Federal Register

10–12–06 Thursday
Vol. 71 No. 197 Oct. 12, 2006

Pages 60055–60412

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 031001243–6227–02]

RIN 0648–AQ41

Gray's Reef National Marine Sanctuary Regulations

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; notice of public availability of final management plan/final environmental impact statement and record of decision.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is issuing a final revised management plan and revised regulations for the Gray's Reef National Marine Sanctuary (GRNMS or sanctuary). The revised regulations prohibit anchoring in the sanctuary, restrict all fishing except that conducted by rod and reel, handline, or spearfishing gear without powerheads, and requires all other forms of fishing gear to be stowed and not available for immediate use when a vessel with such gear is in the sanctuary.

DATES: *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the revised designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on October 12, 2006. Announcement of the effective date of the final regulations will be published in the **Federal Register**.

ADDRESSES: Copies of the final management plan/final environmental impact statement and the record of decision are available upon request to the Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia 31411; 912/598–2381.

FOR FURTHER INFORMATION CONTACT: Greg McFall, Acting Sanctuary Superintendent, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, Georgia 31411; 912/598–2345.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to section 304(e) of the National Marine Sanctuaries Act (16 U.S.C. 1434(e)) the National Marine Sanctuary Program (NMSP) issues a revised management plan for GRNMS. The plan includes several revisions to existing regulations and several new regulations for the sanctuary. The new regulations restrict fishing at GRNMS to use of rod and reel, handline, and spearfishing gear without powerheads, by prohibiting the injuring, catching, harvesting, or collecting of any marine organism or part thereof in the sanctuary except by these gear types. All other forms of fishing gear must be stowed when a vessel is in the sanctuary. The regulations also prohibit anchoring vessels in the sanctuary. These measures will afford better protection to the nationally significant marine resources and habitats at GRNMS.

In the Draft Management Plan/Draft Environmental Impact Statement (68 FR 62033, October 31, 2003), Alternative ''a'' was identified as the preferred alternative for fishing, which would have prohibited spearfishing as well as all other types of fishing except with rod and reel and handline gear. However, NOAA has decided to adopt fishing alternative ''c'', which continues to allow use of spearfishing gear without powerheads. While it has been effectively demonstrated in other areas that selective removal of large individual fish by spearfishing can adversely affect the reproductive viability of a given population, the sanctuary has little data on the actual level of spearfishing at GRNMS. In order to assess socioeconomic factors of spearfishing activities at the sanctuary, a focused study will be initiated to determine the level of spearfishing and other fishing activities. The sanctuary will also use the ongoing, long-term biological data collected through the Marine Resources Monitoring, Assessment, and Prediction Program (MARMAP) and diver census methods to evaluate fish populations at GRNMS.

NOAA therefore defers taking action on spearfishing as was proposed in the DMP/DEIS for a period of two years while additional information is collected on this activity in GRNMS. The issue will be reviewed again with the benefit of additional socioeconomic and biological analyses. NOAA will then determine what action to take, if any, given the additional data.

NOAA has also determined that establishing hook limits on rod and reel and handline gear, as described in the proposed rule and the DMP/DEIS, would complicate compliance and law enforcement. Law enforcement officials noted that the hook limitations would be extremely difficult to enforce. The preferred alternative, therefore, does not impose hook limits in the regulations.

Existing regulations are revised to address placing or abandoning structures on the submerged lands; using underwater explosives or devices generating electrical current; and moving or damaging historical resources. The permit regulations for the sanctuary are revised and clarified. Prior to permit issuance, the Director of the NMSP is required to consider and make certain findings regarding, among other things, the duration of the activity and its effects; the cumulative effects; and whether it is necessary to conduct the proposed activity in the sanctuary. Permit holders are required to display a copy of the permit on board any vessel or aircraft used in the permitted activity.

The final management plan details the goals and objectives and management responsibilities for the Sanctuary, as well as a series of action plans that outline marine resource protection, administration, research and monitoring, exploration, outreach and education, and performance evaluation activities that are planned for the next five years. The activities are designed to address specific issues facing the sanctuary and in doing so, help achieve the management objectives of the GRNMS and the larger mandates of the NMSP.

This document provides the final regulations and the revised Designation Document for the sanctuary; and announces the availability of the final

management plan and the final environmental impact statement (FMP/FEIS).

Background

Gray's Reef National Marine Sanctuary, which was designated on January 16, 1981 (46 FR 7942), consists of approximately 16.68 square nautical miles of ocean waters and hard bottom located 17.5 nautical miles off Sapelo Island, Georgia. It is one of the largest nearshore rocky reefs off the southeastern United States and is in a transition zone between temperate and tropical waters. Some reef fish populations and plant communities change seasonally, while others are year-round residents. Migratory fish move through the sanctuary, using the reef for food and shelter. Loggerhead sea turtles, a threatened species, use GRNMS for foraging and resting. The reef is also close to the only known calving ground for the highly endangered Northern right whale.

The hard bottom habitat at the sanctuary is composed of marine sediments (mud, sand, and shells) that were deposited between 2–3,000,000 years ago. These marine sediments were consolidated into rock during subsequent glacial periods by numerous changes in sea level that repeatedly exposed and then submerged the areas of GRNMS as the coastline advanced and retreated across the continental shelf.

Recent bottom mapping indicates that the area is a single rock unit. It is made of calcareous sandstone that formed as a result of the compacting marine sediments and aerial exposure. The irregularities of the bathymetry can be attributed to the easily erodable sandstone that has dissolved and pitted, creating the appearance of isolated ledges and patches of hard bottom.

The exposed rock offers moderate relief (0.5 to 10 feet in height) with sandy, flat-bottomed troughs between. The series of rock ledges and sand expanses has produced a complex habitat of caves, burrows, troughs, and overhangs that provide a solid base on which temperate and tropical marine flora and fauna attach and grow. This rocky platform with its rich carpet of remarkable attached organisms is known locally as a ''live bottom'' habitat.

The sanctuary is a small but very important part of the broad continental shelf off the southeastern coast sometimes known as the South Atlantic Bight (SAB). The SAB extends from Cape Hatteras, North Carolina to Cape Canaveral, Florida. The outer reaches are dominated by the Gulf Stream flowing northeastward. The inner area is defined by the curve of the coastline between the two capes and is dominated by tidal currents, river runoff, local winds, seasonal storms, hurricanes, and atmospheric changes. While GRNMS lies in the inner-shelf zone of the SAB—which causes great seasonal variations in temperature, salinity, and water clarity—it is also influenced by the Gulf Stream. The Gulf Stream draws deep nutrient-rich water to the region, and carries and supports many of the tropical fish species and other animals found in the sanctuary. Ocean currents transport fish and invertebrate eggs and larvae from other areas, linking the Sanctuary to reefs both north and south. GRNMS is the only protected natural reef area in the SAB.

The sanctuary's area constitutes a tiny percentage of the ocean space off the coast, yet the sanctuary's value as a natural marine habitat is recognized nationally and internationally. The live bottom is a flourishing ecosystem that attracts mackerel, grouper, black sea bass, angelfish, and a variety of other fishes. GRNMS is one of the most popular recreational fishing and sport diving destinations along the Georgia coast. Sport fishing occurs year-round but intensifies in warmer months and with the migration of pelagic game fish.

The sanctuary is located near an area of Georgia coastline that has experienced a dramatic increase in population. Aerial and on-water surveys indicate that visitation to GRNMS has increased significantly since 1981. With continued technological innovations such as global positioning systems (GPS), electronic fish finders, and improved watercraft design, it is likely that there will be increasing pressure on the resources of the sanctuary. With its new management plan and regulations, NOAA hopes to continue to protect GRNMS for the continued appreciation and use by the current and future generations.

Because this action includes changes to the sanctuary's Designation Document, the FMP/FEIS is developed pursuant to section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)) consistent with, and in fulfillment of, the requirements of the National Environmental Policy Act of 1969.

Revised Designation Document

NOAA specifies in the Designation Document that the submerged lands at GRNMS are legally part of the sanctuary and are included in the boundary description. At the time the sanctuary was designated in 1981, Title III of the Marine Protection, Research, and Sanctuaries Act (now also known as the National Marine Sanctuaries Act) characterized national marine sanctuaries as consisting of coastal and ocean waters but did not expressly mention the submerged lands thereunder. NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98–498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, to be consistent with the NMSA, NOAA is updating the Designation Document and the boundary description, and is replacing the term ''seabed'' with ''submerged lands.'' Although certain fishing activities have been regulated at GRNMS since 1981, terms are being added to the Designation Document to authorize regulations for use of allowable fishing gear and to prohibit the possession of non-allowed gear. This allows sanctuary fishing regulations for GRNMS, recommended by the South Atlantic Fishery Management Council (SAFMC), to be issued for the sanctuary. The Designation Document is also updated to authorize regulating drilling into the submerged lands of the sanctuary; constructing, placing or abandoning material or matter; discharging or depositing material or matter outside the sanctuary that subsequently enters and injures a sanctuary resource or quality; using explosives or devices that produce electric current underwater; and moving, removing, injuring, or possessing historical resources.

Language in Article 4 Section 2 providing authority for temporary emergency regulations has been revised to provide NOAA greater discretion to act in emergency situations to protect sanctuary resources on a temporary basis, and is now more consistent with the NMSA's primary objective of resource protection. Rather than show that ecosystem damage would be immediate, serious and irreversible before it could promulgate emergency regulations, NOAA must now show an actual or imminent risk of destruction, loss of, or injury to a sanctuary resource or quality. In addition, while emergency regulations must still be issued on a temporary basis, the 120-day limit has been removed.

Article 6 of the Designation Document is also updated regarding the process to modify the Designation. The requirement that modifications to the Designation must be approved by the President is deleted and replaced with the requirement that modifications be approved by the Secretary of Commerce

or his or her designee. This is consistent with amendments to the NMSA that were enacted after the Sanctuary was designated in 1981 and which removed Presidential approval as a requirement for designation.

Revised Designation Document for the Gray's Reef National Marine Sanctuary

Preamble

Under the Authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (the Act), the waters and the submerged lands thereunder at Gray's Reef in the South Atlantic Bight off the coast of Georgia are hereby designated a National Marine Sanctuary for the purposes of: (1) Protecting the quality of this unique and fragile ecological community; (2) promoting scientific understanding of this live bottom ecosystem; and (3) enhancing public awareness and wise use of this significant regional resource.

