes into account whether the disease is an emerging disease when determining whether to list it. Although it is not an emerging disease, HPAI fulfills all the other conditions for being listed as a notifiable disease, including having the potential for severe consequences of infection in humans.[1]

The number of outbreaks of HPAI in the world's commercial poultry has grown in the years since 1955 (table 2), with particularly dramatic growth in the last 10 years. There is also evidence that AI virus has been directly transmitted from birds to humans several times in recent years (table 3). Incidents of human infection with HPAI are specifically noted in the table.

TABLE 2.—OUTBREAKS OF HPAI BY DECADE SINCE 1955

Years	Number of outbreaks
1955–1964	3
1965–1974	1
1975–1984	4
1985–1994	5
1995–2004	10

TABLE 3.—TRANSMISSION OF AI VIRUS FROM BIRDS TO HUMANS

Location	Year	Virus subtype
Hong Kong	1997	H5N1 (HPAI).
Hong Kong	1999	H9N2.
Virginia, United States	2002	H7N2 (mild upper respiratory infection and conjunctivitis).
The Netherlands	2003	H7N7 (HPAI).
New York, United States	2003	H7N2 (immunosuppressed individual).
Southeast Asia, Iraq, Turkey	2003–2006	H5N1 (HPAI).
British Columbia, Canada	2004	H7N3 (HPAI).

As mentioned previously, the transmission of HPAI from birds to humans poses serious risks for public health. The first documented infection of humans with an avian influenza virus occurred in Hong Kong in 1997, when the H5N1 strain caused severe respiratory disease in 18 humans, of whom 6 died. The infection of humans coincided with an epidemic of HPAI, caused by the same strain, in Hong Kong's poultry population.

Since December 2003, a growing number of Southeast Asian countries have reported outbreaks of HPAI responsible for the deaths of millions of birds and at least 105 humans. The World Health Organization (WHO) reports that these outbreaks of H5N1 HPAI among poultry are the largest and most severe on record, and that all the conditions for a human pandemic of H5N1 influenza have been met save the establishment of efficient and sustained

[1] The OIE's criteria for listing a disease as one that must be reported by OIE members may be viewed on the Internet at *http://www.oie.int/eng/normes/mcode/en_ chapitre_2.1.1.htm#chapitre_2.1.1.*

human-to-human transmission of the virus. The WHO further warns that ''the risk that the H5N1 virus will acquire this ability will persist as long as opportunities for human infections occur. These opportunities, in turn, will persist as long as the virus continues to circulate in birds, and this situation could endure for some years to come.'' [2]

Trade Restrictions and OIE Guidelines Related to H5/H7 LPAI

Given the information discussed above about the ability of H5/H7 LPAI to mutate into HPAI, several U.S. trading partners have put in place restrictions on the importation of poultry and poultry products in an effort to prevent the introduction of H5/H7 LPAI. Additionally, the U.S. Department of Agriculture has observed that some trading partners now require a greater level of assurance that neither HPAI nor LPAI exist in source flocks for poultry exported from the United States.

The European Union (EU) has reported that it is currently considering the option of including H5/H7 LPAI in its statutory definition of AI. This would mean that poultry or poultry products exported to the EU from countries where H5/H7 LPAI is present would be subject to the same stringent requirements that apply to poultry or poultry products exported to the EU from countries where HPAI is present. The EU is also considering what regulatory responses, possibly including the use of vaccines, may be appropriate for outbreaks of H5/H7 LPAI in the EU.

In addition, spurred by the increasing importance of controlling H5/H7 LPAI, the OIE adopted new guidelines for AI in its Terrestrial Animal Health Code chapter on AI in May 2005. These guidelines became effective on January 1, 2006.[3] The OIE guidelines in the Terrestrial Animal Health Code are recognized by the World Trade Organization as international recommendations for animal disease control.

The new OIE guidelines define notifiable avian influenza (NAI) as an infection of poultry caused by any influenza A virus of the H5 or H7 subtypes or by any AI virus with an intravenous pathogenicity index greater than 1.2, or, as an alternative, an AI virus with at least 75 percent mortality. NAI viruses are divided into highly pathogenic notifiable avian influenza and low pathogenicity notifiable avian influenza. However, with regard to such issues as restrictions on importation, eradication of outbreaks, and determination of whether a country or a region within a country is free of AI, the guidelines treat HPAI and H5/H7 LPAI as posing similar risks.

Under the new guidelines, therefore, OIE members are obligated to report outbreaks of H5/H7 LPAI in addition to outbreaks of HPAI. In addition, in order to export poultry and poultry products to countries whose regulations are modeled on the OIE guidelines, countries or regions within countries may conceivably be required to have in place surveillance mechanisms sufficient to demonstrate freedom from both H5/H7 LPAI and HPAI and disease response measures sufficient to eradicate H5/H7 LPAI and HPAI. Establishing such surveillance mechanisms and disease response measures is one of the purposes of this interim rule.

Current AI Control and Surveillance Within the United States

HPAI does not currently exist in the United States. However, H7N2 LPAI viruses have been present in the poultry markets of New York and New Jersey since 1994. The amino acid sequences of the hemagglutinin proteins from some of these viruses have been found to carry more than two basic amino acids adjacent to the hemagglutinin cleavage site, raising concern that additional mutations could result in a highly pathogenic virus.

In addition, occasional LPAI outbreaks in commercial poultry in the United States, such as the LPAI outbreaks in Virginia, Delaware, Connecticut, Maryland, and Texas, have led some countries to place restrictions on the importation of poultry and poultry products from the United States.

In the United States, a combination of active and diagnostic surveillance for AI is used. Diagnostic surveillance is conducted through industry, State, and university diagnostic laboratories. These laboratories routinely test for AI, both serologically and by virus isolation, whenever birds are submitted from a flock with clinical signs compatible with HPAI or LPAI.

Active surveillance for AI in U.S. poultry has been conducted in three settings. The first involves the National Poultry Improvement Plan disease control provisions for breeding poultry in 9 CFR part 145. The Plan provides for a ''U.S. Avian Influenza Clean'' classification for table-egg layer breeding flocks in § 145.23(h); for meat-type chicken breeding flocks in § 145.33(l); and for waterfowl, exhibition poultry, and game bird breeding flocks in § 145.53(e). The Plan also provides for a ''U.S. H5/H7 Avian Influenza Clean'' classification for turkey breeding flocks in § 145.43(g). These active surveillance programs are used to certify baby chicks, poults, and hatching eggs for interstate commerce or export from the United States. All flocks tested since these programs began in 2000 have returned negative results for AI.

Second, in recent years a number of broiler and turkey meat producers have begun conducting AI serology tests on samples collected from their flocks just prior to slaughter to meet the requirements Mexico has established for exporting poultry meat to that country. Since Mexico established this requirement, all flocks tested in order to fulfill it have returned negative results for AI.

Third, several States have established AI surveillance programs based on the risk of AI exposure unique to their States or regions. For example, Minnesota has a long-standing AI surveillance program for turkeys; Texas established a surveillance program for commercial poultry flocks near the Mexican border following the Mexican HPAI outbreak in 1994–95; and Pennsylvania, New York, and New Jersey have ongoing surveillance programs in live bird markets and their supply flocks as a result of the LPAI infections that persist in that marketing system.

However, given the risk that a persistent H5/H7 LPAI infection could mutate into HPAI, the possible trade disruptions that may be associated with H5/H7 LPAI now and in the future, and the OIE's adoption of guidelines designating H5/H7 LPAI as a notifiable disease, we believe that it is necessary to establish a national control program that provides for active and diagnostic surveillance for H5/H7 LPAI in both commercial and breeding poultry flocks. In case H5/H7 LPAI is discovered, we believe it is also necessary to establish a plan for controlling and eradicating H5/H7 LPAI outbreaks and to provide the authority to pay indemnity for costs associated with control and eradication of the disease.

Overall Approach of the Voluntary Control and Indemnity Program

Accordingly, the Animal and Plant Health Inspection Service (APHIS), the U.S. Animal Health Association's Transmissible Diseases of Poultry Committee, and the National Poultry Improvement Plan have worked to develop regulatory options for H5 and

[2] See ''WHO Avian influenza frequently asked questions'' at *http://www.who.int/csr/disease/avian_influenza/avian_faqs/en/index.html* (as of August 11, 2006).

[3] The recommendations may be viewed on the Internet at *http://www.oie.int/eng/normes/mcode/en_chapitre_2.7.12.htm.*

H7 LPAI for commercial poultry—specifically, table-egg layers, meat-type chickens, and meat-type turkeys. These options were intended to augment the current active surveillance programs for breeding flocks of table-egg layers, meat-type chickens, meat-type turkeys, and waterfowl, exhibition poultry, and game birds that have been included in the NPIP. (We may develop programs for surveillance and control of H5/H7 LPAI in other types of commercial or breeding poultry in the future.)

During a meeting APHIS organized with State and industry representatives that took place in May 2002 in San Antonio, TX, participants identified three key components that the H5/H7 LPAI program should contain. In cooperation with States and industry, APHIS developed provisions describing such a program; these provisions were approved at the July 2004 NPIP meeting in San Francisco, CA, and they form the basis of this interim rule. In each of these components, Federal, State, and industry stakeholders all have an important part to play, and efforts to detect and eradicate outbreaks of H5/H7 LPAI will rely on cooperation among all three groups. Each component of the program is discussed in detail below.

The first component discussed here is a diagnostic surveillance program for all poultry, undertaken by the Official State Agencies according to plans approved by APHIS. In the new part 146 establishing the voluntary control program, § 146.14 sets out criteria for a diagnostic surveillance program. Each State that wishes to participate in the Plan for commercial poultry must implement a diagnostic surveillance program that is approved by APHIS. However, the diagnostic surveillance programs that States are required to implement apply to all poultry in the State, not just those included in the NPIP.

Diagnostic surveillance programs developed under this interim rule will designate H5/H7 LPAI as a disease reportable to the State veterinarian and require that all laboratories (private, State, and university laboratories) that perform diagnostic procedures on poultry must examine all submitted cases of unexplained respiratory disease, egg production drops, and mortality for AI by both an approved serological test and an approved antigen detection test. This is consistent with the recommendation in paragraph 2a of Article 3.8.9.2 of the OIE Guidelines for Surveillance of Avian Influenza.[4]

The second component discussed here is the initial State response and containment plans for each participating State that are required by the new part 56 established by this interim rule. These plans detail what actions will be taken in response to an outbreak of H5/H7 LPAI; they will also be developed by the States, and they must be approved by APHIS before a State can begin participation in the voluntary control and indemnity program. Where the regulations in part 56 set out uniform requirements for emergency response, they are consistent with the OIE guidelines.

The requirements for both the diagnostic surveillance plan and the initial State response and containment plan provide for some level of variation on the State level, as long as the plans meet certain performance standards. As noted previously, several States already have diagnostic surveillance and emergency response measures of some kind in place for H5/H7 LPAI. (We are aware of State LPAI surveillance programs in Arkansas, California, Delaware, Georgia, Iowa, Maryland, Minnesota, North Carolina, Pennsylvania, Texas, and Virginia. However, it is difficult to estimate the proportion of U.S. poultry that are covered by State programs, as other States may also have such initiatives in place.) We believe it is better to build a Federal program that recognizes State activities than to replace them with a strictly Federal program. In our judgment, the States that already have control measures in place to address H5/H7 LPAI may be able to adapt those measure to meet the performance standards that this interim rule sets out for surveillance and emergency response measures with few or no changes. For States that do not have control measures in place to address H5/H7 LPAI, the combination of State autonomy with Federal review will give States flexibility to develop plans based on local conditions, including industry organization, marketing patterns, and anticipated disease risks, while ensuring that the State-developed control measures meet minimum standards for surveillance and emergency response.

The third component in the voluntary control program is active surveillance, based on testing of birds or eggs for breeding poultry and commercial table-egg layers and testing at the flock level or at slaughter for commercial meat-type chickens and meat-type turkeys, and conducted according to plans detailed in the regulations. The active surveillance program focuses on establishing that individual compartments are free of H5/H7 LPAI. The OIE defines a compartment as ''one or more establishments under a common biosecurity management system containing an animal subpopulation with a distinct health status with respect to a specific disease or specific diseases for which required surveillance, control and biosecurity measures have been applied for the purpose of international trade.''[5] For poultry types grown to produce eggs (breeding poultry and table-egg layers), the compartment level of organization is the flock. For poultry types grown to produce meat (meat-type chickens and meat-type turkeys), the compartment level of organization is the slaughter plant and all the flocks under the same ownership as or otherwise affiliated with the slaughter plant. (For information on affiliation with a slaughter plant, see the section headed ''Administration'' later in this document.)

In 9 CFR part 145, the Plan provides for a ''U.S. Avian Influenza Clean'' classification for table-egg layer breeding flocks, for meat-type chicken breeding flocks, and for waterfowl, exhibition poultry, and game bird breeding flocks. The Plan also provides for a ''U.S. H5/H7 Avian Influenza Clean'' classification for turkey breeding flocks. The ''Clean'' designation is used because these programs require testing of 30 birds per flock; these requirements are sufficient to establish the flocks as free of AI (or, in the case of turkeys, H5/H7 AI) at a 95 percent confidence interval for a 10 percent infection rate.

Table-egg layer flocks, meat-type chicken and meat-type turkey slaughter plants, and States participating in the voluntary control program in 9 CFR part 146 may earn the ''U.S. H5/H7 Avian Influenza Monitored'' classification. In the case of table-egg layer and meat-type chicken flocks, the programs require testing of 11 birds per flock or per shift, which is sufficient to establish the flocks and slaughter plants as free of H5/H7 LPAI at a 95 percent confidence interval for a 25 percent infection rate, for any size group of birds. In the case of meat-type turkeys, fewer birds are tested, but the testing is concentrated on birds showing clinical symptoms consistent with H5/H7 LPAI. The higher infection rate targeted in the testing for commercial poultry is appropriate because, in practice, an H5/H7 LPAI infection in one bird in a commercial poultry flock would quickly spread to almost all the other birds in the flock.

[4] These guidelines may be viewed on the Internet at *http://www.oie.int/eng/normes/mcode/en_chapitre_3.8.9.htm#chapitre_3.8.9.*

[5] See the Terrestrial Animal Health Code General Definitions at *http://www.oie.int/eng/normes/mcode/en_chapitre_1.1.1.htm#terme_compartiment.*

The active surveillance programs for the NPIP apply only to the types of poultry cited above and only to flocks or slaughter plants that participate in the NPIP. In addition, for commercial poultry, a participating flock or slaughter plant is required to participate in the active surveillance program only if it is larger than a certain size standard. For table-egg layer flocks, the standard is 75,000 birds, which is consistent with the American Egg Board's definition of commercial egg producers. For meat-type chicken slaughter plants, the standard is slaughtering 200,000 meat-type chickens in an operating week, while for meat-type turkey slaughter plants, the standard is slaughtering 2 million meat-type turkeys in a 12-months period; both of these standards are consistent with Watt Publishing Companies' listing of commercial meat-type chicken and turkey slaughter operations, respectively.

Although we chose these size standards based on standard industry references, the purpose behind having size standards is to concentrate resources on testing flocks and slaughter plants that are associated with a relatively high percentage of the total U.S. population of commercial poultry of these types. Estimates indicate that the poultry associated with flocks and slaughter plants above these size standards comprise a very high percentage of the total number of commercial poultry:

- According to the American Egg Board, the top 260 table-egg layer producers own over 3,000 flocks with 75,000 hens or more. Together, these flocks comprise approximately 95 percent of all table-egg layers in the United States.
- According to Watt Publishing Companies, the top 20 U.S. meat-type chicken producers produce 91 percent of the entire U.S. production of chicken meat; these companies slaughter approximately 152.71 million birds a week. The next 20 companies slaughter approximately 17.5 million birds a week. Meat-type chicken slaughter plants owned by these companies slaughter well over 200,000 birds a week. The top 40 chicken companies in the United States produce close to 100 percent of the annual U.S. broiler meat production.
- According to Watt Publishing Companies, the top 27 meat-type turkey companies produce over 6992.9 million pounds of live weight turkey meat annually, approximately 97 percent of U.S. annual production of turkey meat. The slaughter plants owned by all of these 27 companies slaughter more than 2 million birds in a 12-month period.

By concentrating the active surveillance on such flocks and slaughter plants, we believe we will be employing the Federal, State, and industry resources that will be used to conduct this surveillance as effectively as possible. We invite comment from the public on whether these size standards and our use of them are appropriate.

Flocks and slaughter plants that participate in these programs thus can make statements about their freedom from H5/H7 LPAI. In addition, for table-egg layers and meat-type turkeys, a State can be declared a H5/H7 LPAI Monitored State with respect to those types of poultry if all large flocks or slaughter plants are participating in the relevant program in part 146 and certain other conditions are fulfilled. (No State-level program exists for meat-type chickens; we do not believe such a program is necessary.) Records of testing under the active surveillance programs will be made available for inspection by State and APHIS personnel.

The OIE guidelines also recommend that surveillance mechanisms be established for high-risk populations of poultry such as places where birds and poultry of different origins are mixed, such as live bird markets, and poultry in close proximity to waterfowl. These surveillance mechanisms are not part of this interim rule. However, it is important to note that these issues are addressed in other APHIS programs and activities. For example, in the live bird marketing system, APHIS has entered into cooperative agreements with States that have live bird market activities, as well as Official State Agencies and NPIP authorized laboratories participating in the NPIP LPAI program. In addition, in spring 2006, under the interagency HPAI plan, the USDA and its cooperators planned to collect between 75,000 and 100,000 samples from live and dead wild birds in all States and 50,000 samples of water or feces from high-risk waterfowl habitats across the United States for the purposes of AI surveillance. These programs are consistent with the OIE recommendation.

The program we are establishing is voluntary because some producers and some States may not wish to participate. Fulfilling the requirements of the program will entail some additional costs for producers and States. However, the incentives to participate are also considerable. Under this interim rule, APHIS is authorized to pay 100 percent indemnity for the destruction and disposal of poultry infected with or exposed to H5/H7 LPAI; 100 percent indemnity for the destruction of any eggs destroyed during testing of poultry for H5/H7 LPAI during an outbreak of H5/H7 LPAI; and 100 percent indemnity for cleaning and disinfecting premises, conveyances, and materials (or, in certain cases, for the destruction and disposal of materials) to most producers, including all participants in the voluntary control programs, provided that the State in which the outbreak occurs is a participant in the control program and has developed an initial State response and containment plan that has been approved by APHIS. For commercial poultry producers who do not choose to participate in the voluntary H5/H7 LPAI control programs in part 146, and for breeding poultry producers who participate in the Plan but do not participate in the AI control programs in part 145, this interim rule authorizes APHIS to pay indemnity for only 25 percent of the costs of those activities. (A detailed description of the conditions that would cause a producer to be eligible for 25 percent indemnity can be found later in this document under the heading ''Payment of Indemnity.'')

In addition, under this interim rule, APHIS is authorized to establish cooperative agreements with Cooperating State Agencies to pay for costs associated with the eradication of H5/H7 LPAI outbreaks and to transfer vaccine for H5/H7 LPAI for use by Cooperating State Agencies in accordance with the initial State response and containment plan, as approved by APHIS. Costs that may be paid under a cooperative agreement include the cost of surveillance and monitoring associated with poultry that have been infected with or exposed to H5/H7 LPAI and the cost of vaccine administration by Cooperating State Agencies. APHIS is authorized to pay 100 percent of these costs to participating States and 25 percent of these costs to nonparticipating States.

All States with commercial poultry operations that meet the size standards of the control program we have developed currently participate in the NPIP for breeding poultry, and they are expected to participate in the program established by this interim rule. In addition, the State Poultry Executive Association has indicated that all State poultry associations strongly support the control program; the National Chicken Council, National Turkey Federation, United Egg Producers, and U.S. Poultry and Egg Association have indicated their strong support as well.