Article 1. Designation and Effect

The Gray's Reef National Marine Sanctuary was designated on January 16, 1981 (46 FR 7942). The Act authorizes the Secretary of Commerce to issue such regulations as are necessary to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational or aesthetic resources and qualities of a national marine sanctuary. Section 1 of Article 4 of this Designation Document lists activities of the type that are presently being regulated or may need to be regulated in the future, in order to protect sanctuary resources and qualities. Listing in Section 1 does not mean a type of activity is currently regulated or would be regulated in the future. If a type of activity is not listed, however, it may not be regulated except on an emergency basis, unless section 1 is amended to include the type of activity following the same procedures by which the original designation was made.

Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources or qualities of the sanctuary or on sanctuary property or that do not pose a threat of harm to users of the sanctuary.

Article 2. Description of the Area

The sanctuary consists of an area of ocean waters and the submerged lands thereunder located 17.5 nautical miles due east of Sapelo Island, Georgia. The exact coordinates are defined by regulation (15 CFR 922.90).

Article 3. Characteristics of the Area

The sanctuary consists of submerged calcareous sandstone rock reefs with contiguous shallow-buried hard layer and soft sedimentary regime which supports rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human uses, including recreational fishing and diving, scientific research, and educational activities.

Article 4. Scope of Regulation

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or would be regulated. If an activity is listed, however, the activity can be regulated, after compliance with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA (16 U.S.C. 1434(a) and (b)).

1. Dredging, drilling into, or otherwise altering the submerged lands of the sanctuary;
2. Within the boundary of the sanctuary, discharging or depositing any material or other matter or constructing, placing, or abandoning any structure, material or other matter; or discharging or depositing any material or other matter outside the boundary of the sanctuary that subsequently enters the sanctuary and injures a sanctuary resource or quality;
3. Vessel operations, including anchoring;
4. Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities, by any means except by use of rod and reel, and handline gear;
5. Possessing fishing gear that is not allowed to be used in the sanctuary;
6. Using explosives, or devices that produce electric charges underwater; and
7. Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource.

Section 2. Emergency Regulation

Where necessary to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1 of this Article, is subject to immediate temporary regulation, including prohibition.

Article 5. Relation to Other Regulatory Programs

Section 1. Defense Activities

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

Section 2. Other Programs

All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the sanctuary unless authorizing any activity prohibited by a regulation implementing Article 4.

Article 6. Alteration of This Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the Act including public hearings, consultation with interested Federal, State, and local government agencies, and the South Atlantic Fishery Management Council, review by the appropriate congressional committees, and approval by the Secretary of Commerce or designee.

[End of designation document]

Summary of the Regulatory Amendment

The regulatory changes clarify that ''submerged lands'' are within the boundary and are part of the sanctuary. This updates the boundary regulation to make it consistent with the NMSA and its definition of areas of the ''marine environment'' that may be designated as a sanctuary.

The regulations also modify the sanctuary fishing regulations that have been in effect since 1981. The original regulations prohibited the use of specific fishing gear within the sanctuary, particularly wire fish traps and bottom trawls. The new regulation prohibits the injuring, catching, harvesting, or collecting of any marine organism by any means except by rod and reel, handline, or spearfishing gear without powerheads. This establishes a

clearer, more enforceable approach for the sanctuary fishing regulations than those currently in effect. Rod and reel gear is the predominant fishing gear now in use at GRNMS and continues to be allowed under the regulations. To facilitate enforcement of the gear restriction, a related regulation requires that all forms of fishing gear other than rod and reel, handline, or spearfishing gear without powerheads be stowed when vessels are in the sanctuary.

The final regulations also prohibit anchoring vessels within the sanctuary. The unique bottom formations and habitats at GRNMS are vulnerable to the effects of anchoring. The documented increases of population in the region and of visitor use at GRNMS suggest that the risk from vessel anchoring will also increase and that prohibiting anchoring helps protect the live bottom habitat and the associated living marine resources that GRNMS was designated to protect. This regulation has little impact on current users of the sanctuary. Based on findings of a socioeconomic study (Ehler and Leeworthy) conducted in 2002, virtually none of the activities that occur at GRNMS require anchoring. Fishermen routinely allow their boats to drift during bottomfishing or are trolling for migratory species, and divers frequently use a ''live-boat'' for drift diving, due to the strong currents. There is overall support for the ban on anchoring among users surveyed during the socioeconomic study. In an emergency situation, boaters are allowed to anchor in the sanctuary and existing boundary marker buoys provide a place for a boat to moor in an emergency as well.

Finally, the regulations for the issuance of permits adds a new permit category for assisting in managing the sanctuary. This authorizes the NMSP to issue a permit to the sanctuary manager and qualified individuals outside the NMSP for activities that otherwise would be prohibited, if the activities assist in sanctuary management and if they satisfy permit criteria. The permit criteria require the NMSP or the Superintendent to consider, and make certain findings regarding, factors including the duration of a proposed activity, its cumulative effects, and whether it is necessary to conduct the proposed activity in the sanctuary. A permit holder is required to display a copy of the permit in any vessel or aircraft being used in the permitted activity.

The following regulatory changes are also included in this document: The term ''seabed'' is replaced with ''submerged lands of the sanctuary'' to be consistent with usage in the NMSA. The prohibition against dredging, drilling into or altering submerged lands of the sanctuary specifically includes bottom formations to call attention to one of the critical elements of the ecosystem at GRNMS. The original prohibition against constructing any structure other than a navigation aid is revised to include constructing, placing, or abandoning any structure or material on the sanctuary submerged lands. This change, among other things, prohibits activities that have been identified in the Florida Keys National Marine Sanctuary, where materials are placed on the submerged lands to create lobster habitat. The prohibition against using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited from being taken is revised to prohibit the use underwater of explosives and devices producing electric current, while the reference to poisons is removed because it is already addressed by the prohibition against discharges. Use of these items is prohibited regardless of whether marine animals are being taken. The regulation prohibiting tampering with, damaging or removing historic or cultural resources is revised to prohibit moving, removing, damaging, or possessing any sanctuary historical resource, or attempting any of these. This change better protects these resources from being removed and facilitates enforcement by prohibiting their possession.

Comments and Responses

During the public comment period, 144 written comments were received. Seven (7) public hearings were also held with approximately 125 individuals in attendance. Comment during the public hearings was derived out of round table discussions and recorded on flip charts at each of the small group tables. Written and verbal comments were compiled and grouped by general topics into a 10-page summary, which was reviewed and considered by the GRNMS Advisory Council on January 28, 2004.

Substantive comments received are summarized below, followed by NOAA's response. Multiple but similar comments have been treated as one comment for purposes of response. Comments beyond the scope of the proposed action are neither summarized nor responded to.

Comment 1: Many members of the public that have an interest in spearfishing commented that spearfishing at Gray's Reef should not be prohibited as proposed in the draft plan. The sanctuary does not have specific data on the number of people who spearfish and the amount of fish they take. If spearfishing is prohibited, then all bottom fishing at the sanctuary should be prohibited too. Bottom fishing takes far more fish and leaves far more debris on the reef than spearfishing does.

Response: Spearfishing was considered for regulation during the original 1981 GRNMS designation. No regulations, however, were adopted at that time, except the prohibition of powerheads (explosives) for spearfishing. While the number of recreational divers spearfishing at GRNMS appears to be small, spearfishing typically targets the larger individual fish among the reef-dependent species. Large fish are important to the reproductive health of species. Some fish populations are overfished or approaching overfished status. Some researchers have commented on the lack of large snapper-grouper individuals at GRNMS (Bohnsack pers. comm.).

Research has shown significantly reduced populations of larger predatory fishes where spearfishing occurs (SAFMC, 1990; Bohnsack, 1982; Chapman and Kramer, 1999; Jouvenel and Pollard, 2001). Larger predators are favored targets of spearfishermen. Reduction in the larger predatory fishes can have a ''top-down'' effect on fish populations by allowing other fish populations to increase, altering the composition of the overall natural communities including invertebrates.

Although the use of powerheads is prohibited at GRNMS, powerhead cartridges found on site indicate that this gear is still in use. Law enforcement officials have expressed concerns that some commercial spearfishing operations may be harvesting large numbers of undersized fish from the region.

NOAA recognizes that while it has been effectively demonstrated in other areas that selective removal of large individual fish by spearfishing can adversely affect the reproductive viability of a given population, the sanctuary has little data on the actual level of spearfishing at GRNMS. The sanctuary will, therefore, gather additional socioeconomic information on this activity in GRNMS and review the issue again in two years. The additional socioeconomic information coupled with ongoing biological studies of fish populations will enable management to better evaluate the impact of current and potentially future levels of spearfishing at GRNMS.

NOAA therefore defers taking action on spearfishing as was proposed in the draft management plan for a period of two years while additional information

is collected on this activity in GRNMS. NOAA will then determine what action to take, if any, given the additional information.

Comment 2: (U.S. Environmental Protection Agency, Region IV) The language used in the Preferred Alternative could be strengthened to expressly prohibit the use or possession of spearguns, nets, bandit gear, buoy gear, traps, pots, etc., in the GRNMS. The distinction between permitted activities and prohibited activities should be made unambiguously clear.

Response: NOAA has determined that prohibiting specific gear types could add more complication and confusion for fishermen by lengthening the list of restricted fishing methods and gear, versus clearly identifying what gear is allowed in GRNMS. The allowable gear regulation approach was endorsed by the GRNMS Advisory Council and the SAFMC as the best approach.

Comment 3: (South Atlantic Fishery Management Council) The SAFMC voted to support the DMP/DEIS and proposed fishing regulatory language contained in the November 2003 public hearing document. Prohibiting anchoring and the other proposed actions are consistent with the SAFMC's Essential Fish Habitat (EFH) and EFH-Habitat Area of Particular Concern (HAPC) designations and with the SAFMC's habitat policies. The SAFMC did, however, request that GRNMS reconsider the proposed 3-hook limit.

Response: NOAA has adopted Alternative ''c'' of the proposed allowable gear regulation, to permit only rod and reel, handline, and spearfishing gear without powerheads in the sanctuary. NOAA has determined that the 3-hook limit on rod and reel and handline gear, as defined in the draft proposed rule, complicates law enforcement and compliance. Hooks vary significantly in size and identification since hooks are made by different manufactures in different countries. Uses are also varied, making compliance difficult for users and interpretation of the regulations difficult for law enforcement. Therefore, NOAA defines the gear allowance without a limit on the number of hooks.

The process of developing fishing regulations for GRNMS has complied with the NMSA, including Section 304(a)(5), and the Memorandum of Understanding executed by the SAFMC, NOAA Fisheries Service, and the NMSP.

Comment 4: (Georgia Department of Natural Resources, Coastal Resources Division, Marine Fisheries Section) Prohibiting anchoring and the other proposed actions are consistent with the SAFMC's EFH and EFH–HAPC designations and with the Council's habitat policies. The anchoring prohibition and similar marine resource action plan strategies to protect the live bottom habitat are appropriate and consistent not only with the SAFMC's EFH definitions/policies, but also with the goals and objectives of the NMSP.

Response: See response to comment 3 above. The prohibition of anchoring is consistent with the SAFMC's EFH and EFH–HAPC designations of GRNMS, as well as the goals and objectives of the NMSP.

Comment 5: (U.S. Navy, Commander Navy Region Southeast) The Navy requested that the document expand the statements regarding military activities to specifically indicate that the sanctuary designation did not limit or restrict ongoing or future military use for training and operations.

Response: Existing regulations governing national defense exemptions for current activities have not changed.

Current Department of Defense activities are essential for national defense and are not subject to the regulatory prohibitions. The exemption of additional activities having significant impacts will be determined in consultation between the Director and the Department of Defense.

Comment 6: (U.S. Navy, Commander Navy Region Southeast) The Navy recommended modification of the next to last sentence in the section on Military Activities on page 53 of the FEIS to read ''Military aircraft do not routinely fly below 1500 feet or within a one nautical mile radius of the Sanctuary.''

Response: NOAA acknowledges the Navy's comment and has determined that the language as it exists in the FMP/FEIS (already published), coupled with the regulations governing national defense activities, will adequately address this concern.

Comment 7: (U.S. Coast Guard, Commander (OLE), 7th Coast Guard District) Section 922.92(5)(ii) of the regulations states that ''There shall be a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the sanctuary has been collected or removed from the Sanctuary.'' A ''rebuttable presumption'' places the burden of proving that any organism in possession of an alleged violator was actually caught in the sanctuary on the enforcement entity, something that is very difficult to do unless directly observed. Section 5 (ii) as written would be extremely difficult to enforce. The Coast Guard recommended changing this text to simply prohibit possession of any marine organism or part thereof when within the sanctuary and when in possession of any fishing gear or means except rod and reel and handline gear that is available for use. The prohibition text should also ensure that it is illegal to possess any species caught with a gear type prohibited in the sanctuary.

Response: The U.S. Coast Guard is a key enforcement partner to NOAA in the protection of sanctuary resources and NOAA appreciates its comment to improve the regulation. The rebuttable presumption does not place any additional burden on the enforcement entity; rather it operates such that any person located inside the sanctuary and found in possession of a marine organism is presumed to have taken that organism from the sanctuary. Thus, no actual observation of a violation is required—it is presumed—and the burden is shifted to the alleged violator to provide some evidence proving the organism was in fact not taken from the sanctuary. Although the presumption can be overcome by the introduction of contrary evidence, NOAA regards the rebuttable presumption as generally useful to enforcement of the sanctuary regulations and, therefore, believes it should be retained in the final regulations. Language in the text of the allowable gear regulation addresses possession of species caught in the sanctuary with prohibited gear types.

Comment 8: (U.S. Coast Guard, Commander (OLE), 7th Coast Guard District) Section 922.92(6) of the DMP/DEIS prohibits gear other than rod and reel and handline gear unless ''stowed and not available for use.'' This term is later defined as ''stowed and not available for immediate use.'' This disparity between prohibition and definition will cause confusion and may make this prohibition unenforceable. The definition and prohibition language should be aligned.

Response: NOAA has corrected this typographical error in the FMP/FEIS by adding the word ''immediate'' in Section (6).

Comment 9: (U.S. Coast Guard, Commander (OLE), 7th Coast Guard District) Rod and reel gear is defined in the definitions section, and the definition includes a limit on the number of hooks per line to capture baitfish and a limit on the size and type of hooks that can be used. This limitation should be removed, as it is extremely difficult to enforce. However, if this limit is retained these prohibitions should be moved from the definition section and be included under the new regulation section. This will help simplify the regulations, a key component of an enforceable regulation.

Response: NOAA has changed the regulation. See response to comment 3 above.

Comment 10: (U.S. Coast Guard, Commander (OLE), 7th Coast Guard District) Prior to implementing a final rule, GRNMS should coordinate with NOAA General Counsel for Enforcement and Litigation to update GRNMS' penalty schedule. The current penalty schedule was last revised in January 1997, and a proposed revision drafted in 2002 has not gone into effect. Unfortunately, the proposed revision is not adequate and does not address the proposed regulation changes in the DMP/DEIS. In addition, the majority of potential violations within GRNMS are likely to be small and perpetrated by recreational fishermen. Any penalty schedule update should reflect this.

Response: NOAA has developed a national penalty schedule for the NMSP. Penalty schedules, however, are not established by rulemaking; they are for internal guidance and have no binding effect on the amount of a penalty that may be assessed for a violation. Rather they are intended for consistency across a national system. The NMSA remains the authority for, and the source of, penalties that NOAA may assess.

Comment 11: The South Carolina Aquarium fully supports the increased protection proposed in the DMP/DEIS. Limits placed on spearfishing and anchoring would help to minimize damage due to human activities on Gray's Reef.

Response: NOAA has chosen the prohibition on anchoring (alternative ''a''). Regarding spearfishing, see response to comment 1 above.

Comment 12: The Coastal Group, Georgia Chapter, Sierra Club strongly supports the two major regulatory changes in the management plan: the prohibition of dropping anchor except in an emergency and the elimination of spearfishing from the sanctuary.

Response: NOAA has chosen the prohibition on anchoring (alternative ''a''). Regarding spearfishing, see response to comment 1 above.

Comment 13: The Center for a Sustainable Coast believes that to truly serve as a sanctuary for marine life, GRNMS must ultimately be managed as a reserve to protect all species within its bounds against fishing and any other activities that disturb natural resources. To strengthen the capacity of efforts to improve water resource management, the GRNMS Management Plan should include analysis of the relationship of watersheds, water use, and water quality with the inter-tidal and marine areas. GRNMS must work to enhance and support greater awareness about these issues, and work to build a lasting intergovernmental management structure capable of resolving the complex water issues that may impact Gray's Reef and other marine resources.

Response: During the scoping process for the revised management plan, many comments received asked that GRNMS consider marine reserve status (no-take) for the sanctuary. As noted in the FMP/FEIS (pages 29 and 69–70), GRNMS determined that marine reserves are best addressed through our partnership with SAFMC as they continue deliberations on a network of reserves in the region.

NOAA agrees that water quality is critical to the continued sustainability of the protected resources at GRNMS. Therefore an extensive water quality monitoring program has been implemented at GRNMS. Education programs, such as the Rivers to Reef module, are also bringing awareness to students and teachers.

Comment 14: Many commenters expressed general support for increased protection of marine resources in the sanctuary and/or that NOAA adopt the preferred fishing alternative ''a.''

Response: See responses to comments 11 through 13 above.

Comment 15: One member of the public commented that GRNMS should be managed as a ''sanctuary;'' and/or allow only dive activities; and/or allow only transit through the sanctuary with fishing gear stowed.

Response: GRNMS is managed as a ''national marine sanctuary,'' which is defined in the NMSA as ''an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.'' As such, all uses are evaluated as to whether they are compatible with the primary objective of resource protection. Ongoing research and monitoring are conducted to support that objective.

Comment 16: One commenter suggested that GRNMS should consider designating 25–50 percent of the sanctuary as a reserve for non-extractive uses. Protect Gray's Reef NMS as representative hard-ground live bottom habitat in the South Atlantic Bight.

Response: See response to comment 13 above.

Comment 17: Several members of the public commented that non-extractive diving as a compatible use at GRNMS is growing; more divers prefer recreational diving for wildlife observation and photography. Conflicts are arising due to spearfishing at GRNMS because the fish, particularly larger fish, are either killed or scared away. Most spearfishermen do not use GRNMS, but prefer other offshore sites.

Response: See response to comment 1 above.

Comment 18: Several members of the public asked if the proposed regulations restrict use of commonly used equipment such as downriggers and marker buoys?

Response: The FMP/FEIS does not propose restrictions on commonly used equipment such as downriggers and marker buoys. The document specifically states on page 65: ''Items that are deployed and subsequently retrieved the same day, such as fishing line and small marker buoys, are not considered 'deposited' in the Sanctuary.''

Comment 19: A member of the public commented that GRNMS should reduce all commercial and recreational fish harvest to ''sustainable levels.'' GRNMS should ban all commercial fishing and charter/head boats in order to achieve sustainable levels of harvest.

Response: NOAA is responsible for the conservation and management of fish stocks within the Federal 200-mile limit exclusive economic zone of the Atlantic Ocean off the southeastern U.S. under the Magnuson-Stevens Fishery Conservation and Management Act. Under this mandate, sustainable levels of fish harvest are an objective for a wide range of fish species. Achieving sustainable fishing levels can be done better on a regional level well beyond the boundaries of GRNMS. However, the allowable fishing gear approach to GRNMS regulation does restrict certain types of fishing gear that have a negative impact on sustainable levels of many fish species.

Comment 20: One member of the public commented that GRNMS should regulate fishing gear by prohibiting specific gear instead of allowing specific gear.

Response: NOAA believes that fishing alternative ''b'' would not be in the best interest of the sanctuary or its users. The allowable gear approach is simple, clear, and easily understood by the fishing community and by the public generally. It means that gear identified as allowable is the only gear that may be used in the sanctuary; use of all other gear types is prohibited. This is a simpler, clearer approach than attempting to list all possible gear types that are prohibited. It also simplifies and facilitates monitoring and law enforcement, and eliminates the costs to users who develop and utilize fishing gear in the sanctuary that may have to be prohibited in the future due to damage to the resources.

Comment 21: One commenter was concerned that all diving activities will be eliminated at GRNMS.

Response: This plan does not propose eliminating diving at GRNMS. Although impacts on bottom resources from diving activities are a concern, GRNMS will establish a comprehensive outreach and education program to address these concerns. The revised regulations for GRNMS are very clear that only specific fishing gear is allowed and any other form of collection, harvest, or injury to marine organisms is prohibited.

Comment 22: The National Marine Manufacturers Association has strong reservations about NMSP's proposal to prohibit anchoring in the sanctuary because there is no evidence that at any point NMSP considered the effect this proposal would have on boater safety. NMSP should formally consult with the U.S. Coast Guard (USCG) Office of Boating Safety for recommendations on how to make NMSP's management policies consistent with proper boater safety procedures. NMMA also urges NMSP to adopt anchoring alternative ''b'' and establish and maintain a mooring buoy system in the appropriate places to enhance boater safety.