On the producer level, 100 percent of commercial table-egg layer chickens,

meat-type chickens, and meat-type turkeys that meet the size standards of the control program we have developed are currently produced from breeding flocks that participate in the NPIP. Besides this natural link to the NPIP, and the indemnity incentives described earlier, another incentive for participation is the fact that participation in the H5/H7 LPAI control program has the potential to serve as a seal of approval for producers who wish to export their products to foreign markets; as discussed earlier in this document, countries modeling their regulations on the OIE guidelines may in the future establish requirements that poultry and poultry products originate from flocks in H5/H7 LPAI control programs. It is believed that the possible loss of export markets for nonparticipants in the event of an outbreak of H5/H7 LPAI, combined with the indemnity incentives, will bring a very high percentage of the commercial poultry industry into the new voluntary program. We expect that at least 90 percent of commercial poultry operations that meet the size standards will participate. This is similar to the participation level in the current Plan programs for breeding flocks, in which we have a nearly 100 percent participation level from chicken and turkey companies. With the proposed surveillance levels, a 90 percent participation rate would accomplish the goals of the program. Outreach and education from NPIP office through the Official State Agencies will be necessary to maintain participation levels.

For these reasons, we do not believe that making the program voluntary will have an adverse effect on its ability to prevent outbreaks of H5/H7 LPAI within the United States; rather, we believe most commercial poultry producers and States with substantial commercial poultry industries will participate in the voluntary program, particularly given that on the State level the program allows for some flexibility. In addition, the diagnostic surveillance portion will allow for the detection of H5/H7 LPAI in any non-participating establishments.

As described, the voluntary control program established by this interim rule is consistent with the three key characteristics that a control program for H5/H7 LPAI in the commercial poultry industry should have, as identified at the May 2002 meeting:

1. Autonomy for the Official State Agency (the animal health authority in a particular State recognized by APHIS to cooperate in the administration of the Plan) wherever possible;

2. Federal review of surveillance and response measures at the State level; and

3. Voluntary participation for producers on a cooperative basis with State and Federal authorities.

Differences Between This Approach and the Approach Used To Control LPAI Outbreaks in Virginia and Texas in 2002

In 2002, nearly 4 million birds were depopulated under State and Federal authority in Virginia and Texas due to outbreaks of H7 LPAI (in Virginia) and H5 LPAI (in Texas). In order to provide an incentive for poultry owners and contract growers to participate in the depopulation effort, APHIS provided compensation to poultry owners and contract growers in Virginia in an interim rule published in the **Federal Register** on November 4, 2002, and made effective December 9, 2002 (67 FR 67089–67096, Docket No. 02–048–1). A subsequent final rule effective and published in the **Federal Register** on July 18, 2003 (68 FR 42565–42570, Docket No. 02–048–2) provided compensation to poultry owners and contract growers in Texas for the same costs for which Virginia poultry owners and contract growers were compensated in the November 2002 interim rule and adjusted the percentage of costs for which indemnity was provided to poultry owners in both States.

The specific provisions relating to these outbreaks established by the November 2002 interim rule and the July 2003 final rule in the general indemnity regulations in 9 CFR part 53 have been the only regulations in 9 CFR chapter I dealing specifically with compensation for outbreaks of H5 or H7 LPAI. Since the approach of the regulations we are establishing in 9 CFR part 56 differs in some respects from the approach of the regulations established by the November 2002 interim rule and the July 2003 final rule, we will discuss here how and why the approaches differ.

The November 2002 interim rule allowed for poultry owners to receive compensation for 50 percent of the costs they incurred related to destruction and disposal of birds affected by H5 or H7 LPAI, minus the amount paid in compensation to contract growers; the July 2003 final rule increased that amount to 75 percent. Under both rules, contract growers were eligible to receive indemnity for 100 percent of the costs they incurred; this compensation was subtracted from the compensation paid to the poultry owners. Costs eligible for indemnity under 9 CFR part 53 included the market value of the birds destroyed and the costs of destruction and disposal of animals and materials required to be destroyed to eradicate a disease and the cost of cleaning and disinfection of premises, conveyances, and materials. (While the regulations did not state this explicitly, compensation was paid for eggs destroyed during the Virginia and Texas LPAI outbreaks for testing for H5/H7 LPAI.)

Prior to the publication of this interim rule, any Federal indemnification relating to H5/H7 LPAI would have been paid under the authority of the general indemnity regulations in 9 CFR part 53; indemnity would have been provided in the context of a cooperative program with a State, and APHIS was authorized to provide indemnity for 50 percent of the above costs in accordance with § 53.2(b).

The new part 56 we are establishing will provide indemnity for the market value, destruction, and disposal of poultry that have been infected with or exposed to H5/H7 LPAI; the destruction of any eggs destroyed during an outbreak for testing for H5/H7 LPAI; and cleaning and disinfection of premises, conveyances, and materials that were exposed to H5/H7 LPAI, or, in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, indemnity for the destruction and disposal of the materials. These costs are identical to the costs for which indemnity was provided for the LPAI outbreaks in Virginia and Texas.

However, the new part 56 also establishes mechanisms to address some additional costs not explicitly included in the indemnity provided for the outbreaks in Virginia and Texas. This interim rule also provides for the establishment of cooperative agreements with Cooperating State Agencies to pay for the costs of surveillance and monitoring, to transfer vaccine from APHIS to a State under certain controls, and to pay for vaccine administration associated with an outbreak. Although the November 2002 and July 2003 rules did not discuss the issue, the costs of surveillance and monitoring were also assumed by APHIS in the Virginia and Texas outbreaks; vaccination was not used in those control and eradication efforts.

Cooperative agreements established under this interim rule will provide for payment of the costs of surveillance and monitoring only as they relate to a specific disease outbreak. We are providing for the authority to pay the cost of surveillance and monitoring as they relate to a disease outbreak because

we believe it is appropriate for APHIS to pay for actions undertaken at APHIS' direction to confirm successful eradication of an outbreak of H5/H7 LPAI.

Cooperative agreements established under this interim rule may also provide for the transfer of vaccine from APHIS to a State for disease control purposes, provided that the vaccine is transferred and used in accordance with a previously approved initial State response and containment plan, and provide for the payment to the States of the cost of administering the vaccine. Compared to the cost of depopulation of poultry, vaccination of poultry can be a more cost-effective method of controlling the spread of LPAI. (It should be noted that, under this interim rule, vaccination for H5/H7 LPAI may not be performed except as a disease control method after an outbreak has occurred.) For example, a table-egg layer can be vaccinated for AI with two inoculations at a total cost of 25 cents per bird. By comparison, the total cost to APHIS, the Cooperating State Agency, and the poultry owner of depopulating and replacing a table-egg layer can reach $10 per bird. Thus, for a typical 2-million-bird table-egg layer complex, the difference in cost between vaccination and depopulation could reach $19.5 million. Therefore, we believe it is important to explicitly provide for both the transfer of vaccine and its administration, subject to appropriate controls, to ensure that this means of controlling the spread of LPAI is available to APHIS and to Cooperating State Agencies.

As noted previously, the new regulations in part 56 will provide for the authority to pay indemnity of 100 percent of eligible costs for most producers and will provide for the establishment of cooperative agreements with participating States through which States will be eligible to receive 100 percent of the costs covered under the cooperative agreements. We believe that providing for the payment of 100 percent of eligible costs, rather than 75 percent as in the July 2003 final rule, is appropriate because participants in the H5/H7 LPAI control program that this interim rule establishes assume an economic burden in complying with the requirements of the control program. The requirements of the control program make it more likely that an outbreak of H5/H7 LPAI will be quickly detected and contained; this would tend to lower the amount of indemnity APHIS may have to pay, but the cost of participating in the program is mostly borne by producers and Official State Agencies.

While APHIS has recently provided funding to States for ongoing LPAI surveillance under cooperative agreements, these do not come close to covering the total State and industry cost of participation in the program; for example, the NPIP budgeted $2 million in fiscal year 2006 for cooperative agreements with 24 States for LPAI surveillance in commercial poultry, but the State costs for surveillance for LPAI were reported to be $15 million, while the industry costs were reported to be $25 million, based on the costs of the testing conducted in the NPIP. We expect that the States and industry would continue to bear most of the cost burden after the publication of this interim rule, as they have for the provisions of the NPIP relating to breeding poultry. Therefore, in the event of an outbreak, it is appropriate to indemnify participating owners of commercial poultry flocks that meet certain size standards for the full amount of the costs that are eligible for indemnity and that are associated with the outbreak and to pay for the full amount of costs that Cooperating State Agencies incur in eradicating the outbreak.

The interim rule also provides for the authority to pay 100 percent indemnity to owners of flocks that do not meet these size standards, regardless of whether these smaller flocks are participating in the NPIP. We believe that providing for the payment of 100 percent of eligible costs to all flock owners is appropriate because the OIE now lists all H5 and H7 AI viruses, both LPAI and HPAI, as serious diseases that are required to be reported by member countries. In essence, the premise of the OIE guidelines is that, because H5/H7 LPAI has the potential to mutate into HPAI, it should be treated very similarly to HPAI by member countries. Therefore, we believe that it is consistent to provide for payment of 100 percent indemnity for costs associated with H5/H7 LPAI to large commercial poultry producers and breeding poultry producers who participate in the voluntary control program, all small poultry producers, and participating States, as we do for costs associated with HPAI under the general indemnity regulations in § 53.2(b). Given expected participation rates, this will mean that 100 percent indemnity will be available for almost all producers and States. Providing indemnity for 25 percent of associated costs for the small number of commercial poultry producers and States who do not participate in the Plan and breeding poultry producers who participate in the Plan but not in its AI programs serves to encourage participation in the voluntary control program, whose surveillance requirements are consistent with the OIE guidelines.

Finally, the indemnity regulations established in this interim rule also provide for the distribution of payments between producers and contract growers. The distribution of payments provided for in this interim rule is similar to the one APHIS used to distribute indemnity that was paid to producers and contract growers due to LPAI outbreaks in Virginia and Texas in 2002. This will help ensure full participation by contract growers in the diagnostic surveillance program described later in this document. This formula is described in detail under the heading ''Conditions For Payment'' later in this document.

Prior to the publication of this interim rule, 9 CFR part 53 still contained indemnity provisions relating to the LPAI outbreaks in Virginia and Texas in 2002. We have paid all the indemnity claims related to these incidents that we anticipate paying. To update the regulations, this interim rule removes the indemnity provisions relating to the LPAI outbreaks in Virginia and Texas in 2002 from 9 CFR part 53.

Section-by-Section Explanation of New Parts 146 and 56

In this interim rule, in a new part 146, we are providing for the establishment of active and diagnostic surveillance programs for commercial table-egg layers, meat-type chickens, and meat-type turkeys; these programs will be developed by each participating State and approved by APHIS. Participating commercial table egg-layer, meat-type chicken, and meat-type turkey flocks may earn the classification ''U.S. H5/H7 Avian Influenza Monitored.'' States participating in the active surveillance programs may also earn the classification ''U.S. H5/H7 Avian Influenza Monitored State'' with respect to commercial table-egg layers and meat-type turkeys. (As discussed earlier in this document, the AI programs in 9 CFR part 145 for table-egg layer, meat-type chicken, and waterfowl, exhibition poultry, and game bird breeding flocks provide the classification ''U.S. Avian Influenza Clean,'' and the AI program for turkey breeding flocks provides the classification ''U.S. H5/H7 Avian Influenza Clean.'' Currently, the NPIP contains no State classifications relating to AI for breeding poultry.) The new part 146 also contains specific requirements for collecting samples to test for AI and guidelines for States to

use in establishing a diagnostic surveillance program.

Where possible, the language and structure of new 9 CFR part 146 is modeled on that of 9 CFR part 145, which, as noted above, contains the provisions of the NPIP that apply to breeding poultry. The NPIP provisions in part 145 are well established and familiar to many poultry producers, and we believe that modeling the new part 146 on part 145 will enhance the effectiveness of the new Plan provisions for commercial poultry. We have not included provisions from part 145 that are not relevant to commercial poultry in the new part 146.

The new part 56 provides for the payment of indemnity in the event of an H5/H7 LPAI outbreak and for the establishment of cooperative agreements between APHIS and Official State Agencies to control H5/H7 outbreaks. It also sets out requirements for determining the value of destroyed poultry and eggs, for cleaning and disinfecting affected premises, for presenting claims, for distribution of payments, and for developing an initial State response and containment plan.

The provisions of part 146 provide for testing and diagnostic surveillance in commercial table-egg layers, meat-type chickens, and meat-type turkeys. Part 56 includes those poultry in its provisions for eradication of H5/H7 LPAI and payment of indemnity, and many of the provisions of part 56 refer to provisions of part 146, such as the State diagnostic surveillance plan for all poultry in the State or the active surveillance programs for commercial poultry.

However, because part 56 is intended first and foremost to allow APHIS to pay indemnity to help eradicate outbreaks of H5/H7 LPAI, the regulations in part 56 allow us to pay indemnity to owners of breeding poultry and both commercial and non-commercial poultry, such as poultry grown for live bird markets. This represents a change from the indemnity provisions developed at the July 2004 NPIP meeting, but we expect that it will be necessary to pay indemnity for all types of poultry in order to eradicate H5/H7 LPAI outbreaks.

As explained later in this document (*see* the section titled ''Payment of Indemnity'' below), commercial producers that are above certain size standards will still have an indemnity-based incentive to participate in the NPIP provisions in part 146, and they will still be eligible to receive 100 percent indemnity if they do.

The specific provisions of parts 146 and 56 are discussed in more detail below.

Control Program Provisions in 9 CFR Part 146

Definitions

Section 146.1 sets out definitions for the terms *Administrator, Animal and Plant Health Inspection Service (APHIS), Authorized Agent, authorized laboratory, Department, domesticated, equivalent, Official State Agency, person, Plan, program, Service,* and *State Inspector* that are substantively identical to the definitions of those terms in § 145.1. In addition, § 146.1 sets out definitions of *State* and *United States* that are drawn directly from the Animal Health Protection Act.

The other definitions below are new in part 146. For the convenience of the reader, we have set out the definitions of *Official State Agency* and *Plan* below.

Affiliated flock. A meat-type flock that is owned by or has an agreement to participate in the Plan with a slaughter plant and that participates in the Plan through that slaughter plant.

For meat-type poultry, the control program in part 146 is organized around the participation of slaughter plants, which typically own the flocks that are slaughtered at the plants. Affiliation with a slaughter plant through an agreement can be a way for a flock not owned by a slaughter plant to participate in the Plan. This issue is discussed in more detail under the heading ''Participation'' later in this document.

Classification. A designation earned by participation in a Plan program.

Commercial meat-type flock. All of the meat-type chickens or meat-type turkeys on one farm. However, at the discretion of the Official State Agency, any group of poultry which is segregated from another group in a manner sufficient to prevent the transmission of H5/H7 LPAI and has been so segregated for a period of at least 21 days may be considered as a separate flock.

We are allowing for groups of meat-type poultry to be considered separate flocks if they have been segregated from other poultry on the farm for 21 days in case H5/H7 LPAI infects one group of poultry on a farm but not another one, and the Official State Agency determines that biological security measures sufficient to prevent the transmission of H5/H7 LPAI in place were adequate to prevent the transmission of H5/H7 LPAI between the two groups. (The H5 and H7 subtypes of LPAI can in some cases have low enough virulence to make such measures practical, although final judgment is up to the Official State Agency.) The 21-day period is consistent with the new OIE guidelines regarding NAI discussed earlier in this document. This provision will allow the number of meat-type poultry that would be depopulated in the case of an H5/H7 LPAI outbreak to be kept to a minimum if possible.

Commercial table-egg layer flock. All table-egg layers of one classification in one barn or house.

Commercial table-egg layer premises. A farm containing contiguous flocks of commercial table-egg layers under common ownership.

The regulations address commercial table-egg layers on the premises level because a single commercial table-egg layer premises typically contains several poultry houses with flocks of different ages.

H5/H7 low pathogenic avian influenza (LPAI). An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index test in 6-week-old chickens less than 1.2 or any infection with influenza A viruses of H5 or H7 subtype for which nucleotide sequencing has not demonstrated the presence of multiple basic amino acids at the cleavage site of the hemagglutinin.

H5/H7 LPAI virus infection (infected). Poultry will be considered to be infected with H5/H7 LPAI for the purposes of part 146 if:

- H5/H7 LPAI virus has been isolated and identified as such from poultry; or
- Viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected in poultry; or
- Antibodies to the H5 or H7 subtype of the AI virus that are not a consequence of vaccination have been detected in poultry. If vaccine is used, methods should be used to distinguish vaccinated birds from birds that are both vaccinated and infected. In the case of isolated serological positive results, H5/H7 LPAI infection may be ruled out on the basis of a thorough epidemiological investigation that does not demonstrate further evidence of H5/H7 LPAI infection.

The definitions of *H5/H7 LPAI* and *H5/H7 LPAI infection* thus provide specific criteria for determining whether a bird is infected with H5/H7 LPAI. With one exception they are consistent with the OIE guidelines regarding NAI that were discussed earlier in this document. The OIE definition of NAI, which includes both HPAI and H5/H7 LPAI, mentions detecting the virus or viral antigens or RNA in products derived from poultry. However, only HPAI virus has been found in products derived from poultry; research indicates that live LPAI virus is not found in

poultry meat or from other products derived from poultry.[6] Therefore, we have not included that part of the OIE definition in our definition of *H5/H7 LPAI infection.*

Official State Agency. The State authority recognized by the Department to cooperate in the administration of the Plan.

Plan. The provisions of the National Poultry Improvement Plan contained in part 146.

Poultry. Domesticated chickens and turkeys that are bred for the primary purpose of producing eggs or meat.

The definition of *poultry* is similar to the definitions of that term in § 145.1 but has been adapted to refer specifically to the types of poultry included in part 146.

Administration

Section 146.2 sets out the conditions under which the provisions of part 146 are administered. These conditions are substantively identical to those under which the Plan's provisions in part 145 for breeding poultry are administered; we believe they will be effective for commercial poultry as well.

Paragraph (a) of this section states that the Department cooperates through a Memorandum of Understanding with Official State Agencies in the administration of the Plan.

Paragraph (b) of this section states that the administrative procedures and decisions of the Official State Agency are subject to review by the Service (*i.e.*, APHIS) and that the Official State Agency shall carry out the administration of the Plan within the State according to the applicable provisions of the Plan and the Memorandum of Understanding.

Paragraph (c)(1) of this section allows an Official State Agency to accept for participation a commercial table-egg layer flock or a commercial meat-type flock (including an affiliated flock) located in another participating State under a mutual understanding and agreement, in writing, between the two Official State Agencies regarding conditions of participation and supervision. If a flock is located in a State that does not participate in the Plan, paragraph (c)(2) provides that such a flock may participate with a participating State under a mutual understanding and agreement, in writing, between the owner of the flock and the Official State Agency regarding conditions of participation and supervision. These provisions ensure that flocks are able to participate in the Plan in States other than the State in which they are located when such participation is desirable to facilitate participation in the Plan. In particular, these provisions allow affiliated flocks that are located in a State other than the one in which the slaughter plant with which they are participating is located to participate in the Plan in the State in which the slaughter plant is located.

The Plan does not provide for slaughter plants to participate in a State other than the State in which they are located, because the sample collection that may take place at slaughter plants must be overseen by the local Official State Agency.

Paragraph (d) of this section allows the Official State Agency of any State to adopt regulations applicable to the administration of the Plan in that State that further define the provisions of the Plan or establish higher standards that are compatible with the Plan.

Paragraph (e) of this section requires that an authorized laboratory of the NPIP follow the laboratory protocols outlined in 9 CFR part 147 when determining the status of a participating flock with respect to an official Plan classification.

Paragraph (f) of this section states that the Official State Agency will be responsible for making the determination to request Federal assistance under 9 CFR part 56 in the event of an outbreak of H5/H7 LPAI. While the provisions of part 146 are APHIS requirements for participation in the Plan, and protocols for sampling, testing, and other surveillance activities must be approved by APHIS, the active and diagnostic surveillance undertaken under part 146 (and described in further detail later in this document) is run by the Official State Agencies in cooperation with poultry producers; the costs of the surveillance are borne by the Official State Agencies as well. The regulations in 9 CFR part 56, by contrast, provide that APHIS may pay indemnity for destroyed birds and eggs and for certain other activities; because indemnity may be paid from Federal funds under these regulations, all actions taken under part 56 are subject to APHIS review and approval. Given this administrative structure, some Official State Agencies may prefer to eradicate outbreaks of H5/H7 LPAI without invoking APHIS assistance when it is feasible for them to do so. With this provision and a similar provision in § 56.2(c), the new H5/H7 LPAI control and indemnity regulations allow for this flexibility. If a State decides that APHIS assistance is necessary, we will support that State to the greatest extent our resources allow.

Participation

Section 146.3 sets out the conditions under which commercial table-egg producers and commercial meat-type chicken and meat-type turkey flocks and slaughter plants may participate in the Plan. These provisions ensure that participants in the Plan comply with Plan requirements.

For commercial meat-type chickens and meat-type turkeys, the control program in part 146 is organized around the participation of slaughter plants. This is because slaughter plants for commercial meat-type chickens and meat-type turkeys are typically owned by the same entity that owns the birds themselves. Thus, when slaughter plants participate in the Plan, the owners of those slaughter plants are able to ensure that the flocks from which meat-type chickens and meat-type turkeys are sent to the slaughter plants meet the testing requirements of the control program. Under the surveillance programs for meat-type chickens and meat-type turkeys, slaughter plants have the option to conduct surveillance either at the slaughter plant or in the flocks that will eventually be sent to the slaughter plant.

Independently owned meat-type flocks may participate in the Plan by becoming affiliated with a slaughter plant that participates in the Plan. Owners of independently owned flocks participating in this manner would have to either allow surveillance to be conducted at the slaughter plant or conduct surveillance themselves in the flocks, depending on how the slaughter plant participates in the Plan.

Since commercial table-egg layers are organized for production purposes at the flock level, the control program provides for their participation at the flock level.

Paragraph (a) of this section states that any table-egg producer and any meat-type chicken or meat-type turkey producer or slaughter plant may participate in the Plan when the producer or plant has demonstrated, to the satisfaction of the Official State Agency, that its facilities, personnel, and practices are adequate for carrying out the relevant special provisions of this part and has signed an agreement with the Official State Agency to comply with the relevant special provisions in subparts B, C, or D of part 146. (We use the phrase ''relevant special provisions'' because some commercial poultry flocks and slaughter plants that may participate in the Plan

[6] See David E. Swayne and Joan R. Beck, ''Experimental Study to Determine if Low-Pathogenicity and High-Pathogenicity Avian Influenza Viruses Can Be Present in Chicken Breast and Thigh Meat Following Intranasal Virus Inoculation,'' *Avian Diseases* 49:81–85, 2005.

are not required to comply with the special provisions due to size requirements. These provisions are discussed in greater detail later in this document.)

Paragraph (b) of this section requires that each participant comply with the Plan throughout the operating year, or until released by the Official State Agency.

Paragraph (c) of this section requires that a participating slaughter plant participate with all of the meat-type chicken and/or meat-type turkey flocks that are processed at the facility, including affiliated flocks. Only if all the flocks participating at a slaughter plant have been produced under Plan-approved biosecurity controls and surveillance programs can the plant be considered to be participating in the Plan, according to the OIE guidelines. It also requires that affiliated flocks participate through a written agreement with a participating slaughter plant that is approved by the Official State Agency. This requirement ensures that the Official State Agency is aware of all the flocks participating with any slaughter plant and has an opportunity to approve the terms of their participation.

Paragraph (d) of this section states that participation in the Plan shall entitle the participant to use the Plan participant emblem. The Plan participant emblem is often used as a marketing tool by participants, so it is important to include a statement in the regulations specifically allowing its use only by Plan participants.

Paragraph (e) of this section states that participation in the NPIP by commercial table-egg layers is limited to 2 years after the effective date of this interim rule unless the majority of the commercial table-egg layer delegates vote to continue the program in accordance with subpart E of 9 CFR part 147 at the National Plan Conference. We have included this provision because, at the July 2004 NPIP meeting in San Francisco, CA, the commercial table-egg layer industry indicated that it wanted to make its participation in the Plan conditional. If that industry decides at a National Plan Conference after the publication of this interim rule that it wants to continue its participation in the NPIP, we will remove paragraph § 146.3(e) from the regulations. If that industry decides that it does not want to continue its participation, we will amend part 146 to remove the special provisions for table-egg layers in subpart B of that part and will remove references to table-egg layers in subpart A. We would then evaluate the available regulatory options to ensure that the voluntary control program could continue to provide an adequate level of surveillance for H5/H7 LPAI.

General Provisions for All Participating Flocks and Slaughter Plants

Section 146.4 sets out general provisions with which all flocks and slaughter plants that participate in the Plan must comply.

Paragraph (a) of this section requires that records that establish the identity of products handled be maintained in a manner satisfactory to the Official State Agency. Adequate recordkeeping will allow any necessary investigations to be conducted more efficiently.

Paragraph (b) of this section states that material that is used to advertise products shall be subject to inspection by the Official State Agency at any time. Paragraph (c) states that advertising must be in accordance with the Plan and applicable rules and regulations of the Official State Agency and the Federal Trade Commission. Paragraph (c) further states that a participant advertising products as being of any official classification may include in their advertising reference to associated or franchised slaughter or production facilities only when such facilities produce products of the same classification. These provisions ensure that Plan participation is not misrepresented for marketing purposes.

Paragraph (d) states that each Plan participant shall be assigned a permanent approval number by APHIS. This number, prefaced by the numerical code of the State, will be the official approval number of the participant and may be used on each certificate, invoice, shipping label, or other document used by the participant in the sale of the participant's products. Each Official State Agency which requires an approval number for out-of-State participants to ship into its State shall honor this number. The assignment of a permanent approval number helps in tracking Plan participation. In addition, the requirement that Official State Agencies honor the permanent approval numbers assigned to participants when administering State import requirements helps simplify the interstate movement process for producers.

Specific Provisions for Participating Flocks

Section 146.5 requires that:

- Participating flocks, and all equipment used in connection with the flocks, be separated from non-participating flocks in a manner acceptable to the Official State Agency; and
- Poultry equipment, and poultry houses and the land in the immediate vicinity thereof, be kept in sanitary condition as recommended in § 147.21(c).

These requirements are similar to requirements in § 145.5(a). The provision requiring that participating flocks be separated from non-participating flocks ensures that participating flocks are not subject to the higher risks of disease presence associated with non-participating flocks. The requirement that poultry equipment, and poultry houses and the land in the immediate vicinity thereof, be kept in sanitary condition will help to mitigate any risks of disease for participating flocks.

Specific Provisions for Participating Slaughter Plants

Section 146.6 sets out specific provisions for participating slaughter plants. These provisions are:

- Only meat-type chicken and meat-type turkey slaughter plants that are under continuous inspection by the Food Safety and Inspection Service of the U.S. Department of Agriculture or under State inspection that the Food Safety Inspection Service has recognized as equivalent to federal inspection may participate in the Plan.
- To participate in the Plan, meat-type chicken and meat-type turkey slaughter plants must follow the relevant special provisions for sample collection and flock monitoring in §§ 146.33(a) and 146.43(a), respectively, unless they are exempted from the special provisions under §§ 146.32(b) or 146.42(b), respectively. The specific provisions require routine monitoring for H5/H7 LPAI of all flocks slaughtered at the slaughter plants.

Testing for meat-type chickens and meat-type turkeys may be performed either at the slaughter plant or at the flock level. As discussed earlier in this document, slaughter plants for commercial meat-type chickens and meat-type turkeys are typically owned by the same entity that owns the birds themselves; thus, when slaughter plants participate in the Plan, the owners of those slaughter plants are able to ensure that the flocks from which meat-type chickens and meat-type turkeys are sent to the slaughter plants meet the testing requirements in §§ 146.33(a) and 146.43(a). Affiliated flocks that are not owned by the slaughter plant with which they participate will agree on how testing is to be conducted in the written agreement between the affiliated flock and the slaughter plant. On the other hand, table-egg layers are tested at the flock level either within 30 days of

disposal or once every 12 months. (The provisions for monitoring of table-egg layer flocks are described in more detail under the heading ''Subpart B—Special Provisions for Commercial Table-Egg Layer Flocks'' later in this document.)

Terminology and Classification

Section 146.7 states that classification terms and illustrative designs associated with those terms may only be used by participants in the Plan and may only be used to describe products that have met all the specific requirements of those classifications. Section 146.8 states that participating slaughter plants shall be designated as ''U.S. H5/H7 Avian Influenza Monitored,'' and all Official State Agencies shall be notified by APHIS of additions, withdrawals, and changes in classification. Section 146.9 sets out the various classifications that may be earned by participating flocks (including affiliated flocks), products produced from those flocks, and States, and provides illustrative designs corresponding to those classifications that may be used by those flocks and States. The organization, language, and designs in these sections are modeled on those contained in similar provisions in §§ 145.8 through 145.10.

The specific testing requirements for each type of poultry in 9 CFR part 146 are discussed in detail later in this document.

Supervision

Section 146.10 authorizes the Official State Agency to designate qualified persons as Authorized Agents to do the sample collecting provided for in § 146.13, which sets out sample collection procedures for the blood test for AI. It also states that the Official State Agency may employ or authorize qualified persons as State Inspectors to perform the selecting and testing of participating flocks and to perform the official inspections necessary to verify compliance with the requirements of the Plan. Under this section, the authorities issued to Authorized Agents and State Inspectors are subject to cancellation by the Official State Agency on the grounds of incompetence or failure to comply with the provisions of the Plan or regulations of the Official State Agency. Such actions shall not be taken until thorough investigation has been made by the Official State Agency and the authorized person has been given notice of the proposed action and the basis thereof and an opportunity to present his or her views. These provisions allow the Official State Agency to designate persons to administer the various provisions of the Plan and to withdraw that designation on the grounds of incompetence or failure to comply with the provisions of the Plan or regulations of the Official State Agency.

Inspections

All slaughter plants and flocks of commercial poultry that participate in the Plan must comply with the inspection requirements of § 146.11. The requirements are:

- Each participating slaughter plant shall be audited at least once annually or a sufficient number of times each year to satisfy the Official State Agency that the participating slaughter plant is in compliance with the provisions of 9 CFR part 146.
- On-site inspections of flocks and premises will be conducted if a State Inspector determines that a breach of testing has occurred for the Plan programs for which the flocks are certified.
- The official H5/H7 LPAI testing records of all participating flocks and slaughter plants shall be examined annually by a State Inspector. Official H5/H7 LPAI testing records shall be maintained for 3 years.

Compliance with these auditing and inspection requirements will serve to establish that the participating flock or slaughter plant is complying with the surveillance requirements of the Plan. These requirements are also important because, as discussed earlier in this document, participating table-egg layer premises with fewer than 75,000 birds and participating slaughter plants that slaughter fewer than 200,000 meat-type chickens per week or 2 million meat-type turkeys per year are exempt from the special provisions, including the active surveillance requirements, for table-egg layer premises, meat-type chicken slaughter plants, and meat-type turkey slaughter plants in subparts B, C, and D, respectively, of part 146. However, participating table-egg layer premises with fewer than 75,000 birds and participating slaughter plants that slaughter fewer than 200,000 meat-type chickens per week or 2 million meat-type turkeys per year must be audited and, if necessary, inspected according to this section in order to participate in the Plan, which will help to ensure that they are complying with the requirements of subpart A of part 146.

Debarment From Participation

Section 146.12 describes the procedures by which participants in the Plan may be debarred from participation. Under this section, participants in the Plan who, after investigation by the Official State Agency or its representative, are notified in writing of their apparent noncompliance with the Plan provisions or regulations of the Official State Agency shall be afforded a reasonable time, as specified by the Official State Agency, within which to demonstrate or achieve compliance. If compliance is not demonstrated or achieved within the specified time, the Official State Agency may debar the participant from further participation in the Plan for such period, or indefinitely, as the Official State Agency may deem appropriate. The debarred participant shall be afforded notice of the bases for the debarment and opportunity to present his or her views with respect to the debarment in accordance with procedures adopted by the Official State Agency. The Official State Agency shall thereupon decide whether the debarment order shall continue in effect. Such decision shall be final unless the debarred participant, within 30 days after the issuance of the debarment order, requests the Administrator of APHIS to determine the eligibility of the debarred participant for participation in the Plan. In such an event, the Administrator shall determine the matter de novo in accordance with the rules of practice in 7 CFR part 50.

Testing

Section 146.13 sets out requirements relating to testing samples for H5/H7 LPAI. Either egg yolk or blood samples may be used for testing.

Paragraph (a) of this section contains requirements for sample collection and preparation. Paragraph (a)(1) requires that egg yolk samples be collected and prepared in accordance with the requirements in § 147.8. Prior to the publication of this interim rule, § 147.8, ''Procedures for preparing egg yolk samples for diagnostic tests,'' had referred only to testing for *Mycoplasma gallisepticum* and *M. synoviae*. We believe the procedures for preparation of egg yolk samples in this section will work equally well for preparing egg yolk samples for testing for H5/H7 LPAI. Accordingly, we are amending the introductory text of § 147.8 to indicate that the procedure may be used for preparing samples for testing for the U.S. H5/H7 AI Monitored Classifications in part 146. We are also amending paragraph (b)(7) of that section to indicate that subsequent testing for H5/H7 LPAI must be performed in accordance with the requirements in paragraph (b) of § 146.13.

Paragraph (a)(2) contains specific requirements for collection and storage of blood samples to be tested for LPAI, including when and how blood should

be collected from birds, when and how the sample should be refrigerated, and what measures should be taken to ensure that the sample can be reliably tested. It also states that blood samples must be drawn by an Authorized Agent or State Inspector, as designated in accordance with § 146.10. The details of these requirements are set out in the rule portion of this document.

Paragraph (b) of § 146.13 sets out the requirements for testing for AI. Under this paragraph, the official tests for AI are the agar gel immunodiffusion (AGID) test and the enzyme-linked immunosorbent assay (ELISA). Both tests can be used on either egg yolk or blood samples. The procedures for testing for avian influenza using AGID and ELISA are set out in § 147.9.

The ELISA, a rapid, sensitive test, is typically used to perform initial testing on samples. Any samples that are found to be positive using ELISA must be confirmed using the AGID test, which is more time-consuming but provides more accurate results. Any samples that are found to be positive by AGID must be further tested and subtyped by Federal Reference Laboratories using the hemagglutination inhibition test, which can provide a definitive diagnosis. Final judgment as to whether a sample is positive for H5/H7 LPAI may be based upon further sampling or culture results. The official determination of a flock as positive for H5/H7 LPAI may be made only by the National Veterinary Services Laboratories in Ames, IA (NVSL).

The AGID and ELISA tests must be conducted using antigens or test kits approved by APHIS. Test kits must be licensed by APHIS and approved by the Official State Agency and must be used in accordance with the recommendations of the producer or manufacturer.

Diagnostic Surveillance Program for H5/H7 LPAI

Section 146.14 provides for the diagnostic surveillance program mentioned above under the heading ''Overall Approach of Voluntary Control and Indemnity Program.'' It requires the Official State Agency to develop a diagnostic surveillance program for H5/H7 LPAI for all poultry (not just commercial poultry) in the State. The exact provisions of the program are at the discretion of the States. APHIS will use the standards below in assessing individual State plans for adequacy, including the specific provisions that the State developed. The standards should be used by States in developing those plans.

The regulations in this section require that AI be a disease reportable to the responsible State authority (State veterinarian, etc.) by all licensed veterinarians. To accomplish this, all laboratories (private, State, and university laboratories) that perform diagnostic procedures on poultry must examine all submitted cases of unexplained respiratory disease, egg production drops, and mortality for AI by both an approved serological test and an approved antigen detection test. Memoranda of understanding or other means must be used to establish testing and reporting criteria (including criteria that provide for reporting H5/H7 LPAI directly to APHIS) and approved testing methods. In addition, States should conduct outreach to poultry producers, especially owners of smaller flocks, regarding the importance of prompt reporting of clinical symptoms consistent with AI.

We believe any plan that adequately fulfills these guidelines will ensure that possible infections of H5/H7 LPAI are promptly reported to responsible State authorities, which can then take any further action that may be required.

The diagnostic surveillance plan performance standards specifically mention that H5/H7 LPAI should be reported directly to APHIS. APHIS is the governmental organization authorized to represent the United States to the OIE; we have included this provision to ensure that only APHIS, rather than any individual State, makes a report of H5/H7 LPAI to the OIE.

Subpart B—Special Provisions for Commercial Table-Egg Layer Flocks

Subpart B (§§ 146.21 through 146.24) of part 146 provides special provisions of the Plan with which participating table-egg layer flocks and States must comply in order to be eligible for the U.S. Avian Influenza Monitored classification.

Section 146.21, ''Definitions,'' sets out a definition of *table-egg layer* that reads: ''A domesticated chicken grown for the primary purpose of producing eggs for human consumption.''

Section 146.22, ''Participation,'' states that participating flocks of table-egg layers must comply both with the applicable general provisions of subpart A of part 146 and the special provisions of subpart B of part 146. However, the section exempts participating table-egg laying premises with fewer than 75,000 birds from the special provisions of subpart B.

Section 146.23, ''Terminology and classification; flocks and products,'' sets out the active surveillance requirements for participating commercial table-egg layer flocks. The active surveillance requirements in § 146.23(a) are intended for table egg-laying premises of 75,000 birds or more. However, producers of smaller table-egg layer flocks may wish to participate in the NPIP to use its seal of approval as a marketing tool. Therefore, smaller table-egg layer flocks are eligible to participate in the NPIP. We believe that diagnostic surveillance in accordance with § 146.14 and inspections in accordance with § 146.11, which are required in the general provisions in subpart A, are adequate to determine whether H5/H7 LPAI is present on such premises.

The indemnity provisions we are establishing in part 56 provide authority to pay indemnity for only 25 percent of costs to any table-egg layer premises that has 75,000 or more birds and that does not participate in the active surveillance described in § 146.23(a). As discussed earlier, the 75,000-bird standard is consistent with the American Egg Board's definition of commercial egg producers and will concentrate resources on testing flocks that comprise a relatively high percentage of the total U.S. population of commercial table-egg layers.

Under paragraph (a) of § 146.23, a table egg-layer flock is eligible for the U.S. H5/H7 Avian Influenza Monitored designation if it meets one of the following requirements:

- It is a table-egg layer flock in which a minimum of 11 birds or egg samples from the same flock have been tested negative for antibodies to the H5/H7 subtypes of avian influenza within 30 days prior to disposal;
- It is a table-egg layer flock in which a minimum of 11 birds or egg samples from the same flock have been tested negative for antibodies to the H5/H7 subtypes of avian influenza within a 12-month period; or
- The flock has an ongoing active and diagnostic surveillance program for H5/H7 LPAI in which the number of birds or egg samples tested is equivalent to the number required by one of the first two options. Such a program must be approved by the Official State Agency and APHIS.

Both of the first two testing requirements are sufficient to establish commercial table-egg layer flocks as free of H5/H7 LPAI at a 95 percent confidence interval for a 25 percent infection rate, and both are consistent with the new OIE guidelines for surveillance of NAI that were discussed earlier in this document.[7] These testing

[7] This plan, as well as the plans for meat-type chickens and meat-type turkeys discussed later in

Continued

requirements are designed to ensure that participating flocks are tested at least once each operating year. Most laying flocks are in lay for almost 2 years and are then disposed of; the first testing requirement ensures that if a participating flock is tested once and then disposed of prior to the passing of a second 12-month period, it will be tested again prior to disposal.

Any ongoing active and diagnostic surveillance program that is approved by the Official State Agency and APHIS would have to test a number of birds or egg samples equivalent to the other two options, but this by itself would not be sufficient to secure approval for the program; the Official State Agency and APHIS would have to agree that the detailed testing plan for the alternate program is sufficient to establish a level of confidence for the detection of AI that is equivalent to that of the other two options. Allowing owners of participating flocks to develop an alternative ongoing active and diagnostic surveillance program of equivalent efficacy will give the flock owners some flexibility.

Section 146.24, ''Terminology and classification; States,'' sets out the requirements for States to be eligible for the U.S. H5/H7 Avian Influenza Monitored State, Layers classification. These requirements are contained in paragraph (a)(1) of § 146.24. The requirements are:

- All table-egg layer flocks in production within the State that are not exempt from the special provisions of subpart B under § 146.22 are classified as U.S. H5/H7 Avian Influenza Monitored under § 146.23(a);
- All egg-type chicken breeding flocks in production within the State are classified as U.S. Avian Influenza Clean under § 145.23(h);
- All persons performing poultry disease diagnostic service within the State must be required to report to the Official State Agency, within 24 hours, the source of all table-egg layer specimens that were deemed positive on an official test for AI, as designated in § 146.13(a);
- All table-egg layer specimens that were deemed positive on an official test for AI, as designated in § 146.13(a) must be sent to an authorized laboratory for subtyping; and
- All table-egg layer flocks within the State found to be infected with H5/H7 LPAI must be quarantined, in accordance with an initial State response and containment plan as described in 9 CFR part 56 and under the supervision of the Official State Agency. APHIS may revoke this classification if:
- There is a discontinuation of any of the above conditions;
- Repeated outbreaks of H5/H7 LPAI occur in table-egg layer flocks; or
- An infection spreads from the originating premises.