Response: NOAA involved the USCG, area boaters, fishermen, and divers on many occasions in the development of the FMP/FEIS through GRNMS Advisory Council meetings, scoping, and workshops. A representative of the 7th USCG District sits on the Advisory Council, along with a recreational angler and a recreational dive operator. The USCG's comment in its formal consultation letter response on the DMP/DEIS stated that: ''There are no objectionable vessel safety concerns contained within this proposal.''

Regarding anchoring alternative ''b,'' NOAA has concluded that a mooring buoy system is not needed, in part because the proposed regulation allows for use of anchors in emergency situations. The GRNMS Advisory Council, and other users surveyed in the socioeconomic studies cited in the FMP/FEIS, also consistently advised that a mooring buoy system was not needed in the sanctuary because boaters (fishermen and divers) prefer to drift or troll. The potential negative impacts from concentrated use around mooring buoys is also a concern for the sanctuary. GRNMS will continue to monitor use in the sanctuary and may reconsider mooring buoys in the next management plan review if the sanctuary finds that they are needed.

Comment 23: A couple members of the public commented that NOAA should install mooring buoys in the sanctuary to enhance fishing, diving and research activities if anchoring is prohibited; consider 25–30 moorings and moveable moorings to minimize the negative impacts of concentrated activities.

Response: See response to comment 22 above.

Comment 24: Several commenters expressed that NOAA should choose the preferred alternative ''a'' for anchoring.

Response: NOAA has chosen the preferred alternative ''a'' for anchoring.

Comment 25: One commenter stated that anchoring alternative ''c'' is not a good option because it assumes that sandy areas in GRNMS have no biological value. It makes little sense to anchor in the sandy areas away from fishing and diving locations.

Response: NOAA acknowledges the concern about the biological importance of sandy areas in the sanctuary. Page 38 of the FMP/FEIS points out the high infaunal diversity in sandy bottom areas of the sanctuary. NOAA has chosen the preferred alternative ''a'' for anchoring.

Comment 26: One member of the public commented that the prohibition on anchoring is inappropriate because there is no concrete or photographic evidence of anchor damage.

Response: Numerous photos have documented damage from anchoring at GRNMS. Page 61 of the FMP/FEIS shows anchoring gear photographed on a live bottom area at GRNMS. Numerous studies in other locations have also definitively documented the significant damage to delicate invertebrates, corals and hard bottoms from anchoring practices. The prohibition of anchoring is not a limiting factor for visitors to be able to conduct recreational activities in GRNMS. Anchoring continues to be allowed in emergency circumstances.

Comment 27: One member of the public commented that there is no purpose to establishing a working group to explore the concept of a marine research area because there is no such thing as a ''natural process along a populated coast,'' and a marine research area would have a negative impact on the fishing community. Designating a research area would open the door to closing the entire sanctuary to fishing; other live bottom areas in the region should be chosen for a research reserve instead of GRNMS.

Response: After consideration of the public comments on the DMP/DEIS, the Advisory Council recommended that the sanctuary establish a working group to advise the Advisory Council on the development of the concept of a marine research area. The Advisory Council, with the concurrence of the sanctuary, established the Marine Research Area Concept Working Group (RAWG), which met from May 2004 until March 2005. The Working Group was comprised of representatives from education, fishing, diving, research and conservation, law enforcement, and other regional, private, State, and Federal organizations. The recommendations from the Working Group to the Advisory Council can be found in Section III under the Research and Monitoring Action Plan (RM–2). The Advisory Council deliberated on the Working Group's recommendations at its June 2005 meeting and made its recommendations to the sanctuary (also found at RM–2).

NOAA has accepted the recommendations of the Advisory Council and made a decision to more formally consider the concept of a research area in the sanctuary through a public process guided by requirements of NEPA and the NMSA.

Comment 28: Members of the public commented that GRNMS should consider an area only for research in the sanctuary; the reserve could serve as a ''constant'' for monitoring marine resources, and help improve information specific to Gray's Reef.

Response: See response to Comment 27 above. The research area concept should be considered and an investigation of its benefits will move forward.

Comment 29: Members of the public commented that GRNMS should consider a ''rotational'' marine research area (either geographically or temporally).

Response: See response to comment 27 above.

Comment 30: One member of the public noted that if the document is to follow the provisions of NEPA, it must have a List of Preparers contained within.

Response: A full list of preparers is included in the FMP/FEIS in an appendix entitled List of Preparers.

Comment 31: A member of the public urged GRNMS to formally incorporate a study of birds which occupy the reef as part of Goal 2 as research into the ecology of the reef.

Response: Surveys of birds in the sanctuary have become a regular part of the monitoring program.

Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act (16 U.S.C. 1434) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other

resource management authorities. Section 304(a)(4) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(4)) requires that the procedures specified in section 304 for designating a national marine sanctuary be followed for modifying any term of designation. Because this action revises the sanctuary designation document (*i.e.*, the sanctuary boundary is revised to specifically include the submerged land), NOAA must comply with the requirements of section 304. All necessary requirements have been completed.

National Environmental Policy Act

When changing a term of designation of a national marine sanctuary, section 304 of the NMSA (16 U.S.C. 1434) requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and that the DEIS be made available to the public. The DEIS, along with a draft management plan, was released on October 31, 2003 (68 FR 62033). The public comment period ended on December 31, 2003. A final environmental impact statement and final management plan were published and made available to the public on July 28, 2006.

Executive Order 12866: Regulatory Impact

The final rule has been determined to be not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in: (1) An annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety; (2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of such recipients; or (4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not fall within the definition of ''policies that have federalism implications'' within the meaning of Executive Order 13132. The Sanctuary does not include State waters. Furthermore, the proposed changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Executive Order, however, the NMSP consulted with the Georgia Department of Natural Resources during development of the FMP/FEIS and these regulations.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the FMP/FEIS for GRNMS does not have a significant economic impact on a substantial number of small entities. We received no comment on this certification or the economic impact of the rule. While minor modifications have been made to the rule proposed, the basis for the certification has not changed. Thus, no regulatory flexibility analysis was required and none has been prepared.

The factual basis for this certification follows:

This final rule is associated with a FMP/FEIS that was developed for the Gray's Reef National Marine Sanctuary (GRNMS), located off Sapelo Island, Georgia. A FMP is a planning and management document that describes the objectives, policies, and activities for a sanctuary. The final rule includes: (1) A prohibition on anchoring within the Sanctuary (except in emergencies); (2) a revision of Sanctuary regulations to allow fishing only with rod and reel, handline gear, and spearfishing gear without powerheads; and (3) a gear stowage requirement to facilitate enforcement.

Current socioeconomic studies and on-site surveys indicate that the majority of users in GRNMS are recreational fishermen who use personal boats and rod and reel gear. There are approximately two dozen charter fishing operations along the Georgia coast that occasionally target the Sanctuary. Commercial fishing activity is negligible, as most commercial fishing gear is prohibited by existing regulations. Furthermore, nearly all users conduct their activities in a manner that complies with the final rule.

Paperwork Reduction Act

This proposed rule involves an existing information collection requirement currently approved by OMB (OMB approval number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed rule will not require any change to the currently approved OMB approval and would not result in any change in the public burden in applying for and complying with NMSP permitting requirements.

The public reporting burden for these permit application requirements is estimated to average 1.00 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to, David Bizot, National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway, N/ORM–6, Silver Spring, MD 20910, by e-mail to *David.Bizot@noaa.gov,* by fax to (301) 713–0404; or by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

The proposed revised permit regulations would require the Director of the NMSP to consider the proposed activity for which a permit application has been received. The proposed modifications to the permit procedures and criteria (15 CFR 922.113) would further refine current requirements and procedures of the general National Marine Sanctuary Program regulations (15 CFR 922.48(a) and (c)). The proposed modifications would also clarify existing requirements for permit applications found in the Office of Management and Budget approved applicant guidelines (OMB Control Number 0648–0141). The revised permit regulations would add language about: the qualifications, finances, and proposed methods of the applicant; the compatibility of the proposed method with the value of the Sanctuary and the primary objective of protection of Sanctuary resources and qualities; the necessity of the proposed activity; and the reasonably expected end value of the proposed activity.

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

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 4, 2006.

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management.

■ Accordingly, for the reasons set forth above, 15 CFR part 922 is to be amended as follows:

PART 922—[AMENDED]

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. The regulations for GRNMS (15 CFR part 922, subpart I) are revised to read as follows:

Subpart I—Grey's Reef National Marine Sanctuary

Sec.
922.90 Boundary.
922.91 Definitions.
922.92 Prohibited or otherwise regulated activities.
922.93 Permit procedures and criteria.

Subpart I—Grey's Reef National Marine Sanctuary

§ 922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within the geodetic lines connecting the following coordinates:

Datum: NAD83

Geographic Coordinate System

(1) N 31.362732 degrees W 80.921200 degrees
(2) N 31.421064 degrees W 80.921201 degrees
(3) N 31.421064 degrees W 80.828145 degrees
(4) N 31.362732 degrees W 80.828145 degrees
(5) N 31.362732 degrees W 80.921200 degrees

§ 922.91 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Handline means fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.

Rod and reel means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually or electrically.

Stowed and not available for immediate use means not readily accessible for immediate use, *e.g.*, by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, partially disassembled, or stowed for transit.

§ 922.92 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.93, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling into, or otherwise altering in any way the submerged lands of the Sanctuary (including bottom formations).

(2) Constructing any structure other than a navigation aid, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary.

(3) Discharging or depositing any material or other matter except:

(i) Fish or fish parts, bait, or chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling water.

(4) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(5)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, handline, or spearfishing gear without powerheads. (ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the Sanctuary has been collected from the Sanctuary.

(6) Except for possessing fishing gear stowed and not available for immediate use, possessing or using within the Sanctuary any fishing gear or means except rod and reel, handline, or spearfishing gear without powerheads.

(7) Using underwater any explosives, or devices that produce electric charges underwater.

(8) Breaking, cutting, damaging, taking, or removing any bottom formation.

(9) Moving, removing, damaging, or possessing, or attempting to move, remove, damage, or possess, any Sanctuary historical resource.

(10) Anchoring any vessel in the Sanctuary, except as provided in § 922.92 when responding to an emergency threatening life, property, or the environment.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

§ 922.93 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.92(a)(1) through (10) if conducted in accordance within the scope, purpose, manner, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, National Marine Sanctuary Program, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) The Director, at his or her discretion may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.92(a)(1) through (10). The Director must also find that the activity will:

(1) Further research related to the resources and qualities of the Sanctuary;

(2) Further the educational, natural, or historical resource value of the Sanctuary;

(3) Further salvage or recovery operations in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

(d) The Director shall not issue a permit unless the Director also finds that:

(1) The applicant is professionally qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(4) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;

(5) The proposed activity will be conducted in a manner compatible with the primary objective of protection of

Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(6) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(7) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes;

(8) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity; and

(9) There are no other factors that make the issuance of a permit for the activity inappropriate.

(e) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(f) The Director shall, inter alia, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(g) The Director may, inter alia, make it a condition of any permit issued to require the submission of one or more reports of the status and progress of such activity.

(h) The Director may, inter alia, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

[FR Doc. E6–16841 Filed 10–11–06; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–078]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the ''Red Bull Flugtag Baltimore'', a marine event to be held October 21, 2006 on the waters of the Patapsco River, Inner Harbor, Baltimore, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Baltimore Inner Harbor during the event.

DATES: This rule is effective from 10:30 a.m. to 5:30 p.m. on October 21, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–078) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 16, 2006, we published a Notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Patapsco River, Inner Harbor, Baltimore, MD in the **Federal Register** (71 FR 47159). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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

Background and Purpose

On October 21, 2006, Red Bull North America will sponsor ''Red Bull Flugtag Baltimore'' at the Inner Harbor in Baltimore, MD. The event will consist of 30 teams who attempt to fly a human powered craft from an 80-foot long flight deck that extends over the water immediately adjacent to the southwest corner of the promenade surrounding the Baltimore Inner Harbor. The regulated area originates at the southwest corner of the Inner Harbor adjacent to the Maryland Science Center and extends outward over the water within an approximately 150 yard arc. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Patapsco River, Inner Harbor, Baltimore, Maryland.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting a portion of the Baltimore Inner Harbor during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally,

the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic may be able to transit the regulated area at slow speed when event activity is halted, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portion of the Baltimore Inner Harbor during the event.

Although this regulation prevents traffic from transiting a small segment of the Baltimore Inner Harbor during the event, this rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic may be able to transit the regulated area when event activity is halted, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would

limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—REGATTAS AND MARINE PARADES

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

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

■ 2. Add a temporary § 100.35–T05–078 to read as follows:

§ 100.35–T05–078, Patapsco River, Inner Harbor, Baltimore, MD.

(a) *Definitions:* The following definitions apply to this section; (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

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

(3) *Participant* includes all vessels participating in the Red Bull Flugtag Baltimore under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Regulated area* includes the waters of the Patapsco River, Baltimore, MD, Inner Harbor within the immediate vicinity of the southwest corner of the harbor adjacent to the Maryland Science Center. The area is bounded on the south and west by the shoreline promenade, bounded on the north by a line drawn along latitude 39°16′58″ North and bounded on the east by a line drawn along longitude 076°36′36.5″ West. All coordinates reference Datum NAD 1983.

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

(2) The operator of any vessel in the regulated area shall: (i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

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

(c) *Effective period.* This section will be enforced from 10:30 a.m. to 5:30 p.m. on October 21, 2006.

Dated: September 27, 2006.

Larry L. Hereth,

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

[FR Doc. E6–16907 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 1

[USCG–2006–24520]

RIN 1625–AB03

Coast Guard Organization; Activities Europe; Correction

AGENCY: Coast Guard, DHS.

ACTION: Correcting amendment.

SUMMARY: Final rule USCG–2006–24520, related to the Coast Guard's organization for marine safety functions, as affected by a change in the operational and administrative control of Activities Europe, was published in the **Federal Register** of June 22, 2006 (71 FR 35816). That final rule document contained an error that unintentionally resulted in the removal of several paragraphs of text in the Code of Federal Regulations. This final rule corrects that omission.

DATES: Effective on October 12, 2006.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. D. Skewes, Coast Guard, telephone 202–267–0418 or e-mail *DSkewes@comdt.uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** of June 22, 2006 (71 FR 35816) amending, among other sections, 46 CFR 1.01–15 (a). The amendment inadvertently deleted paragraphs (a)(1) and (a)(2), concerning the activities of Marine Safety and Boating Safety Divisions. This correction restores the inadvertently deleted paragraphs.

List of Subjects in 46 CFR Part 1

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

■ Accordingly, 46 CFR part 1 is corrected by making the following correcting amendment:

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

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

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

■ 2. Revise paragraph (a) of § 1.01–15 to read as follows:

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

(a) To assist the District Commander, and the Atlantic Area Commander with respect to Activities Europe, in carrying out the regulatory and enforcement aspects of marine safety, there is assigned to each District Commander and to the Atlantic Area Commander a staff officer designated as Chief, Marine Safety Division. The chain of military command is from the District Commander to each Officer in Charge, Marine Inspection, within the district and from the Atlantic Area Commander to the Officer in Charge, Activities Europe. The Chief of the Marine Safety Division is a staff officer assigned to the District Commanders and Atlantic Area Commander, and acts only on the basis of the authority and direction of the District Commanders, and the Atlantic Area Commanders with respect to Activities Europe.

(1) The Chiefs, Marine Safety Division, in the District Offices, under the supervision of their respective District Commanders, direct the activities of their district relative to vessel, factory and shipyard inspections; reports and investigations of marine casualties and accidents; processing of violations of navigation and vessel inspection laws; the licensing, certificating, shipment and discharge of seamen; the investigation and

institution of proceedings looking to suspension and revocation under 46 U.S.C. chapter 77 of licenses, certificates, and documents held by persons; and all other marine safety regulatory activities except those functions related to recreational boating when under the supervision of the Chiefs, Boating Safety Division, in the District Offices.

(2) Unless otherwise provided for, the Chiefs, Boating Safety Division, in the District Offices, under the supervision of their respective District Commanders, direct the activities in their districts relative to administration of the law enforcement program applicable to uninspected vessels used for recreational purposes and the imposition and collection of penalties in connection therewith; maintain liaison with Federal and State agencies having related interests; develop and coordinate agreements and arrangements with Federal and State agencies for cooperation in the enforcement of State and Federal laws related to recreational boating; and review investigative reports of recreational boating accidents.

* * * * *

Dated: October 5, 2006.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E6–16904 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[WT Docket No. 04–344; FCC 06–108]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission designates VHF maritime Channels 87B (161.975 MHz) and 88B (162.025 MHz) for Automatic Identification Systems (AIS). The designation of Channels 87B and 88B for AIS in the United States is consistent with establishment of a seamless global AIS framework, and will facilitate the broad, efficient and effective implementation of AIS in U.S. territorial waters. The intended effect of this action is to maximize the benefits of AIS for United States homeland security and maritime safety.

DATES: Effective November 13, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order,* FCC 06–108, adopted on July 20, 2006, and released on July 24, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. In the *Report and Order,* the Commission affirms its tentative conclusion that, in light of current circumstances, the public interest would be served by designating Channel 87B for exclusive AIS use on a wideband simplex basis. Such an approach would result in both Channel 87B and the Federal Government Channel 88B being available for AIS use in U.S. territorial waters, just as they are used for that purpose internationally. Most commenters continue to favor this approach. However, MariTEL and a few other commenters oppose the designation of Channel 87B for AIS in the wideband simplex mode. These commenters contend that the use of duplex channels for AIS in the United States is technically feasible and should be preferred over wideband simplex AIS operation on Channel 87B because it would cause less disruption to existing VPC operations, preserve the efficiency benefits of duplex channelization throughout the VPC band, maximize the spectrum available for VPC communications, facilitate the implementation of wide-area VPC systems, reduce coordination requirements, permit VPC licensees to make full use of Channel 87, and minimize AIS interference to and from VPC operations. These comments focus primarily on the comparative impact on VPC operations of the various AIS channel designation options, but the Commission believes it is at least as important, if not more so, to consider the impact its decisions herein will have on AIS, a service specifically intended to enhance maritime domain awareness and navigational safety.

2. In the *Notice of Proposed Rule Making* in this proceeding (*AIS NPRM*), the Commission offered a number of reasons why it believed that the designation of Channel 87B for domestic AIS use on a wideband simplex basis would best promote the widespread, efficient and effective use of AIS, and thus the public interest in promoting and enhancing homeland security and maritime safety. Neither the comments to the *AIS NPRM* nor anything else in the record of this proceeding undermine the Commission's tentative conclusion that it would serve the public interest to designate Channel 87B for wideband simplex AIS use in the United States. Of critical importance, adoption of the Commission's proposal permits seamless worldwide AIS operations. As NTIA notes, use of Channels 87B and 88B for AIS communications in U.S. territorial waters will facilitate Coast Guard coordination with other nations in tracking and monitoring vessels.

3. In addition, the Commission remains concerned about the negative consequences that would arise if it does not designate Channel 87B for AIS use in the United States, because vessels on international voyages would have to switch from Channel 87B to other channels when entering U.S. territorial waters. As the Commission explained in the *AIS NPRM,* requiring vessels to switch channels as they transit an AIS ''fence'' between international and U.S. waters would create a risk that AIS tracking of such vessels, by both shore stations and other ship stations, would be interrupted. This temporary disappearance of vessels from AIS screens as they transit the AIS fence increases the risk of vessel collisions and creates a potential vulnerability in the Nation's maritime domain awareness. MariTEL concedes that the resultant need of vessels to switch channels when entering U.S. waters could be ''problematic,'' but argues that it should not preclude use of duplex channels for AIS in the United States. The Commission continues to believe that the potential risks of ''losing'' vessels from AIS screens when they first enter U.S. territorial waters, especially in busy maritime areas where port security is critical, is a significant factor disfavoring the use of channels other than Channel 87B for AIS in the United States, even if, as MariTEL speculates, foreign vessels would eventually ''become accustomed to switching to the U.S. AIS channels when they approach U.S. waters.''