APHIS will not revoke a classification until a thorough investigation has been made by APHIS and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator, as described in § 146.12. (The language governing revocation of classification is similar to language used to describe revocation of State classifications in part 145.)

It should be noted that participation in the U.S. H5/H7 Avian Influenza Monitored State, Layers program is not a precondition for State participation in the Plan; rather, it is an optional program that States may pursue if an Official State Agency and the table-egg layer owners in that State wish to use the designation of U.S. H5/H7 Avian Influenza Monitored State, Layers.

Subpart C—Special Provisions for Meat-Type Chicken Slaughter Plants

Subpart C (§§ 146.31 through 146.33) of part 146 provides special provisions of the Plan with which participating meat-type chicken slaughter plants must comply in order to be eligible for the U.S. H5/H7 Avian Influenza Monitored classification. We do not believe it is necessary to provide for a U.S. H5/H7 Avian Influenza Monitored State classification for meat-type chickens at this time. However, we will continue to examine the issue, and if we determine at some point in the future that it is useful to be able to designate States as U.S. H5/H7 Avian Influenza Monitored, we will implement such a classification.

Section 146.31, ''Definitions,'' sets out a definition of *meat-type chicken* that reads: ''A domesticated chicken grown for the primary purpose of producing meat, including but not limited to broilers, roasters, fryers, and cornish'' and a definition of *meat-type chicken slaughter plant* that reads: ''A meat-type chicken slaughter plant that is federally inspected or under State inspection that the Food Safety Inspection Service has recognized as equivalent to federal inspection.'' It also defines *shift* as: ''The working period of a group of employees who are on duty at the same time.''

Section 146.32, ''Participation,'' states that participating meat-type chicken slaughter plants shall comply with applicable general provisions of subpart A of part 146 and the special provisions of subpart C. However, the section exempts participating meat-type chicken slaughter plants that slaughter fewer than 200,000 meat-type chickens in an operating week from the special provisions of subpart C.

Section 146.33, ''Terminology and classification; meat-type chicken slaughter plants,'' sets out the active surveillance requirements for participating commercial meat-type chicken slaughter plants. The active surveillance requirements in § 146.33 are intended for meat-type chicken slaughter plants that slaughter 200,000 or more meat-type chickens in an operating week. However, smaller meat-type chicken slaughter plants are eligible to participate in the NPIP. We believe that diagnostic surveillance in accordance with § 146.14 and inspections in accordance with § 146.11, which are required in the general provisions in subpart A, are adequate to determine whether H5/H7 LPAI is present on such premises.

The indemnity provisions we are establishing in part 56 provide authority to pay indemnity for only 25 percent of costs to owners of meat-type chicken flocks that participate in the Plan through a meat-type chicken slaughter plant that slaughters 200,000 or more meat-type chickens in an operating week and that does not participate in the active surveillance described in § 146.33(a). As discussed earlier, the standard of slaughtering 200,000 or more meat-type chickens in an operating week is consistent with Watt Publishing Companies' listing of commercial meat-type chicken slaughter operations and will concentrate resources on testing meat-type chickens associated with slaughter plants that slaughter a relatively high percentage of the total U.S. population of commercial meat-type chickens.

Under paragraph (a) of § 146.33, a meat-type chicken slaughter plant is eligible for the U.S. H5/H7 Avian Influenza Monitored designation if it meets one of the following requirements:

- A minimum of 11 birds per shift are tested negative for antibodies to H5/H7 LPAI at slaughter. However, with the approval of the Official State Agency, fewer than 11 birds per shift may be tested for any given shift if the total number of birds tested during the

this document, was developed in accordance with the OIE guidelines in the Terrestrial Animal Health Code Chapter 3.8.9, ''Guidelines for surveillance of avian influenza,'' and in accordance with Dr. Victor Beal's reference *Regulatory Statistics* (sixth edition, June 1983). For details of the testing plan, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

operating month is equivalent to testing 11 birds per shift;

• The plant accepts only meat-type chickens from flocks where a minimum of 11 birds have been tested negative for antibodies to H5/H7 LPAI no more than 21 days prior to slaughter; or

• The plant has an ongoing active and diagnostic surveillance program for H5/H7 LPAI in which the number of birds tested is equivalent to the number required by one of the first two options. Such a program must be approved by the Official State Agency and APHIS.

Both of the first two of these testing requirements are sufficient to establish the commercial meat-type chicken slaughter plants as free of H5/H7 LPAI at a 95 percent confidence interval for a 25 percent infection rate, and both are consistent with the new OIE guidelines for surveillance of NAI that were discussed earlier in this document. Allowing participating slaughter plants to choose between them will give the slaughter plants some flexibility. The first option provides for occasional variances below 11 birds per shift because occasional sample collection problems are likely to arise at slaughter plants; as long as the Official State Agency approves, testing more birds during other shifts so that the number of birds tested per month is equivalent to testing 11 birds per shift will provide adequate surveillance.

Any ongoing active and diagnostic surveillance program that is approved by the Official State Agency and APHIS would have to test a number of birds equivalent to the other two options, but this by itself would not be sufficient to secure approval for the program; the Official State Agency and APHIS would have to agree that the detailed testing plan for the alternate program is sufficient to establish a level of confidence for the detection of AI that is equivalent to that of the other two options. Allowing participating slaughter plants to develop an alternative ongoing active and diagnostic surveillance program of equivalent efficacy will give the plants some additional flexibility.

Subpart D—Special Provisions for Meat-Type Turkeys

Subpart D (§§ 146.41 through 146.44) of part 146 provides special provisions of the Plan with which participating producers and States must comply in order to be eligible for the U.S. H5/H7 Avian Influenza Monitored classification.

Section 146.41, ''Definitions,'' sets out a definition of *meat-type turkey* that reads: ''A domesticated turkey grown for the primary purpose of producing meat.'' It also sets out a definition of *meat-type turkey slaughter plant* that reads: ''A meat-type turkey slaughter plant that is federally inspected or under State inspection that the Food Safety Inspection Service has recognized as equivalent to federal inspection.''

Section 146.42, ''Participation,'' states that participating meat-type turkey slaughter plants shall comply with applicable general provisions of subpart A of part 146 and the special provisions of subpart D. However, the section exempts meat-type turkey slaughter plants that slaughter fewer than 2 million meat-type turkeys in a 12-month period from the special provisions of subpart D.

Section 146.43, ''Terminology and classification; meat-type turkey slaughter plants,'' sets out the active surveillance requirements for participating commercial meat-type turkey slaughter plants. The active surveillance requirements in § 146.43 are intended for meat-type turkey slaughter plants that slaughter 2 million or more meat-type turkeys in a 12-month period. However, smaller meat-type turkey slaughter plants are eligible to participate in the NPIP. We believe that diagnostic surveillance in accordance with § 146.14 and inspections in accordance with § 146.11, which are required in the general provisions in subpart A, are adequate to determine whether H5/H7 LPAI is present on such premises.

The indemnity provisions we are establishing in part 56 provide authority to pay indemnity for only 25 percent of costs to owners of meat-type turkey flocks that participate in the Plan through a meat-type turkey slaughter plant that slaughters 2 million or more meat-type turkeys in a 12-month period and that does not participate in the active surveillance described in § 146.33(a). As discussed earlier, the standard of slaughtering 2 million or more meat-type turkeys in a 12-month period is consistent with Watt Publishing Companies' listing of commercial meat-type turkey slaughter operations and will concentrate resources on testing meat-type turkeys associated with slaughter plants that slaughter a relatively high percentage of the total U.S. population of commercial meat-type turkeys.

Under paragraph (a)(1) of § 146.43, a meat-type turkey slaughter plant is eligible for the U.S. H5/H7 Avian Influenza Monitored designation if it meets one of the following requirements:

• It is a meat-type turkey slaughter plant at which a sample of a minimum of 60 birds has tested negative each month for antibodies to type A avian influenza virus. Positive samples shall be further tested by an authorized laboratory using the hemagglutination inhibition test to detect antibodies to the hemagglutinin subtypes H5 and H7 when more than 4 months of age and prior to the onset of production. It is recommended that samples be collected from flocks over 10 weeks of age with respiratory signs such as coughing, sneezing, snicking, sinusitis, or rales; depression; or decreases in food or water intake; or

• The plant has an ongoing active and diagnostic surveillance program for H5/H7 LPAI in which the number of birds tested is equivalent to the number required by the option directly above. Such a program must be approved by the Official State Agency and APHIS.

Under the first testing requirement, turkeys may be tested either on the flock level or at the slaughter plant; existing State LPAI control programs, which may be used as a basis for meeting the requirements of this program, typically require testing in one location or the other. If turkeys are tested at the slaughter plant, it may be more difficult to determine whether they have clinical symptoms that can indicate the presence of AI, although it is still possible. To accommodate testing at both locations, we have indicated that turkeys with clinical symptoms should be tested if possible; however, if no turkeys can be determined to have clinical symptoms, any turkeys may be tested to fulfill the requirement.

The first testing requirement is sufficient to establish the meat-type turkey slaughter plants as free of H5/H7 LPAI at a 95 percent confidence interval for a 25 percent infection rate and is consistent with the new OIE guidelines for surveillance of NAI that were discussed earlier in this document. In addition, the recommendation that turkeys with clinical symptoms, rather than turkeys selected at random, be tested for H5/H7 LPAI could further improve the results of the testing.

Any ongoing active and diagnostic surveillance program that is approved by the Official State Agency and APHIS would have to test a number of birds equivalent to the first requirement, but this by itself would not be sufficient to secure approval for the program; the Official State Agency and APHIS would have to agree that the detailed testing plan for the alternate program is sufficient to establish a level of confidence for the detection of AI that is equivalent to that of the first requirement. Allowing participating slaughter plants to develop an

alternative ongoing active and diagnostic surveillance program of equivalent efficacy will give the plants some flexibility.

Section 146.44, ''Terminology and classification; States,'' sets out the requirements for States to be eligible for the U.S. H5/H7 Avian Influenza Monitored State, Turkeys classification. These requirements are contained in paragraph (a)(1) of § 146.44. The requirements are:

- All meat-type turkey slaughter plants within the State that are not exempt from the special provisions of subpart D under § 146.42 are classified as U.S. H5/H7 Avian Influenza Monitored under § 146.43(a);
- All turkey breeding flocks in production within the State are classified as U.S. H5/H7 Avian Influenza Clean under § 145.43(g);
- All persons performing poultry disease diagnostic service within the State must be required to report to the Official State Agency, within 24 hours, the source of all meat-type turkey specimens that were deemed positive on an official test for AI, as designated in § 146.13(a);
- All meat-type turkey specimens that were deemed positive on an official test for AI, as designated in § 146.13(a), must be sent to an authorized laboratory for subtyping; and
- All meat-type turkey flocks within the State that are found to be infected with the H5/H7 subtypes of avian influenza must be quarantined, in accordance with an initial State response and containment plan as described in part 56 and under the supervision of the Official State Agency.

APHIS may revoke this classification if:

- There is a discontinuation of any of the above conditions;
- Repeated outbreaks of the H5/H7 subtypes of avian influenza occur in meat-type turkey flocks; or
- An infection spreads from the originating premises.

The conditions under which APHIS will revoke a classification are identical to those in § 146.24(b) for revoking the classification of U.S. H5/H7 Avian Influenza Monitored State, Layers.

It should be noted that participation in the U.S. H5/H7 Avian Influenza Monitored State, Turkeys program is not a precondition for State participation in the Plan; rather, it is an optional program that States may pursue if an Official State Agency and the meat-type turkey slaughter plants in that State wish to use the designation of U.S. H5/H7 Avian Influenza Monitored State, Turkeys.

Emergency Response and Compensation Provisions in 9 CFR Part 56

Definitions

Section 56.1 sets out definitions for the terms *Animal and Plant Health Inspection Service (APHIS), classification, commercial meat-type flock, commercial table-egg layer flock, commercial table-egg layer premises, Department, domesticated, H5/H7 low pathogenic avian influenza (LPAI), H5/H7 LPAI virus infection (infected), meat-type chicken, meat-type turkey, Official State Agency, State, table-egg layer,* and *United States* that are identical to the definitions of those terms in part 146.

The definition of *Administrator* in part 56 reads: ''The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service delegated to act in the Administrator's stead.'' The definition of *Administrator* in part 146 does not limit the people who may be delegated to act in the Administrator's stead to employees of APHIS. We have included this limitation in part 56 because the Administrator is authorized to pay compensation under § 56.3, and APHIS must have the final authority to make a decision on whether to pay compensation. The definition of *Plan* in part 56 refers to the provisions of the NPIP in parts 145, 146, and 147.

The definition of *poultry* in part 56 reads: ''Domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat.'' For reasons discussed earlier in this document, this definition includes poultry for which NPIP AI control programs do not exist in parts 145 or 146.

The following definitions are unique to part 56:

Breeding flock. A flock that is composed of stock that has been developed for commercial egg or meat production and is maintained for the principal purpose of producing chicks for the ultimate production of eggs or meat for human consumption. (Section 145.1 includes definitions of *primary breeding flock* and *multiplier breeding flock*; for the purposes of determining eligibility for compensation, it is not necessary to make such a distinction, although whether a bird is a member of a primary or multiplier breeding flock would be taken into account when determining its fair market value through appraisal.)

Cooperating State Agency. Any State authority recognized by the Department to cooperate in the administration of the provisions of this part 56. This may include the State animal health authority or the Official State Agency. We are including this definition because part 56 contains provisions that apply to all poultry, not just the breeding and commercial poultry included in the NPIP programs administered by the Official State Agencies. For poultry not included in those programs, we would cooperate with the State animal health authority to eradicate an H5/H7 LPAI outbreak and pay indemnity under part 56.

Flock plan. A written flock management agreement developed by APHIS and the Official State Agency with input from the flock owner and other affected parties. Under this definition, a flock plan sets out the steps to be taken to eradicate H5/H7 LPAI from a positive flock, or to prevent introduction of H5/H7 LPAI into another flock. A flock plan shall include, but is not necessarily limited to, poultry and poultry product movement and geographically appropriate infected and control/monitoring zones. Control measures in the flock plan should include detailed plans for safe handling of conveyances, containers, and other associated materials that could serve as fomites; disposal of flocks; cleaning and disinfection; downtime; and repopulation. (This definition is adapted from the definition of *herd plan* in the chronic wasting disease control and indemnity regulations in 9 CFR part 55.)

H5/H7 LPAI exposed. At risk of developing H5/H7 LPAI because of association with birds or poultry infected with H5/H7 LPAI, excrement from birds or poultry infected with H5/H7 LPAI, or other material touched by birds or poultry infected with H5/H7 LPAI, or because there is reason to believe that association has occurred with H5/H7 LPAI or vectors of H5/H7 LPAI, as determined by the Cooperating State Agency and confirmed by APHIS.

We are requiring that the determination that poultry are H5/H7 LPAI exposed be made by the Cooperating State Agency in order to be consistent with the other provisions of the NPIP, including the new provisions for commercial poultry, which require State Inspectors and Authorized Agents designated by the Official State Agency to collect and test samples. (As noted earlier, eradication efforts for poultry not included in the NPIP could be conducted in cooperation with the State animal health authority.) However, since the final determination on whether to pay indemnity for birds destroyed due to H5/H7 LPAI will be

made by the APHIS Administrator, we are requiring that this determination be confirmed by APHIS.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity for the destruction of poultry or eggs due to H5/H7 LPAI.

Official appraiser (APHIS official appraiser, State official appraiser). A person authorized by APHIS to appraise poultry for the purposes of this part. A State official appraiser is selected by a State and authorized by APHIS.

Secretary. The Secretary of the United States Department of Agriculture, or any officer or employee of the Department delegated to act in the Secretary's stead.

Cooperation With States

Section 56.2 states that the Administrator of APHIS has been delegated the authority to cooperate with Cooperating State Agencies in the eradication of LPAI. The section provides that cooperation may include, but is not necessarily limited to, the following activities:

- Payment to Cooperating State Agencies for surveillance and monitoring associated with poultry that have been infected with or exposed to H5/H7 LPAI;
- Transfer of vaccine for H5/H7 LPAI to Cooperating State Agencies, if provided for in the initial State response and containment plan developed by the Official State Agency and approved by APHIS under § 56.10; and
- Payment for vaccine administration by Cooperating State Agencies, if provided for in the initial State response and containment plan.

APHIS is authorized to transfer vaccine for disease control purposes, but current regulations do not provide for payment of compensation to Cooperating State Agencies for their use of vaccine. However, any costs Cooperating State Agencies incur in administering the transferred vaccine, such as labor on the part of Cooperating State Agency employees to give the vaccine to poultry, will be eligible for payment by APHIS.

Paragraph (b) of this section sets out conditions for payment and vaccine transfer under § 56.2. Paragraph (b)(1) requires that any payment made to Cooperating State Agencies for surveillance, monitoring, and vaccine administration after detection of H5/H7 LPAI be made through a cooperative agreement between the Cooperating State Agency and APHIS. It further states that the payment for which the Cooperating State Agency is eligible will be determined in the cooperative agreement.

Paragraph (b)(1)(i) provides that, for any State that participates in the diagnostic surveillance program for H5/H7 LPAI in part 146 and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS, the cooperative agreement will provide that the Cooperating State Agency is eligible for payment of 100 percent of the costs of surveillance and monitoring and 100 percent of the costs of vaccine administration, as determined in the cooperative agreement. Paragraph (b)(1)(ii) provides that, for States that do not meet those criteria, the cooperative agreement will provide that the Cooperating State Agency is eligible for payment of 25 percent of the costs of surveillance and monitoring and 25 percent of the costs of vaccine administration, as determined in the cooperative agreement.

The reasons why we believe 100 percent payment for eligible costs is appropriate for participating States are discussed in detail earlier in this document under the heading ''Differences Between This Approach and the Approach Used in Virginia and Texas in 2002.'' We are providing 25 percent of eligible costs for nonparticipating States in order to provide an additional incentive for States to participate while continuing to provide some relief for costs associated with outbreaks of H5/H7 LPAI.

Paragraph (b)(2) provides that transfer of vaccine must be accomplished through a cooperative agreement between the Cooperating State Agency and APHIS.

Paragraph (c) of this section states that States will be responsible for making the determination to request Federal assistance in the event of an outbreak of H5/H7 LPAI. This provision is also included in § 146.2, and is discussed in more detail under the heading ''Administration'' earlier in this document; we have included it in § 56.2 to further indicate that it is a State decision to invoke the regulations in part 56.

Payment of Indemnity

Section 56.3 sets out the costs for which indemnity may be paid under the indemnity program for H5/H7 LPAI and the percentage of those costs that are eligible for indemnity.

Paragraph (a) of this section sets out the activities for which the Administrator may pay indemnity. These are:

- Destruction and disposal of poultry that were infected with or exposed to H5/H7 LPAI;
- Destruction of any eggs destroyed during testing of poultry for H5/H7 LPAI during an outbreak of H5/H7 LPAI; and
- Cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry that were infected with or exposed to H5/H7 LPAI or, in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, the destruction and disposal of the materials.