4. Further, the record is devoid of any party disputing the Commission's determination in the *AIS NPRM* that domestic use of Channels 87B and 88B for AIS would facilitate the speedy and efficient deployment of AIS, allowing the United States to take full advantage of existing AIS standards and infrastructure. Technical standards have been established, and equipment has been built and installed, domestically and internationally, for AIS operation on Channels 87B and 88B. The Commission is concerned that the designation of narrowband duplex channels for domestic AIS use could preclude reliance on those prior standards-setting efforts, and necessitate further technical analysis and changes in equipment design, and possibly even a more extensive AIS shore infrastructure, to accommodate a unique AIS channelization scheme in the United States and the attendant need to switch AIS channels when entering U.S. waters. In addition to impeding AIS deployment in the United States as a general matter, such an approach also could discourage voluntary AIS carriage by, for example, recreational boaters, due to higher equipment costs. Moreover, the Commission believes, under the circumstances presented, that it is reasonable to consider, as part of its public interest analysis, the economic impact of a duplex approach on equipment manufacturers, ship station licensees and other stakeholders in the maritime community who have designed, manufactured, installed or are using (in most cases to comply with a statutory carriage requirement) AIS devices that operate on Channels 87B and 88B on a wideband simplex basis in reliance on the ITU standards. In this connection, the Commission notes that those standards have been in existence for several years, have been adopted for use not only in international waters but in the territorial waters of other nations, and are the only standards that have received any widespread acceptance.

5. Further, AIS operation on wideband channels will provide for effective AIS coverage at greater distances due to improved receiver sensitivity and frequency modulation discrimination capacity. In addition, requiring AIS shore station equipment and Class A AIS ship station equipment to operate in wideband mode will ensure the interoperability of such equipment with Class B devices. Although MariTEL correctly notes the inherent efficiency benefits of duplex channelization, the Commission agrees with NTIA that, under the circumstances presented, authorizing the use of Channel 87B on a simplex basis will, on balance, permit the establishment of more robust and effective AIS tracking capability in U.S. waters.

6. In sum, the Commission believes that AIS is an important tool for combating terrorism and a significant advancement in maritime navigation technology. Based on the record before us, the Commission is persuaded that its promotion and facilitation of AIS deployment will save lives, strengthen the integrity of our borders, protect port operations that are vital to the United States economy, and promote a healthy and secure marine environment. Given the importance of AIS to homeland security and maritime safety, the Commission also believes that, absent compelling reasons, it should adopt rules that will best ensure that AIS is deployed widely, quickly, reliably, and cost-effectively, and in a manner that will maximize its capabilities. On the basis of this record, the Commission believes that this goal can be most readily and best achieved by designating Channel 87B to be used for AIS on a wideband simplex basis. The Commission therefore amends its rules as proposed, and designates Channels 87B and 88B for exclusive AIS use.

7. In addition, the Commission adopts its proposal in the *AIS NPRM* to delete note US223 from the Table of Frequency Allocations if Channels 87B and 88B are designated for exclusive AIS use. Note US223 permits the authorization of maritime public correspondence operations on Channel 88 in specified areas within seventy-five miles of the Canadian border. Most of the commenters addressing this issue agree that it is no longer necessary to retain note US223 once Channel 88B has been designated exclusively for AIS in the maritime VPCSAs, inasmuch as VPCSAs 1, 5 and 7 completely encompass the areas identified in note US223. The Commission is not persuaded by MariTEL's argument that elimination of note US223 is inconsistent with MariTEL's retention of authority to use Channel 88. Under the rules the Commission adopts herein, MariTEL may use only the A side of Channel 88 for public correspondence operations, and it is unnecessary to retain note US223 to authorize such operations since Channel 88A (157.425 MHz) is allocated for non-Federal Government maritime mobile use on a primary basis. The Commission therefore deletes note US223 as proposed. The Commission agrees with MariTEL, however, that it should modify the table in § 80.371(c) of the Commission's rules only to reflect that Channels 87 and 88 may be used for radiotelephony in simplex mode, in keeping with the Commission's proposal in the *AIS NPRM*, rather than completely delete Channels 87 and 88 from the table. The Commission invited comment on the latter option as an alternative to its proposed amendment. MariTEL, the only commenter addressing this precise issue, correctly observes that eliminating Channels 87 and 88 from the table would be inconsistent with the fact that Channel 87A and, subject to the aforementioned limitations, Channel 88A can still be used for VPC service.

8. The Commission continues to believe that the interference impact of wideband simplex AIS on VPC operations can be effectively mitigated through commercially reasonable means. Accordingly, the Commission concludes that there is no need to adopt additional AIS interference abatement requirements. Even if simplex wideband AIS operations pose a greater interference challenge than duplex narrowband AIS operations, the Commission does not believe that extraordinary measures are necessary to overcome it. The record in this proceeding confirms that the use of forward error correction (FEC) techniques with soft decision decoding mitigates interference from AIS. The Commission also continues to believe that VPF Public Coast (VPC) station licensees would be required to employ FEC and interleaving even in the absence of AIS to correct errors due to signal fading. In support of this belief, the Commission notes that FEC and interleaving techniques are commonly used in other services and technologies, such as the Project 25 technology utilized by some public safety licensees. While the degree of error correction in the commercially available radio equipment MariTEL has thus far investigated may not meet its quality-of-service requirements, the technology is nonetheless available, as indicated in the comments.

9. In addition, while the Commission understands the desirability of limiting the amount of adjacent channel interference to VPC stations, it notes that the International Electrotechnical Commission (IEC) AIS emissions mask is in fact more stringent than the emissions mask applicable to other part 80 devices. In addition, the IEC AIS mask in the 25 kHz mode is more stringent than the equivalent part 90 mask. Therefore, since the AIS emission limits already are more stringent than the normally applicable part 80 or part 90 emission limits, the Commission does not believe it necessary to impose additional technical requirements to

further reduce AIS emissions under the circumstances presented.

10. The Commission continues to encourage the Coast Guard and MariTEL, as well as other VPC licensees, to cooperate on identification and implementation of effective interference mitigation measures, but it remains unconvinced that it should condition the use of Channel 87B for AIS on the Coast Guard's assumption of specific interference mitigation obligations. MariTEL propounds a number of such conditions as alternative means of allowing the use of Channel 87B for AIS in a manner that MariTEL deems sufficiently protective of its interests. MariTEL requests, for example, that the Commission require the Coast Guard to negotiate with MariTEL and incumbent licensees regarding interference protection, and to require an agreement among the parties before any rule designating Channel 87B for AIS becomes effective. The Commission thinks these approaches are both unnecessary, given its conclusions regarding the extent and remediability of AIS interference, and problematic. In this regard, the Commission is concerned that mandatory negotiations regarding interference protection would be no more successful than, and would have the same drawbacks as, mandatory negotiations over the designation of channels for AIS. It therefore declines to condition the designation of Channel 87B for AIS on the Coast Guard's successful completion of interference abatement negotiations with MariTEL and other VPC licensees for the same reasons that impelled us to reject another round of negotiations over the AIS channel designation. The Commission also declines to adopt MariTEL's alternative suggestion that any designation of Channel 87B for AIS be conditioned on demonstrating to MariTEL's satisfaction that it will be able to operate free of AIS interference. Following such an approach would give MariTEL the effective ability to veto AIS deployment on Channel 87B and could result in the same delay and uncertainty that would attend further negotiations. Moreover, even if the Commission were to agree with MariTEL's assessment of the interference threat posed by AIS, it still would be reluctant to make actions that would promote homeland security and public safety contingent upon a private entity's approbation.

11. Similarly, the Commission will not accept MariTEL's offer to forgo its objections to the reallocation of Channel 87B for AIS if the Commission adopts regulations that affirmatively require the Coast Guard to cure to MariTEL's satisfaction all interference to its VPC operations caused by the use of AIS devices on Channel 87B. MariTEL has failed to demonstrate that such extraordinary relief is warranted here and would further the public interest without adversely affecting homeland security and maritime safety. Moreover, such a requirement would be extremely difficult to craft and enforce. Most seriously, adoption of this MariTEL proposal raises the specter of shutting down AIS, thus creating a large vulnerability in our national security.

12. The Commission concludes that it would not serve the public interest to adopt the ''Sharing Proposal'' submitted by MariTEL because it appears that MariTEL still views a reexamination and revision of the AIS equipment certification standards as an integral component of the ''Sharing Proposal.'' The Commission believes, however, that it would be counterproductive to reconsider the AIS equipment standards. To do so would not only create problems for international AIS interoperability and coordination, but would also retard, possibly even freeze, AIS deployment efforts in this country, and could also necessitate retrofitting vessels that have already installed AIS equipment meeting the current international and FCC requirements.

13. The Commission affirms its tentative conclusion in the *AIS NPRM* that there is no basis in public policy or equity to compensate MariTEL in conjunction with the designation of Channels 87B and 88B for AIS on a wideband simplex basis. MariTEL contends, as it has consistently throughout this proceeding, that the Commission should require the Coast Guard to compensate it for harmful interference if the Commission adopts its AIS channel designation proposal. MariTEL asserts that failing to take such action would, for the first time, strip the winner of an FCC auction of the right to the spectrum it purchased in that auction, and that such action would be inequitable and contrary to public policy. The Commission disagrees for a number of reasons. Most importantly, the Commission do not believe that wideband simplex AIS operations on Channels 87B and 88B will unreasonably burden MariTEL's use of its licensed VPC spectrum. Even if such wideband simplex AIS operations were to present new challenges to the launch of a data network on the maritime VPCSA channels, the Commission does not believe that those challenges cannot be surmounted, and does not believe they are of such magnitude as to warrant special compensation to maritime VPCSA licensees. As the Commission indicated in the *AIS NPRM*, moreover, licensees who acquire their licenses at auction do not have a vested right to the continuation without change of the rules in effect at the time of the auction. Auction bidders are on notice, based on clear statutory language and judicial precedent, that the Commission retains the power to alter the terms of existing licenses (whether or not acquired through competitive bidding) through rulemaking, should the public interest so warrant.

14. The Commission believes that it would be beneficial and prudent to augment the record on the important question of whether to expand the exclusive use of Channel 87B for AIS beyond the nine maritime VPC service areas (VPCSAs), as initially contemplated, before taking final action on this issue. NTIA's request for a nationwide AIS allocation is now based to a significant degree on the need to protect satellite AIS systems, but NTIA advanced this justification for the first time in its comments to the *AIS NPRM*. As a result, the existing record provides almost no information regarding the technical feasibility, effectiveness or potential benefits of satellite AIS, and no studies or analysis of potential interference to and from satellite AIS. The Commission is not convinced, based on the current record, that it should depart from its earlier determinations limiting the scope of the AIS set-aside. On the other hand, neither does the Commission believe that it can affirm its tentative conclusion in the *AIS NPRM*, that the public interest would not be served by extending AIS use of Channel 87B to inland areas, without further review of this new development. It appears that satellite AIS may significantly expand the range at which vessels may be effectively identified and tracked. Such an expansion of AIS vessel tracking capabilities could promote and enhance maritime domain awareness. Accordingly, the Commission invites comment in a *Further Notice of Proposed Rule Making* on issues pertaining to satellite AIS, and further comment more generally on the geographic scope of the AIS set-aside.