Paragraph (b) of § 56.3 sets out the percentage of these costs for which the Administrator is authorized to pay indemnity for participants and nonparticipants in the voluntary AI control programs in 9 CFR parts 145 and 146. Under this paragraph, the Administrator is authorized to pay indemnity for 100 percent of eligible costs related to infected or exposed poultry, unless the poultry meet any of the conditions listed below. If the poultry meet any of those conditions, the Administrator is authorized to pay indemnity for only 25 percent of eligible costs:

- The poultry are breeding table egg-layers, meat-type chickens, or meat-type turkeys from a flock that participates in at least one disease control program in the Plan for breeding poultry flocks in 9 CFR part 145 but does not participate in the Plan AI control program for table egg-layer, meat-type chicken, or meat-type turkey breeding flocks;
- The poultry are commercial table-egg layers from a premises that has 75,000 or more birds and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program for commercial table-egg layer flocks described earlier in this document;
- The poultry are commercial meat-type chickens that are associated with a slaughter plant that slaughters 200,000 or more meat-type chickens per operating week and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program for commercial meat-type chicken slaughter plants described earlier in this document;
- The poultry are commercial meat-type turkeys that are associated with a slaughter plant that slaughters 2 million or more meat-type turkeys in a 12-month period and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program for commercial meat-type turkey slaughter plants described earlier in this document; or
- The infected or exposed poultry are associated with a flock or slaughter plant that participates in the relevant Plan AI control program, but the State

in which they participate does not participate in the NPIP diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14, or does not have an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS, as described in § 56.10. However, if the poultry participate in the Plan with another State that does participate in the National Poultry Improvement Plan diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14, and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS, they would be eligible for 100 percent indemnity.

The reasons why we believe 100 percent indemnity for eligible costs is appropriate for most poultry are discussed in detail earlier in this document under the heading ''Differences Between This Approach and the Approach Used in Virginia and Texas in 2002.'' We are providing the authority to pay 25 percent indemnity for eligible costs for nonparticipants in order to provide an additional incentive for owners of commercial enterprises and owners of breeding poultry that participate in the Plan to participate in the AI surveillance programs, while continuing to provide some relief for costs associated with outbreaks of H5/H7 LPAI.

Under paragraph (b) of § 56.3, table-egg layer flocks and meat-type chicken and meat-type turkey slaughter plants that are smaller than the size standards in part 146 are always eligible to receive indemnity for 100 percent of the costs listed in paragraph (a). We are not providing owners of those smaller flocks and slaughter plants with an incentive to participate in an active surveillance program because these programs described in part 146 are designed for large commercial flocks and slaughter plants. (Owners of smaller flocks and slaughter plants may participate in the Plan without participating in the active surveillance programs and thus receive the Plan seal of approval to use as a marketing tool.)

As discussed earlier in this document, many States conduct AI surveillance programs, some of which are designed for table-egg layer flocks and meat-type chicken and meat-type turkey slaughter plants that are smaller than the size standards in paragraph (b), as well as for meat-type poultry that do not have an association with a slaughter plant and for other types of poultry. These programs may have testing requirements that are equivalent to those in the active surveillance programs in part 146 if those testing requirements are sufficient to detect a 25 percent or greater prevalence of H5/H7 LPAI at a confidence interval of 95 percent or greater.

Although we have provided in this interim rule that all poultry associated with table-egg layer flocks and meat-type chicken and meat-type turkey slaughter plants that are smaller than these size standards and from flocks of other types of poultry will be eligible to receive 100 percent indemnity, it may be appropriate to provide an indemnity incentive for owners of smaller poultry flocks to participate in a State program that has testing requirements equivalent to those in part 146, similar to the incentive we provide for larger flocks to participate in the programs in part 146. Such an incentive could encourage owners of smaller flocks to participate in the State AI testing programs designed for those flocks. For example, we could add provisions to the regulations specifying that if infected or exposed poultry are eligible to participate in an active surveillance program whose testing requirements have been recognized by APHIS as equivalent to the testing requirements for the H5/H7 LPAI surveillance programs in part 146, but do not participate in that program, their owner would be eligible to receive indemnity for less than 100 percent of costs related to an H5/H7 LPAI outbreak. We invite public comment on:

- Whether we should recognize State AI surveillance programs for smaller poultry flocks or other types of poultry as equivalent to the NPIP surveillance programs in part 146;
- If so, which programs we should recognize; and
- What changes in the regulations may be appropriate to provide poultry owners with an incentive to participate in State AI surveillance programs.

Paragraph (c) of this section indicates that if the recipient of indemnity for any of the activities listed in paragraph (a) also receives payment for any of those activities from a State or from other sources, the indemnity provided under 9 CFR part 56 will be reduced by the total amount of payment received from the State or other sources. This provision ensures that recipients of indemnity will not receive payment twice for the same loss.

Determination of Indemnity Amounts

Section 56.4 sets out requirements related to the determination of the amount of indemnity that may be paid with regard to each category of cost for which indemnity may be paid under § 56.3. These include provisions for the appraisal and destruction of poultry eligible for indemnity; provisions for the appraisal of eggs destroyed during testing for H5/H7 LPAI during an outbreak of H5/H7 LPAI; and provisions for providing evidence of actual costs for cleaning and disinfection and undertaking cleaning and disinfection under a compliance agreement, or, in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, indemnity for the materials to be destroyed and disposed.

Paragraph (a)(1) of this section states that indemnity for poultry infected with or exposed to H5/H7 LPAI and subject to destruction will be based on the fair market value of the poultry, as determined by an appraisal. Poultry infected with or exposed to H5/H7 LPAI that are removed by APHIS or a Cooperating State Agency from a flock for testing will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. The use of multiple appraisers will provide maximum assurance that an appropriate fair market value will be determined for the poultry subject to destruction, while the provision that allows appraisers to act singly upon agreement of APHIS and State authorities will ensure that an adequate number of appraisers are available for fast-moving outbreaks.

Appraisals for commercial poultry differ somewhat from appraisals for other livestock. In a typical livestock appraisal, an animal's value is determined by finding sale prices for comparable animals. This method is unworkable for commercial poultry, because the poultry are not sold at market but rather are owned by the same entity throughout the production process; the first price data available for poultry are often wholesale prices for carcasses or eggs. Therefore, APHIS economists have developed means to determine the fair market value of commercial poultry at various stages of production by examining the costs involved in the production of the poultry and the wholesale prices of the resulting carcasses or eggs. These means have been used to determine compensation in poultry disease eradication efforts such as the effort to eradicate H5/H7 LPAI in Virginia and Texas in 2002.[8] If we use these means

[8] A more detailed description of the process we would use to appraise commercial poultry can be found in the economic analysis prepared for this interim rule. For information on how to obtain this analysis, see the section headed ''Executive Order 12866 and Regulatory Flexibility Act'' later in this document.

to value commercial poultry in an H5/H7 LPAI outbreak, we would also require State official appraisers to use them whenever applicable.

APHIS would appraise poultry outside of this framework if circumstances warrant. For example, breeding poultry with exceptional genetics might need to be appraised independently in order to arrive at their fair market value. For poultry sold in the live bird marketing system, market price data might be available to provide an appraisal.

Paragraph (a)(1) further requires that appraisals of poultry must be reported on forms furnished by APHIS and signed by the appraisers and that the appraisals must be signed by the owners of the poultry to indicate agreement with the appraisal amount. Appraisals of poultry must be signed by the owners of the poultry prior to the destruction of the poultry, unless the owners, APHIS, and the Cooperating State Agency agree that the poultry may be destroyed immediately. Reports of appraisals must show the number of birds and the value per head.

Paragraph (a)(2) of this section states that indemnity for disposal of poultry infected with or exposed to H5/H7 LPAI will be based on receipts or other documentation maintained by the claimant verifying expenses for disposal activities authorized by part 56. Under this paragraph, any disposal of poultry infected with or exposed to H5/H7 LPAI for which compensation is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for compensation for disposal to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10. The compliance agreement and the APHIS review will help to ensure that APHIS does not pay disposal costs in excess of what is necessary; the fact that the disposal requirements are based on the guidelines in § 56.5 and the initial State response and containment plan means that they will ensure that cleaning and disinfection is conducted properly while taking into account local conditions. If disposal is performed by the Cooperating State Agency, paragraph (a)(2) provides that APHIS will indemnify the Cooperating State Agency for disposal under a cooperative agreement.

Paragraph (a)(3) requires that the destruction and disposal of the indemnified poultry be conducted in accordance with the initial State response and containment plan for H5/H7 LPAI, as described in § 56.10. As discussed earlier in this document, the initial State response and containment plan is a requirement for any State that wishes to participate in a cooperative agreement with APHIS and be eligible to receive 100 percent of its costs and ensure that poultry owners in that State are eligible to receive 100 percent indemnification.

Paragraph (b) of this section states that indemnity for eggs destroyed during an outbreak for testing for H5/H7 LPAI will be based on the fair market value of the eggs, as determined by an appraisal. Eggs destroyed for testing for H5/H7 LPAI will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. Appraisals of eggs must be reported on forms furnished by APHIS and signed by the appraisers and must be signed by the owners of the eggs to indicate agreement with the appraisal amount. Appraisals of eggs must be signed by the owners of the eggs prior to the destruction of the poultry, unless the owners, APHIS, and the Cooperating State Agency agree that the eggs may be destroyed immediately. Reports of appraisals must show the number of eggs and the value per egg. It is not necessary to include disposal requirements for eggs destroyed during testing because testing will in all cases be conducted in sanitary conditions.

Paragraph (c)(1) of this section states that indemnity for cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry that are infected with or exposed to H5/H7 LPAI will be based on receipts or other documentation maintained by the claimant verifying expenditures for cleaning and disinfection activities authorized by part 56. Any cleaning and disinfection of premises, conveyances, and materials for which indemnity is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for indemnity for cleaning and disinfection to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10. The compliance agreement and the APHIS review will help to ensure that APHIS does not pay cleaning and disinfection costs in excess of what is necessary; the fact that the cleaning and disinfection requirements are based on the provisions of § 56.5 and the initial State response and containment plan means that they will ensure that cleaning and disinfection is conducted properly while taking into account local conditions.

Paragraph (c)(2) of this section states that in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, indemnity for the destruction of the materials will be based on the fair market value of those materials, as determined by an appraisal. Materials will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. Indemnity for disposal of the materials will be based on receipts or other documentation maintained by the claimant verifying expenditures for disposal activities authorized by part 56. Any disposal of materials for which indemnity is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for compensation for disposal to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10.

Destruction and Disposal of Poultry and Cleaning and Disinfection of Premises, Conveyances, and Materials

Section 56.5 sets out requirements for the destruction and disposal of poultry, the cleaning and disinfection of premises, conveyances, and materials, and the destruction and disposal of materials.

Paragraph (a) of § 56.5 states that poultry that are infected with or exposed to H5/H7 LPAI may be required to be destroyed at the discretion of the Cooperating State Agency and APHIS and in accordance with the initial State response and containment plan. The Cooperating State Agency and APHIS will select a method to use for the destruction of such poultry based on the following factors:

- The species, size, and number of the poultry to be destroyed;
- The environment in which the poultry are maintained;
- The risk to human health or safety of the method used;
- Whether the method requires specialized equipment or training;
- The risk that the method poses of spreading the H5/H7 LPAI virus;
- Any hazard the method could pose to the environment;
- The degree of bird control and restraint required to administer the destruction method; and

• The speed with which destruction must be conducted.

This will ensure that the Cooperating State Agency and APHIS take into consideration all relevant issues when selecting an appropriate method for destruction of poultry.

Paragraph (b) of § 56.5 states that carcasses of poultry that have died from H5/H7 LPAI infection or poultry that have been humanely slaughtered to fulfill depopulation requirements must be disposed of promptly and efficiently in accordance with the initial State response and containment plan to prevent the spread of H5/H7 LPAI infection. Disposal methods will be selected by the Cooperating State Agency and APHIS and may include one or more of the following: Burial, incineration, composting, or rendering. Paragraph (b) additionally states that, regardless of the disposal method used, strict biosecurity procedures must be implemented and enforced for all personnel and vehicular movement into and out of the area in accordance with the initial State response and containment plan to prevent dissemination of the H5/H7 LPAI virus.

Paragraph (c) of § 56.5 addresses controlled marketing. Under § 56.5(c), at the discretion of the Cooperating State Agency and APHIS, poultry that are infected with or exposed to H5/H7 LPAI may be allowed to move for controlled marketing in accordance with the initial State response and containment plan and in accordance with the following requirements:

• Poultry infected with or exposed to H5/H7 LPAI must not be transported to a market for controlled marketing until 21 days after the acute phase of the infection has concluded, as determined by the Cooperating State Agency in accordance with the initial State response and containment plan in § 56.10; and

• Within 7 days prior to slaughter, each flock to be moved for controlled marketing must be tested for H5/H7 LPAI, using a test approved by the Cooperating State Agency, and found to be free of the virus. Although poultry are likely to be free of the virus 21 days after the acute phase of the infection has been concluded, they are not certain to be free of it; the additional test helps reduce the risk that controlled marketing could spread H5/H7 LPAI.

This paragraph allows controlled marketing for both flocks that have been infected with and flocks that have been exposed to H5/H7 LPAI. As noted previously in this document, LPAI infection in poultry is typically not fatal; if a flock is infected with LPAI, the infection will eventually cease, and the flock will then test negative for LPAI. In addition, LPAI virus is not found in poultry products, meaning that products from an infected flock can be safely marketed. If a State wishes to allow controlled marketing of infected flocks, the conditions specified in that document under which controlled marketing would be allowed must be approved by APHIS; in addition, any controlled marketing must take place under the conditions described above, which are consistent with the OIE guidelines for NAI that were discussed earlier in this document. Therefore, we believe that controlled marketing of an infected flock and its products under the conditions described above and in accordance with the initial State response and containment plan would not pose a risk of spreading H5/H7 LPAI to uninfected poultry.

APHIS will not pay claims for indemnity for infected or exposed poultry that are allowed to move for controlled marketing; the regulations in part 56 only authorize payment for poultry infected with or exposed to H5/H7 LPAI that are destroyed and disposed according to the regulations in part 56, which means that poultry moved for slaughter and sale are ineligible for indemnity.

Paragraph (d) of § 56.5 sets out guidelines for performing cleaning and disinfection of premises, conveyances, and materials. Premises, conveyances, and materials that came into contact with poultry infected with or exposed to H5/H7 LPAI must be cleaned and disinfected, except that materials for which the cost of cleaning and disinfection would exceed the value of the materials or for which cleaning and disinfection would be impracticable for any reason may be destroyed and disposed. All cleaning and disinfection of premises, conveyances, and materials must be performed in accordance with the initial State response and containment plan. The guidelines in paragraph § 56.5(d) will help States develop cleaning and disinfection plans. The guidelines address preparation for cleaning and disinfection, conducting the cleaning and disinfection, and activities to be performed after cleaning and disinfection. Within the cleaning and disinfection guidelines, four areas are specifically addressed:

• Disposal of manure, debris, and feed;

• Cleaning of premises and materials;

• Disinfection of premises and materials; and

• Cleaning and disinfection of conveyances.

The specific, detailed provisions of these guidelines can be found in the rule portion of this document. Paragraph (d) also indicates that, in the case of materials for which the cost of cleaning and disinfection would exceed the value of the materials or for which cleaning and disinfection would be impracticable for any reason, the destruction and disposal of the materials must be conducted in accordance with the initial State response and containment plan described in § 56.10.

Presentation of Claims for Indemnity

Section 56.6 addresses claims for the following costs, which will be paid by APHIS should they be approved:

• The value of poultry to be destroyed due to infection with H5/H7 LPAI;

• The value of eggs to be destroyed during testing for H5/H7 LPAI; and

• The cost of cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry infected with or exposed to H5/H7 LPAI; or, in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, the cost of destruction and disposal for the materials.

The section requires that claims for these costs must be documented on a form furnished by APHIS and presented to an APHIS employee or the State representative authorized to accept the claims.

Mortgage Against Poultry or Eggs

Section 56.7 requires that when poultry or eggs have been destroyed under part 56, any claim for indemnity be presented on forms furnished by APHIS. The owner of the poultry or eggs must certify on the forms that the poultry or eggs covered are, or are not, subject to any mortgage as defined in § 56.1. If the owner states there is a mortgage, the owner and each person holding a mortgage on the poultry or eggs must sign, consenting to the payment of indemnity to the person specified on the form.

Conditions for Payment

As mentioned earlier in this document under the heading ''Differences Between This Approach and the Approach Used in Virginia and Texas in 2002,'' this indemnity program contains provisions specifically ensuring that contract growers, or anyone else providing services related to the growing and care of the birds, receive payment for their services when indemnity is provided for birds destroyed under their care. Just as in the Virginia and Texas outbreaks, we

believe it is important to ensure that all participants in the poultry industry with a stake in the continued health of the U.S. poultry stock are compensated for costs associated with the eradication of outbreaks of H5/H7 LPAI.

Therefore, § 56.8 provides that when poultry or eggs have been destroyed pursuant to part 56, the Administrator may pay claims to any party with which the owner of the poultry or eggs has entered into a contract for the growing or care of the poultry or eggs. Section 56.8 also sets out a formula for calculating the proportion of indemnity paid to the owner of poultry or eggs destroyed under part 56 that may be paid to the contract grower:

- The value of the contract the owner of the poultry or eggs entered into with another party for the growing or care of the poultry or eggs in dollars is divided by the duration of the contract as it was signed prior to the H5/H7 LPAI outbreak in days.
- This figure is multiplied by the time in days between the date the other party began to provide services relating to the destroyed poultry or eggs under the contract and the date the birds were destroyed due to H5/H7 LPAI.

If compensation is paid to a grower under this section, the owner of the poultry or eggs will be eligible to receive the difference between the indemnity paid to the growers and the total amount of indemnity that may be paid for the poultry or eggs. For example, suppose a meat-type chicken flock belonging to an owner who participated in the Plan is destroyed and disposed of under this part, and the flock was appraised at $1,000. The flock was being grown by a contractor with a $500 contract; half of the contract's duration had elapsed. The contractor would be eligible to receive $250 in indemnity, and the owner would be eligible to receive the difference, $750.

For losses resulting from the H5/H7 LPAI outbreak in Virginia and Texas, the Administrator was authorized to pay 100 percent of the costs contract growers incurred and up to 75 percent of the total costs poultry owners incurred related to destruction and disposal of poultry affected by H5/H7 LPAI. This section does not structure indemnity payments in this manner. Under paragraph (b) of § 56.8, the Administrator is authorized to pay contract growers and other parties with contractual claims 100 percent of eligible costs related to the destruction and disposal of poultry infected with or exposed to H5/H7 LPAI, and 100 percent of eligible costs related to the destruction of eggs during testing of commercial poultry for H5/H7 LPAI during outbreaks, unless the producer of the poultry or eggs is a commercial poultry producer that does not participate in the LPAI control program or a breeding poultry producer that participates in the Plan but not in the AI control program. In the latter case, the Administrator is authorized to pay contract growers and other parties with contractual claims 25 percent of eligible costs.

Paragraph (c) of this section explicitly states that if indemnity is paid to a contractor under § 56.8, the owner of the poultry or eggs will be eligible to receive the difference between the indemnity paid to the growers and the total amount of indemnity that may be paid for the poultry or eggs.

Paragraph (d) of this section provides that in the event that determination of indemnity to a party with which the owner of destroyed poultry or eggs has entered into a contract for the growing or care of the poultry or eggs as described in paragraph (a) is determined to be impractical or inappropriate, APHIS may use any other method that the Administrator deems appropriate to make that determination. This provision provides APHIS with flexibility in the event that the formula described previously does not result in an appropriate distribution of indemnity.

Claims Not Allowed

Section 56.9 states that the Department will not allow the following claims:

- Claims arising out of the destruction of poultry unless the poultry have been appraised as prescribed in § 56.4 and the owners have signed the appraisal form indicating agreement with the appraisal amount as required by § 56.4(a)(1).
- Claims arising out of the destruction of poultry unless the owners have signed a written agreement with APHIS in which they agree that if they maintain poultry in the future on the premises used for poultry for which indemnity is paid, they will maintain the poultry in accordance with a plan set forth by the Cooperating State Agency and will not introduce poultry onto the premises until after the date specified by the Cooperating State Agency. Persons who do not maintain their poultry and premises in accordance with this written agreement will not be eligible to receive indemnity under this part.
- Claims arising out of the destruction of poultry unless the poultry have been moved or handled by the owner in accordance with an agreement for the control and eradication of H5/H7 LPAI and in accordance with part 56, for any progeny of any poultry unless the poultry have been moved or handled by the owner in accordance with an agreement for the control and eradication of H5/H7 LPAI and in accordance with part 56, or for any poultry that become or have become infected with or exposed to H5/H7 LPAI because of actions not in accordance with an agreement for the control and eradication of H5/H7 LPAI or a violation of part 56.

These provisions are consistent with the relevant provisions of the Animal Health Protection Act, which are found at 7 U.S.C. 8306(d)(3).