15. The Commission believes, at this juncture, that Channel 87B can continue to be used for AIS on a shared basis with the limited group of site-based incumbent VPC stations in the maritime VPCSAs, but that the channel should ultimately be cleared for exclusive AIS use. The Commission is not persuaded that it is necessary to clear Channel 87B of site-based VPC stations immediately, as requested by NTIA, but neither will it require that AIS operate on a non-

interference basis to such stations, as ShipCom essentially urges (unless the incumbents receive compensation). Although ShipCom contends that it is impossible for site-based VPC operations to co-exist with AIS on Channel 87B, neither ShipCom nor NTIA (nor any other party) has brought to the Commission's attention any present examples of real-world VPC/AIS interference, notwithstanding that AIS has been operating on Channel 87B for several years now. The Commission also believes that ShipCom, like MariTEL, is incorrect in asserting that it is practically impossible to overcome AIS interference, in this case co-channel as well adjacent channel interference. In addition, the Commission is likewise unaware of any actual interference to AIS transmissions from these VPC operations, and it believes that AIS will be able to operate effectively notwithstanding the continued use of Channel 87B for a limited period of time by a very few, highly localized VPC stations.

16. However, the Commission also believes that to ensure the integrity of AIS in the long run, Channel 87B should be cleared of all site-based VPC and private land mobile radio (PLMR) operations over time through the non-renewal of any license authorizing such operation on Channel 87B in a maritime VPCSA. The Commission accordingly adds a new footnote to § 80.373(c)(1)(i) of the rules to provide that no site-based authorization to operate on Channel 87B in a maritime VPCSA will be renewed after this *Report and Order* takes effect. Operation of PLMR stations authorized to use Channel 87B on a secondary basis must cease immediately if it causes harmful interference to AIS that the licensee is unable to remedy.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

17. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public, including businesses with fewer than 25 employees.

B. Report to Congress

18. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* in this proceeding (*AIS NPRM*). The Commission sought written public comment on the proposals in the *AIS NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

20. The rules adopted in the *Report and Order* are intended to identify spectrum to be used for maritime Automatic Identification Systems (AIS) in the United States and its territorial waters. AIS is an important tool for enhancing maritime safety and homeland security, and the Commission had been concerned that certain developments in recent years, such as the termination of the Memorandum of Agreement between the U.S. Coast Guard and MariTEL, Inc. regarding the set-aside of channels for AIS, and the various petitions and pleadings filed by NTIA and MariTEL following that termination, may have created uncertainty in the maritime community regarding the very high frequency (VHF) channels to be used for AIS, and that this in turn could impede efforts to expedite the broad deployment of AIS domestically. In the *Report and Order,* we designate VHF maritime Channels 87B and 88B for AIS use domestically, in keeping with the international allocation of those channels for AIS, because we believe the use of those channels will best ensure that the United States can maximize the maritime safety and homeland security benefits of AIS. The use of VHF maritime Channels 87B and 88B for domestic AIS use will, *inter alia,* permit U.S. participation in a seamless global AIS network, avoid the problems that would inhere in requiring vessels to switch AIS channels when transiting an AIS ''fence'' between international and U.S. territorial waters, facilitate speedy AIS deployment using existing technical standards and infrastructure, and provide for AIS coverage at greater distances than would otherwise be possible.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

21. No comments were submitted specifically in response to the IRFA. However, some commenters, including two VHF Public Coast (VPC) station licensees, MariTEL, Inc. (MariTEL) and ShipCom LLC (ShipCom), contend that the interference impact of wideband simplex AIS operations on Channels 87B and 88B would be of such magnitude as to effectively preclude VPC licensees from being able to make commercially reasonable use of their licensed spectrum. As discussed in detail in Section E of this FRFA, we have considered the potential economic impact on small entities of these rules, and we have considered alternatives that would reduce the potential economic impact on small entities of the rules enacted herein, regardless of whether the potential economic impact was discussed in any comments.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

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

23. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Wireless Telecommunications,'' which is 1,500 or fewer employees. Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast (VPC) licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed fifteen million dollars. In addition, a ''very small'' business is one that,

together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed three million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

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

24. There are no projected reporting, recordkeeping or other compliance requirements. However, some commenters contend that the *Report and Order* may have a significant economic impact on VPC licensees because of the potential interference impact on their operations of designating VHF maritime Channels 87B and 88B for exclusive AIS use on a wideband simplex basis within the nine maritime VPC service areas (VPCSAs).

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

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

26. In the IRFA of the *AIS NPRM,* the Commission described, and sought comment on, possible alternatives to the Commission's proposal for the designation of Channels 87B and 88B for AIS that might minimize the economic impact on small entities. First, the Commission asked commenters to consider the interference impact on MariTEL, licensee of the nine maritime VPC service areas, or on any incumbent site-based VPC licensees or any Economic Area (EA) VPC licensees, of the proposed designation of Channels 87B and 88B for AIS exclusively. The Commission noted that it had tentatively concluded that the proposed designation of Channels 87B and 88B for AIS should not have an adverse effect on MariTEL's use of its VPC channels to a materially greater extent, if at all, than would designation of two narrowband offset channel pairs of the Commission's choosing from the 156–162 MHz VHF maritime band. The Commission noted that it had requested comment on this tentative conclusion, and had also asked commenters to consider if incumbent site-based VPC operations can co-exist on a non-interference basis with AIS and, if not, whether the Commission should require that these operations be migrated to other spectrum and/or that the licensees be compensated in some way.

27. Commenters were requested to identify potential means of minimizing or eliminating any adverse economic impact on any small entities, particularly VPC licensees that qualify as small entities, if Channels 87B and 88B are designated for AIS use. The Commission suggested that such means might include, for example, exemptions, grandfathering protection, or geographic limitations on the use of Channels 87B and 88B for AIS. The Commission also stated, *inter alia*, that commenters could recommend that the Commission designate channels other than Channels 87B and 88B for AIS use in the United States as a means of minimizing any adverse economic impact on these licensees. The Commission noted, however, that mandating use of channels other than Channels 87B and 88B for AIS use in the United States could have an adverse economic impact on vessel operators and radio equipment manufacturers that qualify as small entities by, for example, increasing the cost of AIS equipment, causing premature obsolescence of AIS equipment already installed on vessels, or leaving manufacturers with stranded inventory. Accordingly, commenting parties, and particularly commenting parties who favor adopting an alternative to the Commission's proposal, were asked to address the potential economic impact of that alternative on small entities. In addition, the Commission specifically invited site-based incumbent licensees that operate within VHF Public Coast Service Areas (VPCSAs) 1–9 on Channel 87B or Channel 88B to suggest alternatives or additions to the Commission's proposal that would minimize any significant economic impact on them. Finally, the Commission also noted that there are incumbent licensees operating on the specified channels in inland areas. The Commission said it did not anticipate any significant adverse effect on any such licensee due to the geographic limitations of its proposal, *i.e.*, its tentative determination to limit the AIS set-aside to areas near major navigable waterways. Commenters who believed differently were asked to describe the expected adverse economic impact on incumbent inland licensees operating on these or adjacent channels, and to provide suggested methods of minimizing any such impact. The Commission noted that, although it was proposing only to designate Channels 87B and 88B for AIS in the nine maritime VPCSAs, it was not foreclosing the possibility of designating those channels for AIS on a nationwide basis, and it therefore requested inland licensees and other interested parties to address the possible economic impact on small entities if the Commission were to designate Channels 87B and 88B for AIS in inland areas as well as the nine maritime VPCSAs.

28. Although we received no comments specifically addressed to the IRFA for the *AIS NPRM,* we have considered all comments to the *AIS NPRM* addressing the impact of any proposed change on small entities and all suggestions for alternative measures that would have a less significant impact on small entities. In particular, we have addressed comments regarding the impact on VPC licensees of designating Channels 87B and 88B for AIS on a wideband simplex basis. We have considered the possibility of designating two narrowband duplex channel pairs for AIS in lieu of Channel 87B, because commenters argued that VPC licensees would not incur as great a level of interference from narrowband duplex AIS as they would from wideband simplex AIS. We have determined not to designate narrowband duplex channels for AIS in lieu of Channel 87B because doing so would compromise the effectiveness of AIS as a tool in the service of homeland security and maritime safety. Because both international bodies and other nations operate AIS on a wideband simplex basis on Channels 87B and 88B, the designation of narrowband duplex channels for AIS in the United States would preclude creation of a seamless global AIS network; limit and complicate the ability of the Coast Guard to coordinate with maritime safety organizations in other nations; result in AIS coverage gaps when vessels transit an AIS ''fence'' between international and U.S. territorial waters; delay domestic AIS deployment efforts; discourage voluntary carriage of AIS equipment; and reduce the distances at which vessels may be tracked. In addition, the designation of narrowband duplex channels for AIS would likely

harm more small entities than it would benefit, because it could leave small manufacturers of marine radio equipment with stranded inventory, and require small entities that own or operate vessels to refit those vessels with new AIS equipment.

29. We also have considered a proposal by MariTEL that would permit MariTEL to share use of Channel 87B in what MariTEL deems a commercially advantageous manner. We have rejected this MariTEL *Sharing Proposal* for two reasons. First, it includes as an integral component the Commission's agreement to revisit and revise the rules governing certification of AIS equipment. We have concluded that it would disserve the public interest to adopt AIS equipment certification requirements that diverge from the international requirements. An attempt to devise new, U.S.-specific AIS equipment standards at this juncture would engender many of the same problems that would attend designation of AIS channels other than Channels 87B and 88B for use in the United States. Second, the *Sharing Proposal* contemplates the Commission's imposition and enforcement of restrictions on the ability of entities other than MariTEL to make commercial use of AIS data. We have concluded that, even if the Commission had authority to impose and enforce such restrictions, its exercise would be administratively burdensome.

30. In making all of the above policy determinations, we have weighed in the balance the interference impact of wideband simplex AIS on MariTEL and the other VPC licensees. We have concluded that whatever harmful interference may be caused to VPC operations by wideband simplex AIS transmissions, it can be effectively mitigated through commercially reasonable means, such as forward error correction (FEC) coding, and block interleaving. Based on that determination, as well as a determination that there is no legal theory through which the Commission could provide compensation to VPC licensees in any event, the Commission has declined to provide for compensation to any VPC licensee based on predictions of the interference impact of AIS.