Initial State Response and Containment Plan

Section 56.10 states that, in order for poultry owners within a State to be eligible for 100 percent indemnity under paragraph § 56.3(b)(1), the State in which the poultry owners participate in the NPIP must have in place an initial State response and containment plan that has been approved by APHIS. The plan must be developed by the Official State Agency and administered by the Cooperating State Agency of the relevant State. Section 56.10 also sets out the elements that this plan must include:

- Provisions for a standing emergency disease management committee, regular meetings, and exercises, including coordination with any tribal governments that may be affected;
- A minimum biosecurity plan followed by all poultry producers;
- Provisions for adequate diagnostic resources;
- Detailed, specific procedures for initial handling and investigation of suspected cases of H5/H7 LPAI;
- Detailed, specific procedures for reporting test results to APHIS. These procedures must be developed after appropriate consultation with poultry producers in the State and must provide for the reporting only of confirmed cases of H5/H7 LPAI in accordance with 9 CFR 146.13;
- Detailed, strict quarantine measures for presumptive and confirmed index cases;
- Provisions for developing flock plans for infected and exposed flocks;
- Detailed plans for disposal of infected flocks, including preexisting agreements with regulatory agencies and detailed plans for carcass disposal, disposal sites, and resources for conducting disposal, and detailed plans for disposal of materials that come into contact with poultry infected with or exposed to H5/H7 LPAI;

• Detailed plans for cleaning and disinfection of premises, repopulation, and monitoring after repopulation;
• Provisions for appropriate control/monitoring zones, contact surveys, and movement restrictions;
• Provisions for monitoring activities in control zones;
• If vaccination is considered as an option, a written plan for use in place with proper controls and provisions for APHIS approval of any use of vaccine;
• Plans for H5/H7 LPAI-negative flocks that provide for quarantine, testing, and controlled marketing; and
• Public awareness and education programs regarding avian influenza.

We believe that any State with a plan that includes all these elements is fully capable of determining whether H5/H7 LPAI is present in flocks that participate in the Plan within that State and taking action to respond to any outbreaks of H5/H7 LPAI that may occur. A model initial State response and containment plan is available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). APHIS plans to distribute the model initial State response and containment plan as a guide to help States develop initial State response and containment plans for approval by APHIS; the model plan sets out what would typically be considered to be provisions that would satisfy the requirements for an initial State response and containment plan in this interim rule. We invite public comment on the model initial State response and containment plan.

Section 56.10 also provides that if a State has U.S. Avian Influenza Monitored status under § 146.24(a) or § 146.44(a), it will lose that status during any outbreak of H5/H7 LPAI and for 90 days after the destruction and disposal of all infected or exposed birds and cleaning and disinfection of all affected premises are completed. If a State completes the actions required by the initial State response and containment plan, 90 days will provide adequate time to complete the post-outbreak surveillance necessary to establish that the State is free of H5/H7 LPAI. As discussed earlier in this document in the context of the special provisions for table-egg layers and meat-type turkeys, APHIS reserves the right to remove U.S. Avian Influenza Monitored status from a State entirely if there is a discontinuation of any of the conditions required to attain that status, if repeated outbreaks of the H5/H7 subtypes of avian influenza occur in table-egg layer or meat-type turkey flocks, or if an infection spreads from the originating premises in a State.

Miscellaneous Changes

The new part 146 is titled ''National Poultry Improvement Plan for Commercial Poultry.'' The title of part 145 has been ''National Poultry Improvement Plan.'' Prior to the publication of this interim rule, the only poultry included in the Plan (and, thus, in part 145) had been breeding poultry. To ensure clarity, we are amending the title of part 145 to read ''National Poultry Improvement Plan for Breeding Poultry.''

Section 147.45 of the auxiliary provisions of the NPIP provides that each cooperating State is entitled to one official delegate at Plan conferences for each of the programs prescribed in subparts B, C, D, E, and F of 9 CFR part 145 in which it has one or more participants at the time of the Plan conference. We are amending this section to accommodate the addition of the new programs in 9 CFR part 146 by stating that each cooperating State is also entitled to one official delegate for each of the programs prescribed in subparts B, C, and D of 9 CFR part 146. We are also amending § 147.46(a) by providing for the establishment of committees to give preliminary consideration to the proposed changes falling in their respective fields for egg-type commercial chickens, meat-type commercial chickens, and meat-type commercial turkeys.

Immediate Action

We believe that it is necessary to establish a voluntary LPAI control program and an LPAI indemnity program in an interim rule in order to proactively address the increasing threat of mutation to HPAI posed by outbreaks of H5/H7 LPAI, including the H7N2 LPAI virus present in New York and New Jersey, and thus mitigate the potential poultry and human health threat of an H5/H7 HPAI virus. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an initial regulatory flexibility analysis that examines the potential economic effects of this interim rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Under the interim rule, the U.S. Department of Agriculture (USDA) will compensate both owners and growers for losses arising from depopulation of birds affected with H5/H7 LPAI.

In general, benefits of depopulating birds affected with H5/H7 LPAI come from containing the spread of the disease. Benefits of containing disease spread fall into three general categories: (1) Avoided owner and grower losses from disease morbidity and mortality; (2) avoided consumer price increases resulting from decreased supplies; and (3) avoided trade bans (State, regional, or national) that result when trading partners close markets during or after a disease outbreak.

The groups who enjoy the primary benefit of a disease eradication campaign are consumers and those owners/growers whose flocks have remained healthy. The group who bears the primary burden of the eradication effort is the owners and/or growers whose flocks are depopulated. In addition to the value of lost production, the owners/growers of affected birds may also bear costs of cleanup, disinfection, transportation, forgone income, and other financial hardships.

The benefits of a voluntary avian influenza control program are derived from avoiding costs incurred when an outbreak occurs. Evidence of types of benefits gained from control of avian influenza is found in the USDA-Economic Research Service study of a 1983–84 outbreak (summarized in the full economic analysis). Also, the 2002 outbreak in Virginia provides evidence of the costs incurred due to an avian influenza incident. This evidence shows

that the costs of an avian influenza outbreak can be substantial.

To the extent that the interim rule contributes to the elimination of AI, all affected entities should benefit over the long term. The program that APHIS is establishing is a voluntary program; producers are not required to participate. The benefits of this rule, from avoiding LPAI outbreaks and losses should an outbreak occur, exceed the cost to producers and States of participating in disease prevention efforts. Under the rule, producers would be required to keep flocks and facilities clean, slaughter plants would be required to conduct sampling, and States would be required to conduct annual inspections and develop response and containment plans. As the Federal part of the control program, APHIS would provide full indemnity for specific costs to participating producers and States should an outbreak occur. Related to, but separate from, this LPAI rule, APHIS received about $14 million in fiscal year 2006 appropriations for LPAI efforts, including almost $2 million in NPIP cooperative agreements to 24 States for ongoing surveillance.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

9 CFR Part 56

Animal diseases, Indemnity payments, Low pathogenic avian influenza, Poultry.

9 CFR Parts 145, 146, and 147

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR chapter I as follows:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

■ 1. The authority citation for 9 CFR part 53 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 53.4 [Amended]

■ 2. Section 53.4 is amended as follows:

■ a. In paragraph (a), by removing the third sentence.

■ b. In paragraph (a), in the fourth sentence, by removing the words ''or poultry.''

■ c. By removing and reserving paragraph (b).

§ 53.8 [Amended]

■ 3. Section 53.8 is amended as follows:

■ a. In paragraph (a) introductory text, by removing the words ''Except for claims made under § 53.11, claims'' and adding the word ''Claims'' in their place.

■ b. By removing and reserving paragraph (b) and removing paragraph (c).

§ 53.11 [Removed]

■ 4. Section 53.11 is removed.

■ 5. A new part 56 is added to read as follows.

PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

Sec.
56.1 Definitions.
56.2 Cooperation with States.
56.3 Payment of indemnity.
56.4 Determination of indemnity amounts.
56.5 Destruction and disposal of poultry and cleaning and disinfection of premises, conveyances, and materials.
56.6 Presentation of claims for indemnity.
56.7 Mortgage against poultry or eggs.
56.8 Conditions for payment.
56.9 Claims not allowed.
56.10 Initial State response and containment plan.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 56.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Breeding flock. A flock that is composed of stock that has been developed for commercial egg or meat production and is maintained for the principal purpose of producing chicks for the ultimate production of eggs or meat for human consumption.

Classification. A designation earned by participation in a Plan program.

Commercial meat-type flock. All of the meat-type chickens or meat-type turkeys on one farm. However, at the discretion of the Official State Agency, any group of poultry which is segregated from another group in a manner sufficient to prevent the transmission of H5/H7 LPAI and has been so segregated for a period of at least 21 days may be considered as a separate flock.

Commercial table-egg layer flock. All table-egg layers of one classification in one barn or house.

Commercial table-egg layer premises. A farm containing contiguous flocks of commercial table-egg layers under common ownership.

Cooperating State Agency. Any State authority recognized by the Department to cooperate in the administration of the provisions of this part 56. This may include the State animal health authority or the Official State Agency.

Department. The U.S. Department of Agriculture.

Domesticated. Propagated and maintained under the control of a person.

Flock plan. A written flock management agreement developed by APHIS and the Official State Agency with input from the flock owner and other affected parties. A flock plan sets out the steps to be taken to eradicate H5/H7 LPAI from a positive flock, or to

prevent introduction of H5/H7 LPAI into another flock. A flock plan shall include, but is not necessarily limited to, poultry and poultry product movement and geographically appropriate infected and control/monitoring zones. Control measures in the flock plan should include detailed plans for safe handling of conveyances, containers, and other associated materials that could serve as fomites; disposal of flocks; cleaning and disinfection; downtime; and repopulation.

H5/H7 low pathogenic avian influenza (LPAI). An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index test in 6-week-old chickens less than 1.2 or any infection with influenza A viruses of H5 or H7 subtype for which nucleotide sequencing has not demonstrated the presence of multiple basic amino acids at the cleavage site of the hemagglutinin.

H5/H7 LPAI exposed. At risk of developing H5/H7 LPAI because of association with birds or poultry infected with H5/H7 LPAI, excrement from birds or poultry infected with H5/H7 LPAI, or other material touched by birds or poultry infected with H5/H7 LPAI, or because there is reason to believe that association has occurred with H5/H7 LPAI or vectors of H5/H7 LPAI, as determined by the Cooperating State Agency and confirmed by APHIS.

H5/H7 LPAI virus infection (infected). Poultry will be considered to be infected with H5/H7 LPAI for the purposes of this part if:

(1) H5/H7 LPAI virus has been isolated and identified as such from poultry; or

(2) Viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected in poultry; or

(3) Antibodies to the H5 or H7 subtype of the AI virus that are not a consequence of vaccination have been detected in poultry. If vaccine is used, methods should be used to distinguish vaccinated birds from birds that are both vaccinated and infected. In the case of isolated serological positive results, H5/H7 LPAI infection may be ruled out on the basis of a thorough epidemiological investigation that does not demonstrate further evidence of H5/H7 LPAI infection.

Meat-type chicken. A domesticated chicken grown for the primary purpose of producing meat including but not limited to broilers, roasters, fryers, and cornish.

Meat-type turkey. A domesticated turkey grown for the primary purpose of producing meat.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity for the destruction of poultry or eggs due to H5/H7 LPAI.

Official appraiser (APHIS official appraiser, State official appraiser). A person authorized by APHIS to appraise poultry for the purposes of this part. A State official appraiser is selected by a State and authorized by APHIS.

Official State Agency. The State authority recognized by the Department to cooperate in the administration of the Plan.

Plan. The provisions of the National Poultry Improvement Plan contained in parts 145, 146, and 147 of this chapter.

Poultry. Domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat.

Secretary. The Secretary of the United States Department of Agriculture, or any officer or employee of the Department delegated to act in the Secretary's stead.

State. Any of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, or any territory or possession of the United States.

Table-egg layer. A domesticated chicken grown for the primary purpose of producing eggs for human consumption.

United States. All of the States.

§ 56.2 Cooperation with States.

(a) The Administrator has been delegated the authority to cooperate with Cooperating State Agencies in the eradication of H5/H7 LPAI. This cooperation may include, but is not necessarily limited to, the following activities:

(1) Payment to Cooperating State Agencies for surveillance and monitoring associated with poultry that have been infected with or exposed to H5/H7 LPAI;

(2) Transfer of vaccine for H5/H7 LPAI to Cooperating State Agencies if provided for in the initial State response and containment plan developed by the Official State Agency and approved by APHIS under § 56.10; and

(3) Payment for vaccine administration by Cooperating State Agencies, if provided for in the initial State response and containment plan developed by the Official State Agency and approved by APHIS under § 56.10

(b)(1) Any payment made to a State or an Official State Agency for the activities listed in paragraphs (a)(1) and (a)(3) of this section must be made through a cooperative agreement between the Cooperating State Agency and APHIS. The payment for which the Cooperating State Agency is eligible will be determined in the cooperative agreement.

(i) For any Cooperating State Agency that participates in the National Poultry Improvement Plan diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS, as described in § 56.10 of this part, the cooperative agreement will provide that the Cooperating State Agency is eligible for payment of 100 percent of the costs of surveillance and monitoring and 100 percent of the costs of vaccine administration, as determined in the cooperative agreement.

(ii) For any Cooperating State Agency that does not meet the criteria in paragraph (b)(1)(i) of this section, the cooperative agreement will provide that the Cooperating State Agency is eligible for payment of 25 percent of the costs of surveillance and monitoring and 25 percent of the costs of vaccine administration, as determined in the cooperative agreement.

(2) Transfer of vaccine under paragraph (a)(2) of this section must be accomplished through a cooperative agreement between the Cooperating State Agency and APHIS.

(c) States will be responsible for making the determination to request Federal assistance under this part in the event of an outbreak of H5/H7 LPAI.

§ 56.3 Payment of indemnity.

(a) *Activities eligible for indemnity.* The Administrator may pay indemnity for the activities listed in paragraphs (a)(1) through (a)(3) of this section, as provided in paragraph (b) of this section:

(1) Destruction and disposal of poultry that were infected with or exposed to H5/H7 LPAI;

(2) Destruction of any eggs destroyed during testing of poultry for H5/H7 LPAI during an outbreak of H5/H7 LPAI; and

(3) Cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry that were infected with or exposed to H5/H7 LPAI; or, in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, the destruction and disposal of the materials.

(b) *Percentage of costs eligible for indemnity*. Except for poultry that are described by the categories in paragraphs (b)(1) through (b)(7) of this section, the Administrator is authorized to pay 100 percent of the costs, as determined in accordance with § 56.4, of the activities described in paragraphs (a)(1) through (a)(3) of this section, regardless of whether the infected or exposed poultry participate in the Plan. For infected or exposed poultry that are described by the categories in paragraphs (b)(1) through (b)(7) of this section, the Administrator is authorized to pay 25 percent of the costs of the activities described in paragraphs (a)(1) through (a)(3) of this section:

(1) The poultry are egg-type breeding chickens from a flock that participates in any Plan program in part 145 of this chapter but that does not participate in the U.S. Avian Influenza Clean program of the Plan in § 145.23(h) of this chapter; or

(2) The poultry are meat-type breeding chickens from a flock that participates in any Plan program in part 145 of this chapter but that does not participate in the U.S. Avian Influenza Clean program of the Plan in § 145.33(l) of this chapter; or

(3) The poultry are breeding turkeys from a flock that participates in any Plan program in part 145 of this chapter but that does not participate in the U.S. H5/H7 Avian Influenza Clean program of the Plan in § 145.43(g) of this chapter; or

(4) The poultry are commercial table-egg layers from a premises that has 75,000 or more birds and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.23(a) of this chapter; or

(5) The poultry are commercial meat-type chickens that are associated with a slaughter plant that slaughters 200,000 or more meat-type chickens per operating week and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.33(a) of this chapter; or

(6) The poultry are commercial meat-type turkeys that are associated with a slaughter plant that slaughters 2 million or more meat-type turkeys in a 12-month period and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.43(a) of this chapter; or

(7) The poultry are associated with a flock or slaughter plant that participates in the Plan, but they are located in a State that does not participate in the National Poultry Improvement Plan diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, or that does not have an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS, unless such poultry participate in the Plan with another State that does participate in the National Poultry Improvement Plan diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS.

(c) *Other sources of payment*. If the recipient of indemnity for any of the activities listed in paragraphs (a)(1) through (a)(3) of this section also receives payment for any of those activities from a State or from other sources, the indemnity provided under this part will be reduced by the total amount of payment received from the State or other sources.

§ 56.4 Determination of indemnity amounts.

(a) *Destruction and disposal of poultry*. (1) Indemnity for the destruction of poultry infected with or exposed to H5/H7 LPAI will be based on the fair market value of the poultry, as determined by an appraisal. Poultry infected with or exposed to H5/H7 LPAI that are removed by APHIS or a Cooperating State Agency from a flock will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. For laying hens, the appraised value should include the hen's projected future egg production. Appraisals of poultry must be reported on forms furnished by APHIS and signed by the appraisers and must be signed by the owners of the poultry to indicate agreement with the appraisal amount. Appraisals of poultry must be signed by the owners of the poultry prior to the destruction of the poultry, unless the owners, APHIS, and the Cooperating State Agency agree that the poultry may be destroyed immediately. Reports of appraisals must show the number of birds and the value per head.

(2) Indemnity for disposal of poultry infected with or exposed to H5/H7 LPAI will be based on receipts or other documentation maintained by the claimant verifying expenditures for disposal activities authorized by this part. Any disposal of poultry infected with or exposed to H5/H7 LPAI for which compensation is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for compensation for disposal to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10. If disposal is performed by the Cooperating State Agency, APHIS will indemnify the Cooperating State Agency for disposal under a cooperative agreement.

(3) The destruction and disposal of the indemnified poultry must be conducted in accordance with the initial State response and containment plan for H5/H7 LPAI, as described in § 56.10.

(b) *Destruction of eggs*. Indemnity for eggs destroyed during an outbreak for testing for H5/H7 LPAI will be based on the fair market value of the eggs, as determined by an appraisal. Eggs destroyed for testing for H5/H7 LPAI will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. Appraisals of eggs must be reported on forms furnished by APHIS and signed by the appraisers and must be signed by the owners of the eggs to indicate agreement with the appraisal amount. Appraisals of eggs must be signed by the owners of the eggs prior to the destruction of the poultry, unless the owners, APHIS, and the Cooperating State Agency agree that the eggs may be destroyed immediately. Reports of appraisals must show the number of eggs and the value per egg.

(c) *Cleaning and disinfection*. (1) Indemnity for cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry that are infected with or exposed to H5/H7 LPAI will be based on receipts or other documentation maintained by the claimant verifying expenditures for cleaning and disinfection activities authorized by this part. Any cleaning and disinfection of premises, conveyances, and materials for which indemnity is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for indemnity for cleaning and disinfection to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10.

(2) In the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, indemnity for the destruction of the materials will be based on the fair market value of those materials, as determined by an appraisal. Materials will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS

and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. Indemnity for disposal of the materials will be based on receipts or other documentation maintained by the claimant verifying expenditures for disposal activities authorized by this part. Any disposal of materials for which indemnity is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for compensation for disposal to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10.

§ 56.5 Destruction and disposal of poultry and cleaning and disinfection of premises, conveyances, and materials.

(a) *Destruction of poultry*. Poultry that are infected with or exposed to H5/H7 LPAI may be required to be destroyed at the discretion of the Cooperating State Agency and APHIS and in accordance with the initial State response and containment plan described in § 56.10. The Cooperating State Agency and APHIS will select a method to use for the destruction of such poultry based on the following factors:

(1) The species, size, and number of the poultry to be destroyed;

(2) The environment in which the poultry are maintained;

(3) The risk to human health or safety of the method used;

(4) Whether the method requires specialized equipment or training;

(5) The risk that the method poses of spreading the H5/H7 LPAI virus;

(6) Any hazard the method could pose to the environment;

(7) The degree of bird control and restraint required to administer the destruction method; and

(8) The speed with which destruction must be conducted.

(b) *Disposal of poultry*. Carcasses of poultry that have died from H5/H7 LPAI infection or poultry that have been humanely slaughtered to fulfill depopulation requirements must be disposed of promptly and efficiently in accordance with the initial State response and containment plan described in § 56.10 to prevent the spread of H5/H7 LPAI infection. Disposal methods will be selected by the Cooperating State Agency and APHIS and may include one or more of the following: Burial, incineration, composting, or rendering. Regardless of the method used, strict biosecurity procedures must be implemented and enforced for all personnel and vehicular movement into and out of the area in accordance with the initial State response and containment plan to prevent dissemination of the H5/H7 LPAI virus.

(c) *Controlled marketing*. (1) At the discretion of the Cooperating State Agency and APHIS, poultry that has been infected with or exposed to H5/H7 LPAI may be allowed to move for controlled marketing in accordance with the initial State response and containment plan described in § 56.10 and in accordance with the following requirements:

(i) Poultry infected with or exposed to H5/H7 LPAI must not be transported to a market for controlled marketing until 21 days after the acute phase of the infection has concluded, as determined by the Cooperating State Agency in accordance with the initial State response and containment plan described in § 56.10; and

(ii) Within 7 days prior to slaughter, each flock to be moved for controlled marketing must be tested for H5/H7 LPAI using a test approved by the Cooperating State Agency and found to be free of the virus.

(2) Poultry moved for controlled marketing will not be eligible for indemnity under § 56.3.

(d) *Cleaning and disinfection of premises, conveyances, and materials*. Premises, conveyances, and materials that came into contact with poultry infected with or exposed to H5/H7 LPAI must be cleaned and disinfected; *Provided*, that materials for which the cost of cleaning and disinfection would exceed the value of the materials or for which cleaning and disinfection would be impracticable for any reason may be destroyed and disposed. Cleaning and disinfection must be performed in accordance with the initial State response and containment plan described in § 56.10, which must be approved by APHIS. This paragraph (d) provides guidelines for the development of a cleaning and disinfection plan for a premises and for the materials and conveyances on that premises.

(1) *Preparation for cleaning and disinfection*. Following the depopulation or controlled marketing of all poultry infected with or exposed to H5/H7 LPAI on a premises, the following procedures should be completed prior to cleaning and disinfection:

(i) Secure and remove all feathers that might blow around outside the house in which the infected or exposed poultry were held by raking them together and burning the pile;

(ii) Apply insecticides and rodenticides immediately after the removal of the birds, before the house cools;

(iii) Close the house in which the poultry were held, maintaining just enough ventilation to remove moisture. Leave the house undisturbed for a minimum of 21 days and for as long as possible thereafter, in order to allow as much H5/H7 LPAI virus as possible to die a natural death.

(iv) Heat the house to 100 °F for the 72 hours prior to cleaning and disinfection.

(2) *Cleaning and disinfection*. All premises, conveyances, and materials that came into contact with poultry that were infected with or exposed to H5/H7 LPAI must be cleaned and disinfected. Cleaning and disinfection must be performed on all buildings that came into contact with poultry that were infected with or exposed to H5/H7 LPAI within a premises, including pumphouses and service areas. To accomplish cleaning and disinfection, the following procedures should be completed:

(i) *Disposal of manure, debris, and feed*. Clean up all manure, debris, and feed. Compost manure, debris, and feed in the house if possible. If this is not possible, set up a system for hauling manure, debris, and feed to an approved site for burial, piling, or composting. Do not clean out the house or move or spread litter until any H5/H7 LPAI virus that may have contaminated the manure and litter is dead, as determined by the Cooperating State Agency and in accordance with the initial State response and containment plan described in § 56.10. If composting is used as a disposal method, manure and litter should be composted in accordance with State and local regulations. If litter is piled, the litter pile must be covered and allowed to sit undisturbed for an amount of time approved by the Cooperating State Agency and APHIS and in accordance the initial State response and containment plan described in § 56.10. Drying and heat *in situ* over time are effective and may be used in place of composting if weather conditions or conditions in the building are favorable. After use, equipment used to clean out manure, debris, and feed must be washed, disinfected, and inspected at the site to which the manure and litter was transported. In the case of inclement weather, the equipment may be washed, disinfected, and inspected at off-site wash stations at the discretion of the Cooperating State Agency and APHIS.

(ii) *Cleaning of premises and materials*. Cleaning and washing should be thorough to ensure that all materials

or substances contaminated with H5/H7 LPAI virus, especially manure, dried blood, and other organic materials, are removed from all surfaces. Spray all contaminated surfaces above the floor with soap and water to knock dust down to the floor, using no more water than necessary. Wash equipment and houses with soap and water. Disassemble equipment as required to clean all contaminated surfaces. Special attention should be given to automatic feeders and other closed areas to ensure adequate cleaning. Inspect houses and equipment to ensure that cleaning has removed all contaminated materials or substances and let houses and equipment dry completely before applying disinfectant.

(iii) *Disinfection of premises and materials.* When cleaning has been completed and all surfaces are dry, all interior surfaces of the structure should be saturated with a disinfectant authorized in § 71.10(a) of this chapter. A power spray unit should be used to spray the disinfectant on all surfaces, making sure that the disinfectant gets into cracks and crevices. Special attention should be given to automatic feeders and other closed areas to ensure adequate disinfection.

(vi) *Cleaning and disinfection of conveyances.* Clean and disinfect all trucks and vehicles used in transporting affected poultry or materials before soil dries in place. Both exterior, including the undercarriage, and interior surfaces, including truck cabs, must be cleaned. The interior of the truck cabs should be washed with clean water and sponged with a disinfectant authorized in § 71.10(a) of this chapter. Manure and litter removed from these vehicles should be handled in a manner similar to that described in paragraph (d)(2)(i) of this section.

(3) *Activities after cleaning and disinfection.* Premises should be checked for virus before repopulation in accordance with the initial State response and containment plan described in § 56.10. The premises may not be restocked with poultry until after the date specified in the initial State response and containment plan described in § 56.10.

(4) *Destruction and disposal of materials.* In the case of materials for which the cost of cleaning and disinfection would exceed the value of the materials or for which cleaning and disinfection would be impracticable for any reason, the destruction and disposal of the materials must be conducted in accordance with the initial State response and containment plan described in § 56.10.

§ 56.6 Presentation of claims for indemnity.

Claims for the following must be documented on a form furnished by APHIS and presented to an APHIS employee or the State representative authorized to accept the claims:

(a) Compensation for the value of poultry to be destroyed due to infection with or exposure to H5/H7 LPAI;

(b) Compensation for the value of eggs to be destroyed during testing for H5/H7 LPAI; and

(c) Compensation for the cost of cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry infected with or exposed to H5/H7 LPAI, or, in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, the cost of destruction and disposal for the materials.

§ 56.7 Mortgage against poultry or eggs.

When poultry or eggs have been destroyed under this part, any claim for indemnity must be presented on forms furnished by APHIS. The owner of the poultry or eggs must certify on the forms that the poultry or eggs covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the poultry or eggs must sign the APHIS-furnished form, consenting to the payment of indemnity to the person specified on the form.

§ 56.8 Conditions for payment.

(a) When poultry or eggs have been destroyed pursuant to this part, the Administrator may pay claims to any party with which the owner of the poultry or eggs has entered into a contract for the growing or care of the poultry or eggs. The indemnity the Administrator may pay to such a party or parties shall be determined as follows:

(1) Divide the value of the contract the owner of the poultry or eggs entered into with another party for the growing and care of the poultry or eggs in dollars by the duration of the contract as it was signed prior to the H5/H7 LPAI outbreak in days;

(2) Multiply this figure by the time in days between the date the other party began to provide services relating to the destroyed poultry or eggs under the contract and the date the birds were destroyed due to H5/H7 LPAI.

(b)(1) If indemnity for the destroyed poultry or eggs is being provided for 100 percent of eligible costs under § 56.3(b), the Administrator may pay contractors eligible for compensation under this section 100 percent of the indemnity determined in paragraph (a) of this section.

(2) If indemnity for the destroyed poultry or eggs is being provided for 25 percent of eligible costs under § 56.3(b), the Administrator may pay contractors eligible for compensation under this section 25 percent of the indemnity determined in paragraph (a) of this section.

(c) If indemnity is paid to a contractor under this section, the owner of the poultry or eggs will be eligible to receive the difference between the indemnity paid to the growers and the total amount of indemnity that may be paid for the poultry or eggs.

(d) In the event that determination of indemnity to a party with which the owner of destroyed poultry or eggs has entered into a contract for the growing or care of the poultry or eggs using the method described in paragraph (a) of this section is determined to be impractical or inappropriate, APHIS may use any other method that the Administrator deems appropriate to make that determination.

§ 56.9 Claims not allowed.

(a) The Department will not allow claims arising out of the destruction of poultry unless the poultry have been appraised as prescribed in this part and the owners have signed the appraisal form indicating agreement with the appraisal amount as required by § 56.4(a)(1).

(b) The Department will not allow claims arising out of the destruction of poultry unless the owners have signed a written agreement with APHIS in which they agree that if they maintain poultry in the future on the premises used for poultry for which indemnity is paid, they will maintain the poultry in accordance with a plan set forth by the Cooperating State Agency and will not introduce poultry onto the premises until after the date specified by the Cooperating State Agency. Persons who do not maintain their poultry and premises in accordance with this written agreement will not be eligible to receive indemnity under this part.

(c) The Department will not allow claims arising out of the destruction of poultry unless the poultry have been moved or handled by the owner in accordance with an agreement for the control and eradication of H5/H7 LPAI and in accordance with part 56, for any progeny of any poultry unless the poultry have been moved or handled by the owner in accordance with an agreement for the control and eradication of H5/H7 LPAI and in

accordance with part 56, or for any poultry that become or have become infected with or exposed to H5/H7 LPAI because of actions not in accordance with an agreement for the control and eradication of H5/H7 LPAI or a violation of this part.

§ 56.10 Initial State response and containment plan.

(a) In order for poultry owners within a State to be eligible for indemnity for 100 percent of eligible costs under § 56.3(b), the State in which the poultry participate in the Plan must have in place an initial State response and containment plan that has been approved by APHIS. The initial State response and containment plan must be developed by the Official State Agency and administered by the Cooperating State Agency of the relevant State. This plan must include:

(1) Provisions for a standing emergency disease management committee, regular meetings, and exercises, including coordination with any tribal governments that may be affected;

(2) A minimum biosecurity plan followed by all poultry producers;

(3) Provisions for adequate diagnostic resources;

(4) Detailed, specific procedures for initial handling and investigation of suspected cases of H5/H7 LPAI;

(5) Detailed, specific procedures for reporting test results to APHIS. These procedures must be developed after appropriate consultation with poultry producers in the State and must provide for the reporting only of confirmed cases of H5/H7 LPAI in accordance with § 146.13 of this chapter;

(6) Detailed, strict quarantine measures for presumptive and confirmed index cases;

(7) Provisions for developing flock plans for infected and exposed flocks;

(8) Detailed plans for disposal of infected flocks, including preexisting agreements with regulatory agencies and detailed plans for carcass disposal, disposal sites, and resources for conducting disposal, and detailed plans for disposal of materials that come into contact with poultry infected with or exposed to H5/H7 LPAI;

(9) Detailed plans for cleaning and disinfection of premises, repopulation, and monitoring after repopulation;

(10) Provisions for appropriate control/monitoring zones, contact surveys, and movement restrictions;

(11) Provisions for monitoring activities in control zones;

(12) If vaccination is considered as an option, a written plan for use in place with proper controls and provisions for APHIS approval of any use of vaccine;

(13) Plans for H5/H7 LPAI-negative flocks that provide for quarantine, testing, and controlled marketing; and

(14) Public awareness and education programs regarding avian influenza.

(b) If a State is designated a U.S. Avian Influenza Monitored State, Layers under § 146.24(a) of this chapter or a U.S. Avian Influenza Monitored State, Turkeys under § 146.44(a) of this chapter, it will lose that status during any outbreak of H5/H7 LPAI and for 90 days after the destruction and disposal of all infected or exposed birds and cleaning and disinfection of all affected premises are completed.

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

■ 6. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 7. The part heading for part 145 is revised to read as set forth above.

■ 8. A new part 146 is added to read as follows.

PART 146—NATIONAL POULTRY IMPROVEMENT PLAN FOR COMMERCIAL POULTRY

Subpart A—General Provisions

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146.1 Definitions.
146.2 Administration.
146.3 Participation.
146.4 General provisions for all participating flocks and slaughter plants.
146.5 Specific provisions for participating flocks.
146.6 Specific provisions for participating slaughter plants.
146.7 Terminology and classification; general.
146.8 Terminology and classification; slaughter plants.
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146.10 Supervision.
146.11 Inspections.
146.12 Debarment from participation.
146.13 Testing.
146.14 Diagnostic surveillance program for H5/H7 low pathogenic avian influenza.

Subpart B—Special Provisions for Commercial Table-Egg Layer Flocks

146.21 Definitions.
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146.23 Terminology and classification; flocks and products.
146.24 Terminology and classification; States.

Subpart C—Special Provisions for Meat-Type Chicken Slaughter Plants

146.31 Definitions.
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146.33 Terminology and classification; meat-type chicken slaughter plants.

Subpart D—Special Provisions for Meat-Type Turkey Slaughter Plants

146.41 Definitions.
146.42 Participation.
146.43 Terminology and classification; meat-type turkey slaughter plants.
146.44 Terminology and classification; States.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Subpart A—General Provisions

§ 146.1 Definitions.

Except where the context otherwise requires, for the purposes of this subpart the following terms shall be construed, respectively, to mean:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Affiliated flock. A meat-type flock that is owned by or has an agreement to participate in the Plan with a slaughter plant and that participates in the Plan through that slaughter plant.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Authorized Agent. Any person designated under § 146.10(a) to perform functions under this part.

Authorized laboratory. An authorized laboratory designated by an Official State Agency, subject to review by the Service, to perform the diagnostic assays. The Service's review will include, but will not necessarily be limited to, checking records, laboratory protocol, check-test proficiency, periodic duplicate samples, and peer review. A satisfactory review will result in the authorized laboratory being recognized by the Service as a national approved laboratory qualified to perform the diagnostic assays provided for in this part.

Classification. A designation earned by participation in a Plan program.

Commercial meat-type flock. All of the meat-type chickens or meat-type turkeys on one farm. However, at the discretion of the Official State Agency, any group of poultry which is segregated from another group in a manner sufficient to prevent the transmission of H5/H7 LPAI and has been so segregated for a period of at least 21 days may be considered as a separate flock.

Commercial table-egg layer flock. All table-egg layers of one classification in one barn or house.

Commercial table-egg layer premises. A farm containing contiguous flocks of commercial table-egg layers under common ownership.

Department. The U.S. Department of Agriculture.

Domesticated. Propagated and maintained under the control of a person.

Equivalent. Requirements which are equal to the program, conditions, criteria, or classifications with which compared, as determined by the Official State Agency and with the concurrence of the Service.

H5/H7 low pathogenic avian influenza (LPAI). An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index test in 6-week-old chickens less than 1.2 or any infection with influenza A viruses of H5 or H7 subtype for which nucleotide sequencing has not demonstrated the presence of multiple basic amino acids at the cleavage site of the hemagglutinin.

H5/H7 LPAI virus infection (infected). Poultry will be considered to be infected with H5/H7 LPAI for the purposes of this part if:

(1) H5/H7 LPAI virus has been isolated and identified as such from poultry; or

(2) Viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected in poultry; or

(3) Antibodies to the H5 or H7 subtype of the AI virus that are not a consequence of vaccination have been detected in poultry. If vaccine is used, methods should be used to distinguish vaccinated birds from birds that are both vaccinated and infected. In the case of isolated serological positive results, H5/H7 LPAI infection may be ruled out on the basis of a thorough epidemiological investigation that does not demonstrate further evidence of H5/H7 LPAI infection.

Official State Agency. The State authority recognized by the Department to cooperate in the administration of the Plan.

Person. A natural person, firm, or corporation.

Plan. The provisions of the National Poultry Improvement Plan contained in this part.

Poultry. Domesticated chickens and turkeys that are bred for the primary purpose of producing eggs or meat.

Program. Management, sanitation, testing, and monitoring procedures which, if complied with, will qualify, and maintain qualification for, designation of a flock, a slaughter plant, or a State by an official Plan classification and illustrative design, as described in § 146.9 of this part.

Service. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

State. Any of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, or any territory or possession of the United States.

State Inspector. Any person employed or authorized under § 146.10(b) to perform functions under this part.

United States. All of the States.

§ 146.2 Administration.

(a) The Department cooperates through a Memorandum of Understanding with the Official State Agency in the administration of the Plan.

(b) The administrative procedures and decisions of the Official State Agency are subject to review by the Service. The Official State Agency shall carry out the administration of the Plan within the State according to the applicable provisions of the Plan and the Memorandum of Understanding.

(c)(1) An Official State Agency may accept for participation a commercial table-egg layer flock or a commercial meat-type flock (including an affiliated flock) located in another participating State under a mutual understanding and agreement, in writing, between the two Official State Agencies regarding conditions of participation and supervision.

(2) An Official State Agency may accept for participation a commercial table-egg layer flock or a commercial meat-type flock (including an affiliated flock) located in a State that does not participate in the Plan under a mutual understanding and agreement, in writing, between the owner of the flock and the Official State Agency regarding conditions of participation and supervision.

(d) The Official State Agency of any State may adopt regulations applicable to the administration of the Plan in such State further defining the provisions of the Plan or establishing higher standards, compatible with the Plan.

(e) An authorized laboratory will follow the laboratory protocols outlined in part 147 of this chapter when determining the status of a participating flock with respect to an official Plan classification.

(f) States will be responsible for making the determination to request Federal assistance under part 56 of this chapter in the event of an outbreak of H5/H7 LPAI.

§ 146.3 Participation.

(a) Any table-egg producer and any meat-type chicken or meat-type turkey slaughter plant, including its affiliated flocks, may participate in the Plan when the producer or plant has demonstrated, to the satisfaction of the Official State Agency, that its facilities, personnel, and practices are adequate for carrying out the relevant special provisions of this part and has signed an agreement with the Official State Agency to comply with the relevant special provisions of this part.

(b) Each participant shall comply with the Plan throughout the operating year, or until released by the Official State Agency.

(c) A participating slaughter plant shall participate with all of the meat-type chicken and/or meat-type turkey flocks that are processed at the facility, including affiliated flocks. Affiliated flocks must participate through a written agreement with a participating slaughter plant that is approved by the Official State Agency.

(d) Participation in the Plan shall entitle the participant to use the Plan emblem reproduced as follows:

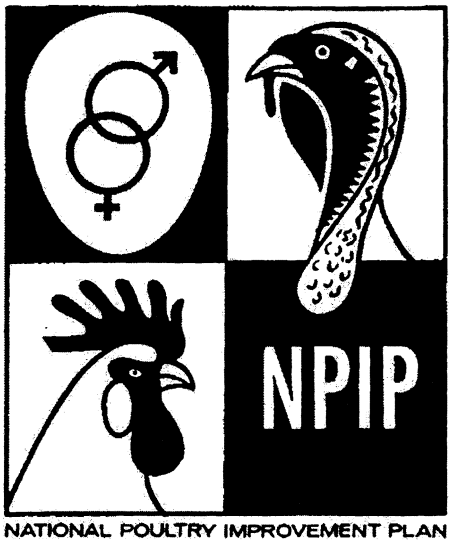

FIGURE 1.

(e) Participation in the NPIP by commercial table-egg layers will cease after September 26, 2008 unless the majority of the commercial table-egg layer delegates vote to continue the program in accordance with subpart E of part 147 of this chapter at a National Plan Conference.

§ 146.4 General provisions for all participating flocks and slaughter plants.

(a) Records that establish the identity of products handled shall be maintained in a manner satisfactory to the Official State Agency.

(b) Material that is used to advertise products shall be subject to inspection by the Official State Agency at any time.

(c) Advertising must be in accordance with the Plan, and applicable rules and regulations of the Official State Agency

and the Federal Trade Commission. A participant advertising products as being of any official classification may include in their advertising reference to associated or franchised slaughter or production facilities only when such facilities produce products of the same classification.

(d) Each participant shall be assigned a permanent approval number by the Service. This number, prefaced by the numerical code of the State, will be the official approval number of the participant and may be used on each certificate, invoice, shipping label, or other document used by the participant in the sale of the participant's products. Each Official State Agency which requires an approval number for out-of-State participants to ship into its State shall honor this number.

§ 146.5 Specific provisions for all participating flocks.

(a) Participating flocks, and all equipment used in connection with the flocks, shall be separated from non-participating flocks in a manner acceptable to the Official State Agency.

(b) Poultry equipment, and poultry houses and the land in the immediate vicinity thereof, shall be kept in sanitary condition as recommended in § 147.21(c) of this subchapter.

§ 146.6 Specific provisions for participating slaughter plants.

(a) Only meat-type chicken and meat-type turkey slaughter plants that are under continuous inspection by the Food Safety and Inspection Service of the Department or under State inspection that the Food Safety Inspection Service has recognized as equivalent to federal inspection may participate in the Plan.

(b) To participate in the Plan, meat-type chicken and meat-type turkey slaughter plants must follow the relevant special provisions in §§ 146.33(a) and 146.43(a), respectively, for sample collection and flock monitoring, unless they are exempted from the special provisions under §§ 146.32(b) or 146.42(b), respectively.

§ 146.7 Terminology and classification; general.

The official classification terms defined in §§ 146.8 and 146.9 and the various designs illustrative of the official classifications reproduced in § 146.9 may be used only by participants and to describe products that have met all of the specific requirements of such classifications.

§ 146.8 Terminology and classification; slaughter plants.

Participating slaughter plants shall be designated as ''U.S. H5/H7 Avian Influenza Monitored.'' All Official State Agencies shall be notified by the Service of additions, withdrawals, and changes in classification.

§ 146.9 Terminology and classification; flocks, products, and States.

Participating flocks (including affiliated flocks), products produced from them, and States which have met the respective requirements specified in subparts B, C, or D of this part may be designated by the following terms or illustrative designs:

(a) *U.S. H5/H7 Avian Influenza Monitored.* (See §§ 146.23(a), 146.33(a), and 146.43(a).)

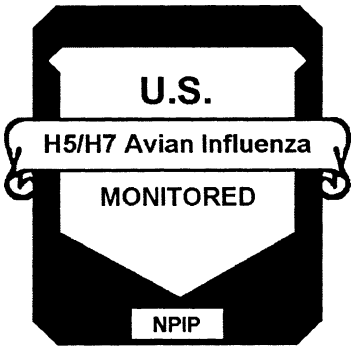

Figure 2.

(b) *U.S. H5/H7 Avian Influenza Monitored State, Layers.* (See § 146.24.)

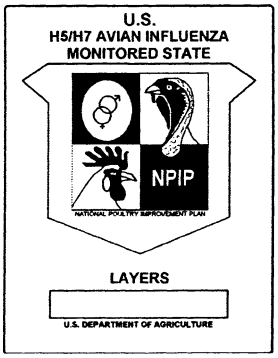

Figure 3.

(c) *U.S. H5/H7 Avian Influenza Monitored State, Turkeys.* (See § 146.44.)

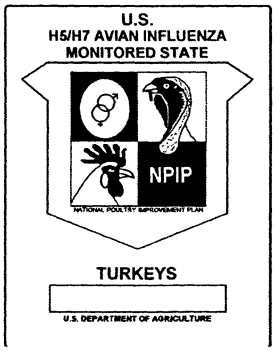

Figure 4.

§ 146.10 Supervision.

(a) The Official State Agency may designate qualified persons as Authorized Agents to do the sample collecting provided for in § 146.13 of this part.

(b) The Official State Agency shall employ or authorize qualified persons as State Inspectors to perform the selecting and testing of participating flocks and to perform the official inspections necessary to verify compliance with the requirements of the Plan.

(c) Authorities issued to Authorized Agents or State Inspectors under the provisions of this section shall be subject to cancellation by the Official State Agency on the grounds of incompetence or failure to comply with the provisions of the Plan or regulations of the Official State Agency. Such actions shall not be taken until thorough investigation has been made by the Official State Agency and the authorized person has been given notice of the proposed action and the basis thereof and an opportunity to present his or her views.

§ 146.11 Inspections.

(a) Each participating slaughter plant shall be audited at least once annually or a sufficient number of times each year to satisfy the Official State Agency that the participating slaughter plant is in compliance with the provisions of this part.

(b) On-site inspections of any participating flocks and premises will be conducted if a State Inspector determines that a breach of testing has occurred for the Plan programs for which the flocks are certified.

(c) The official H5/H7 LPAI testing records of all participating flocks and slaughter plants shall be examined annually by a State Inspector. Official H5/H7 LPAI testing records shall be maintained for 3 years.

§ 146.12 Debarment from participation.

Participants in the Plan who, after investigation by the Official State Agency or its representative, are notified in writing of their apparent noncompliance with the Plan provisions or regulations of the Official State Agency shall be afforded a reasonable time, as specified by the Official State Agency, within which to demonstrate or achieve compliance. If compliance is not demonstrated or achieved within the specified time, the Official State Agency may debar the participant from further participation in the Plan for such period, or indefinitely, as the Official State Agency may deem appropriate. The debarred participant shall be afforded notice of the bases for the debarment and opportunity to present his or her views with respect to the debarment in accordance with procedures adopted by the Official State Agency. The Official State Agency shall thereupon decide whether the debarment order shall continue in effect. Such decision shall be final unless the debarred participant, within 30 days after the issuance of the debarment order, requests the Administrator to determine the eligibility of the debarred participant for participation in the Plan. In such an event, the Administrator shall determine the matter de novo in accordance with the rules of practice in 7 CFR part 50, which are hereby made applicable to proceedings before the Administrator under this section. The definitions in 7 CFR 50.10 and the following definitions shall apply with respect to terms used in such rules of practice:

(a) *Administrator* means the Administrator, Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, or any officer or employee to whom authority has heretofore been delegated or to who authority may hereafter be delegated to act in his or her stead.

(b) [*Reserved*]

§ 146.13 Testing.

(a) *Samples.* Either egg or blood samples may be used for testing. Samples must be collected in accordance with the following requirements:

(1) *Egg samples.* Egg samples must be collected and prepared in accordance with the requirements in § 147.8 of this subchapter.

(2) *Blood samples.* Blood samples obtained in the slaughter plant should be collected after the kill cut with birds remaining on the kill line. Hold an open 1.5 mL snap cap micro-centrifuge tube under the neck of the bird directly after the kill cut and collect drips of blood until the tube is half full. Keep the blood tubes at room temperature for the clot to form, which should require a minimum of 4 hours and a maximum of 12 hours. Refrigerate the tube after the clot has formed. Put tubes in a container and label it with plant name, date, shift (A.M. or Day, P.M. or Night), and flock number. After the clot is formed, the clot should be removed by the Authorized Agent in order to ensure good-quality sera. Prepare a laboratory submission form and ship samples with submission forms to the laboratory in a polystyrene foam cooler with frozen ice packs. Submission forms and the manner of submission must be approved by the Official State Agency and the authorized laboratory to ensure that there is sufficient information to identify the samples and that the samples are received in an acceptable condition for further tests to be reliably performed. Blood samples should be shipped routinely to the laboratory. Special arrangements should be developed for samples held over the weekend to ensure that the samples can be reliably tested. Blood samples for official tests shall be drawn by an Authorized Agent or State Inspector.

(b) *Avian influenza.* The official tests for avian influenza are the agar gel immunodiffusion (AGID) test and the enzyme-linked immunosorbent assay (ELISA). These tests may be used on either egg yolk or blood samples. Standard test procedures for the AGID test for avian influenza are set forth in § 147.9 of this subchapter.

(1) The AGID test must be conducted on all ELISA-positive samples. Any samples that are found to be positive by AGID must be further tested and subtyped by Federal Reference Laboratories using the hemagglutination inhibition test. Final judgment may be based upon further sampling or culture results.

(2) The tests must be conducted using antigens or test kits approved by the Service. Test kits must be licensed by the Service and approved by the Official State Agency, and tests must be performed in accordance with the recommendations of the producer or manufacturer.

(3) The official determination of a flock as positive for the H5 or H7 subtypes of low pathogenic avian influenza may be made only by the National Veterinary Services Laboratories.

§ 146.14 Diagnostic surveillance program for H5/H7 low pathogenic avian influenza.

(a) The Official State Agency must develop a diagnostic surveillance program for H5/H7 low pathogenic avian influenza for all poultry in the State. The exact provisions of the program are at the discretion of the States. The Service will use the standards in paragraph (b) of this section in assessing individual State plans for adequacy, including the specific provisions that the State developed. The standards should be used by States in developing those plans.

(b) Avian influenza must be a disease reportable to the responsible State authority (State veterinarian, etc.) by all licensed veterinarians. To accomplish this, all laboratories (private, State, and university laboratories) that perform diagnostic procedures on poultry must examine all submitted cases of unexplained respiratory disease, egg production drops, and mortality for avian influenza by both an approved serological test and an approved antigen detection test. Memoranda of understanding or other means must be used to establish testing and reporting criteria (including criteria that provide for reporting H5 and H7 low pathogenic avian influenza directly to the Service) and approved testing methods. In addition, States should conduct outreach to poultry producers, especially owners of smaller flocks, regarding the importance of prompt reporting of clinical symptoms consistent with avian influenza.

Subpart B—Special Provisions for Commercial Table-Egg Layer Flocks

§ 146.21 Definitions.

Table-egg layer. A domesticated chicken grown for the primary purpose of producing eggs for human consumption.

§ 146.22 Participation.

(a) Participating commercial table-egg layer flocks shall comply with the applicable general provisions of subpart A of this part and the special provisions of subpart B of this part.

(b) Commercial table-egg laying premises with fewer than 75,000 birds are exempt from the special provisions of subpart B of this part.

§ 146.23 Terminology and classification; flocks and products.

Participating flocks which have met the respective requirements specified in this section may be designated by the following terms and the corresponding designs illustrated in § 146.9 of this part:

(a) *U.S. H5/H7 Avian Influenza Monitored.* This program is intended to be the basis from which the table-egg layer industry may conduct a program

to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7 subtypes of avian influenza in table-egg layers through routine serological surveillance of each participating commercial table-egg layer flock. A flock will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) It is a commercial table-egg layer flock in which a minimum of 11 birds or egg samples have been tested negative for antibodies to the H5/H7 subtypes of avian influenza within 30 days prior to disposal;

(2) It is a commercial table-egg layer flock in which a minimum of 11 birds or egg samples have been tested negative for antibodies to the H5/H7 subtypes of avian influenza within a 12-month period; or

(3) It is a commercial table-egg layer flock that has an ongoing active and diagnostic surveillance program for the H5/H7 subtypes of avian influenza in which the number of birds or egg samples tested is equivalent to the number required in paragraph (a)(1) or (a)(2) and that is approved by the Official State Agency and the Service.

(b) [*Reserved*]

§ 146.24 Terminology and classification; States.

(a) *U.S. H5/H7 Avian Influenza Monitored State, Layers.* (1) A State will be declared a U.S. H5/H7 Avian Influenza Monitored State, Layers when it has been determined by the Service that:

(i) All commercial table-egg layer flocks in production within the State that are not exempt from the special provisions of this subpart B under § 146.22 are classified as U.S. H5/H7 Avian Influenza Monitored under § 146.23(a) of this part;

(ii) All egg-type chicken breeding flocks in production within the State are classified as U.S. Avian Influenza Clean under § 145.23(h) of this subchapter;

(iii) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency, within 24 hours, the source of all table-egg layer specimens that were deemed positive on an official test for avian influenza, as designated in § 146.13(a) of this chapter;

(iv) All table-egg layer specimens that were deemed positive on an official test for avian influenza, as designated in § 146.13(a) of this chapter, are sent to an authorized laboratory for subtyping; and

(v) All table-egg layer flocks within the State that are found to be infected with the H5/H7 subtypes of avian influenza are quarantined, in accordance with an initial State response and containment plan as described in part 56 of this chapter and under the supervision of the Official State Agency.

(2) If there is a discontinuation of any of the conditions described in paragraph (a)(1) of this section, or if repeated outbreaks of the H5/H7 subtypes of avian influenza occur in commercial table-egg layer flocks as described in paragraph (a)(1)(i) of this section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to this classification. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

(b) [*Reserved*]

Subpart C—Special Provisions for Meat-Type Chicken Slaughter Plants

§ 146.31 Definitions.

Meat-type chicken. A domesticated chicken grown for the primary purpose of producing meat, including but not limited to broilers, roasters, fryers, and cornish.

Meat-type chicken slaughter plant. A meat-type chicken slaughter plant that is federally inspected or under State inspection that the Food Safety Inspection Service has recognized as equivalent to federal inspection.

Shift. The working period of a group of employees who are on duty at the same time.

§ 146.32 Participation.

(a) Participating meat-type chicken slaughter plants shall comply with applicable general provisions of subpart A of this part and the special provisions of this subpart C.

(b) Meat-type chicken slaughter plants that slaughter fewer than 200,000 meat-type chickens in an operating week are exempt from the special provisions of this subpart C.

§ 146.33 Terminology and classification; meat-type chicken slaughter plants.

Participating meat-type chicken slaughter plants that have met the respective requirements specified in this section may be designated by the following terms and the corresponding designs illustrated in § 146.9 of this part:

(a) *U.S. H5/H7 Avian Influenza Monitored.* This program is intended to be the basis from which the meat-type chicken industry may conduct a program to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of the H5/H7 subtypes of avian influenza in meat-type chickens through routine surveillance of each participating meat-type chicken slaughter plant. A meat-type chicken slaughter plant will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) It is a meat-type chicken slaughter plant where a minimum of 11 birds per shift are tested negative for antibodies to the H5/H7 subtypes of avian influenza at slaughter; *Provided,* that with the approval of the Official State Agency, fewer than 11 birds per shift may be tested on any given shift if the total number of birds tested during the operating month is equivalent to testing 11 birds per shift; or

(2) It is a meat-type chicken slaughter plant which accepts only meat-type chickens from flocks where a minimum of 11 birds have been tested negative for antibodies to the H5/H7 subtypes of avian influenza no more than 21 days prior to slaughter; or

(3) It is a meat-type chicken slaughter plant that has an ongoing active and diagnostic surveillance program for the H5/H7 subtypes of avian influenza in which the number of birds tested is equivalent to the number required in paragraph (a)(1) or (a)(2) and that is approved by the Official State Agency and the Service.

(b) [*Reserved*]

Subpart D—Special Provisions for Meat-Type Turkey Slaughter Plants

§ 146.41 Definitions.

Meat-type turkey. A domesticated turkey grown for the primary purpose of producing meat.

Meat-type turkey slaughter plant. A meat-type turkey slaughter plant that is federally inspected or under State inspection that the Food Safety Inspection Service has recognized as equivalent to federal inspection.

§ 146.42 Participation.

(a) Participating meat-type turkey slaughter plants shall comply with applicable general provisions of subpart A of this part and the special provisions of this subpart D.

(b) Meat-type turkey slaughter plants that slaughter fewer than 2 million meat-type turkeys in a 12-month period are exempt from the special provisions of this subpart D.

§ 146.43 Terminology and classification; meat-type turkey slaughter plants.

Participating meat-type turkey slaughter plants which have met the

respective requirements specified in this section may be designated by the following terms and the corresponding designs illustrated in § 146.9 of this part:

(a) *U.S. H5/H7 Avian Influenza Monitored.* This program is intended to be the basis from which the meat-type turkey industry may conduct a program to monitor for the H5/H7 subtypes of avian influenza. It is intended to determine the presence of avian influenza in meat-type turkeys through routine surveillance of each participating meat-type turkey slaughter plant. A participating meat-type turkey slaughter plant will qualify for this classification when the Official State Agency determines that it has met one of the following requirements:

(1) It is a meat-type turkey slaughter plant at which a sample of a minimum of 60 birds has tested negative each month for antibodies to type A avian influenza virus. Positive samples shall be further tested by an authorized laboratory using the hemagglutination inhibition test to detect antibodies to the hemagglutinin subtypes H5 and H7. It is recommended that samples be collected from flocks over 10 weeks of age with respiratory signs such as coughing, sneezing, snicking, sinusitis, or rales; depression; or decreases in food or water intake.

(2) It is a meat-type turkey slaughter plant that has an ongoing active and diagnostic surveillance program for the H5/H7 subtypes of avian influenza in which the number of birds tested is equivalent to the number required in paragraph (a)(1) and that is approved by the Official State Agency and the Service.

(b) [*Reserved*]

§ 146.44 Terminology and classification; States.

(a) *U.S. H5/H7 Avian Influenza Monitored State, Turkeys.* (1) A State will be declared a U.S. H5/H7 Avian Influenza Monitored State, Turkeys when it has been determined by the Service that:

(i) All meat-type turkey slaughter plants within the State that are not exempt from the special provisions of this subpart D under § 146.42 are classified as U.S. H5/H7 Avian Influenza Monitored under § 146.43(a) of this part;

(ii) All turkey breeding flocks in production within the State are classified as U.S. H5/H7 Avian Influenza Clean under § 145.43(g) of this subchapter;

(iii) All persons performing poultry disease diagnostic services within the State are required to report to the Official State Agency, within 24 hours, the source of all meat-type turkey specimens that were deemed positive on an official test for avian influenza, as designated in § 146.13(a) of this chapter;

(iv) All meat-type turkey specimens that were deemed positive on an official test for avian influenza, as designated in § 146.13(a) of this chapter, are sent to an authorized laboratory for subtyping; and

(v) All meat-type turkey flocks within the State that are found to be infected with the H5/H7 subtypes of avian influenza are quarantined, in accordance with an initial State response and containment plan as described in part 56 of this chapter, and under the supervision of the Official State Agency.

(2) If there is a discontinuation of any of the conditions described in paragraph (a)(1) of this section, or if repeated outbreaks of the H5/H7 subtypes of avian influenza occur in meat-type turkey flocks as described in paragraph (a)(1)(i) of this section, or if an infection spreads from the originating premises, the Service shall have grounds to revoke its determination that the State is entitled to this classification. Such action shall not be taken until a thorough investigation has been made by the Service and the Official State Agency has been given an opportunity for a hearing in accordance with rules of practice adopted by the Administrator.

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

■ 9. The authority citation for part 147 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 10. Section 147.8 is amended as follows:

■ a. In the introductory text, by removing the words ‘‘, and for’’ and adding the word ‘‘; for’’ in its place; and by adding the words ‘‘; and for retaining the classification U.S. H5/H7 Avian Influenza Monitored under § 146.23(a), § 146.33(a), and § 146.44(a)’’ before the words ‘‘of this chapter’’.

■ b. By revising paragraph (b)(7) to read as set forth below.

§ 147.8 Procedures for preparing egg yolk samples for diagnostic tests.

* * * * *

(b) * * *

(7) (i) For egg yolk samples being tested to retain the U.S. M. Gallisepticum Clean and U.S. M. Synoviae Clean classifications, test the resultant supernatant for *M. gallisepticum* and *M. synoviae* by using test procedures specified for detecting IgG antibodies set forth for testing serum in § 147.7 (for these tests the resultant supernatant would be substituted for serum); except that a single 1:20 dilution hemagglutination inhibition (HI) test may be used as a screening test in accordance with the procedures set forth in § 147.7.

(ii) For egg yolk samples being tested to retain the U.S. H5/H7 Avian Influenza Monitored classification, test the resultant supernatant in accordance with the requirements in § 146.13(b).

Note: For evaluating the test results of any egg yolk test, it should be remembered that a 1:2 dilution of the yolk in saline was made of the original specimen.

§ 147.45 [Amended]

■ 11. Section 147.45 is amended by adding the words ‘‘and for each of the programs prescribed in subparts B, C, and D of part 146 of this chapter’’ after the word ‘‘chapter’’.

■ 12. In § 147.46, paragraph (a) is revised to read as follows:

§ 147.46 Committee consideration of proposed changes.

(a) The following committees shall be established to give preliminary consideration to the proposed changes falling in their respective fields:

(1) Egg-type breeding chickens.

(2) Meat-type breeding chickens.

(3) Breeding turkeys.

(4) Breeding waterfowl, exhibition poultry, and game birds.

(5) Breeding ostriches, emus, rheas, and cassowaries.

(6) Egg-type commercial chickens.

(7) Meat-type commercial chickens.

(8) Meat-type commercial turkeys.

* * * * *

Done in Washington, DC, this 20th day of September 2006.

Bruce Knight,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 06–8155 Filed 9–25–06; 8:45 am]

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