31. As a measure to minimize the potential economic impact of its decision herein on site-based incumbent VPC licensees, some of which may be small entities, we have determined not to require such licensees to immediately terminate use of Channel 87B in order to clear the spectrum for AIS. Instead, we are providing that such licensees may continue to operate on Channel 87B for the remainder of their current license terms, but also that no such license will be renewed for operation on Channel 87B. This provides what is in effect grandfathering protection for site-based incumbent licensees for a period of several years, with the precise termination date based on their current authorizations. In reaching this determination, we have considered that site-based incumbent VPC licensees, unlike maritime VPCSA licensees, were not subject to any pre-existing requirement to set aside spectrum for AIS.

32. Finally, we have determined to augment the record with additional comments to better inform a decision as to whether the designation of Channel 87B for AIS should be nationwide in scope or just limited to the nine maritime VPCSAs. We discuss this matter in the *Further Notice of Proposed Rule Making* (*Further Notice*) in this proceeding and the accompanying Initial Regulatory Flexibility Analysis of the *Further Notice, infra*.

D. Report to Congress

33. The Commission will send a copy of this *Report and Order* in WT Docket No. 04–344, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Parts 2 and 80

Communications, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 80 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise page 21.

■ b. In the list of United States (US) Notes remove footnote US223 and add footnote US399.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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Table of Frequency Allocations			157.0375-267 MHz (VHF)		Page 21
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
156.8375-174 FIXED MOBILE except aeronautical mobile	156.8375-174 FIXED MOBILE		(See previous page)		
			157.0375-157.1875 MARITIME MOBILE US214 5.226 US266 G109	157.0375-157.1875 5.226 US214 US266	Maritime (80) Private Land Mobile (90)
			157.1875-161.575	157.1875-157.45 LAND MOBILE US266 MARITIME MOBILE 5.226 NG111	
				157.45-161.575 FIXED LAND MOBILE NG28 NG111 5.226 NG6 NG70 NG112 NG124 NG148 NG155	Public Mobile (22) Auxiliary Broadcasting (74) Maritime (80) Private Land Mobile (90)
			161.575-161.625 5.226 US77	161.575-161.625 MARITIME MOBILE US77 5.226 NG6 NG17	Public Mobile (22) Maritime (80)
			161.625-161.775	161.625-161.775 LAND MOBILE NG6 5.226	Public Mobile (22) Auxiliary Broadcasting (74)
			161.775-162.0125 5.226 US266 US399	161.775-162.0125 LAND MOBILE US266 NG6 MARITIME MOBILE 5.226 US399	Public Mobile (22) Maritime (80) Private Land Mobile (90)
			162.0125-173.2 FIXED US13 MOBILE 5.226 US8 US11 US216 US300 US312 US399 G5	162.0125-173.2 5.226 US8 US11 US13 US216 US300 US312 US399	Auxiliary Broadcasting (74) Maritime (80) Private Land Mobile (90)
			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE G5	173.4-174	
5.226 5.229	5.226 5.230 5.231 5.232				

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UNITED STATES (US) NOTES

* * * * *

US399 Except as indicated below, the frequency bands 161.9625–161.9875 MHz (AIS 1 with its center frequency at 161.975 MHz) and 162.0125–162.0375 MHz (AIS 2 with its center frequency at 162.025 MHz) are allocated to the maritime mobile service on a primary basis for Federal Government and non-Federal Government use, and shall be used exclusively for Automatic Identification Systems. However, in VHF Public Coast Station Areas (VPCSAs) 1–9, site-based VHF Public Coast stations licensed prior to [effective date of this order] may continue to operate on a co-primary basis in the frequency band 161.9625–161.9875 MHz until expiration of the license term for licenses in active status as of [effective date of this order], and in VPCSAs 10–42, the band 161.9625–161.9875 MHz is allocated to the maritime mobile service on a primary basis for exclusive non-Federal Government use. *See* 47 CFR 80.371(c)(1)(ii) for the definitions of VPCSAs.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 3. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 4. Section 80.5 is amended by adding a definition for ''Automatic Identification Systems (AIS)'', in alphabetical order, to read as follows:

§ 80.5 Definitions.

* * * * *

Automatic Identification Systems (AIS). A maritime navigation safety communications system standardized by the International Telecommunication Union (ITU) and adopted by the International Maritime Organization (IMO) that provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft; receives automatically such information from similarly fitted ships; monitors and tracks ships; and exchanges data with shore-based facilities.

* * * * *

■ 5. Section 80.13 is amended by revising paragraph (c) to read as follows:

§ 80.13 Station license required.

* * * * *

(c) A ship station is licensed by rule and does not need an individual license issued by the FCC if the ship station is not subject to the radio equipment carriage requirements of any statute, treaty or agreement to which the United States is signatory, the ship station does not travel to foreign ports, and the ship station does not make international communications. A ship station licensed by rule is authorized to transmit radio signals using a marine radio operating in the 156–162 MHz band, any type of AIS, any type of EPIRB, and any type of radar installation. All other transmissions must be authorized under a ship station license. Even though an individual license is not required, a ship station licensed by rule must be operated in accordance with all applicable operating requirements, procedures, and technical specifications found in this part.

■ 6. Section 80.371 is amended by revising paragraphs (c)(1)(i), (c)(2) and (c)(3) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

(1)(i) The frequency pairs listed in the following table are available for assignment to public coast stations for public correspondence communications with ship stations and units on land.

WORKING CARRIER FREQUENCY PAIRS IN THE 156–162 MHZ BAND [1]

Channel designator	Carrier frequency (MHz)	
	Ship transmit	Coast transmit
24	157.200	161.800
84	157.225	161.825
25	157.250	161.850
85 [2]	157.275	161.875
26	157.300	161.900
86	157.325	161.925
27	157.350	161.950
87 [4 5]	157.375	161.975
28	157.400	162.000
88 [3]	157.425	162.025

[1] For special assignment of frequencies in this band in certain areas of Washington State, the Great Lakes and the east coast of the United States pursuant to arrangements between the United States and Canada, see subpart B of this part.

[2] The frequency pair 157.275/161.875 MHz is available on a primary basis to ship and public coast stations. In Alaska it is also available on a secondary basis to private mobile repeater stations.

[3] Within that portion of VHF Public Coast Station Areas (VPCSAs) 1 through 9 listed in the table in paragraph (c)(1)(ii) of this section within 120 km (75 miles) of the United States/Canada border, in the area of the Great Lakes, the Saint Lawrence Seaway, and the Puget Sound and the Strait of Juan de Fuca and its approaches, Maritime VHF Channel 88A (157.425 MHz) is available for use for public correspondence communications, subject to prior coordination with Canada. Maritime VHF Channel 88B (162.025 MHz) is available only for Automatic Identification System communications. One hundred twenty kilometers (75 miles) from the United States/Canada border 157.425 MHz is available for intership and commercial communications. Outside the Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

[4] Within VHF Public Coast Station Areas (VPCSAs) 1 through 9 listed in the table in paragraph (c)(1)(ii) of this section, Maritime VHF Channel 87B (161.975 MHz) may be used only for Automatic Identification System communications.

[5] No license authorizing a site-based VHF Public Coast Station or a Private Land Mobile Radio Station to operate on maritime VHF Channel 87B (161.975 MHz) in one of the nine maritime VHF Public Coast Service Areas (VPCSAs) listed in the table in paragraph (c)(1)(ii) will be renewed unless the license is or has been modified to remove Channel 87B as an authorized frequency.

* * * * *

(2) Any recovered channel pairs will revert automatically to the holder of the VPCSA license within which such channels are included, except the channel pairs listed in the table in paragraph (c)(1)(i) of this section. Those channel pairs, and any channel pairs recovered where there is no VPCSA licensee, will be retained by the Commission for future licensing.

(3) VPCSA licensees may not operate on Channel 228B (162.0125 MHz), which is available for use in the Coast Guard's Ports and Waterways Safety System (PAWSS). In addition, VPCSA licensees in VPCSAs 1–9 may not operate on Channel AIS 1 (161.975 MHz) or Channel AIS 2 (162.025 MHz), which are designated in those areas exclusively for Automatic Identification Systems (AIS), except to transmit and receive AIS communications to the same extent, and subject to the same limitations, as other shore stations participating in AIS.

* * * * *

■ 7. Section 80.373 is amended by revising paragraph (j) to read as follows.

§ 80.373 Private communications frequencies.

* * * * *

(j) *Frequencies for portable ship stations.* VHF frequencies authorized for stations authorized carrier frequencies in the 156.275 MHz to 157.450 MHz and 161.575 MHz to 162.025 MHz bands

may also be authorized as marine utility stations. Marine-utility stations on shore must not cause interference to any Automatic Identification System, VHF or coast station, VHF or UHF land mobile base station, or U.S. Government station.

■ 8. Section 80.393 is added to subpart H to read as follows:

§ 80.393 Frequencies for AIS stations.

Automatic Identification Systems (AIS) is a maritime broadcast service. The simplex channels at 161.975 MHz (AIS 1) and 162.025 MHz (AIS 2), each with a 25 kHz bandwidth, may be authorized in VHF Public Coast Station Areas 1–9 for AIS, and the frequency 162.025 MHz (AIS 2) also may be authorized in VHF Public Coast Station Areas 10–42 for AIS. The VHF Public Coast Station Areas are codified at 47 CFR 80.371(c)(1)(ii). In accordance with the Maritime Transportation Security Act, the United States Coast Guard regulates AIS carriage requirements for non-Federal Government ships. These requirements are codified at 33 CFR 164.46, 401.20.

[FR Doc. 06–8655 Filed 10–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[WT Docket No. 04–344; PR Docket No. 92–257; FCC 06–108]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission denies a petition for reconsideration of the Automatic Identification Systems (AIS) equipment certification requirements for ship station equipment that were adopted in the *Sixth Report and Order* in PR Docket No. 92–257. The Commission concludes that there is no compelling justification for adopting domestic AIS equipment certification standards that diverge from the international standards. In support of this conclusion, the Commission notes that any such departure from the international standards would delay AIS deployment in the United States, discourage voluntary AIS carriage, and create other problems, including difficulties in AIS coordination with maritime authorities of other nations.

DATES: Effective October 12, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Fourth Memorandum Opinion and Order*, FCC 06–108, adopted on July 20, 2006, and released on July 24, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. In the *Sixth Report and Order* in PR Docket No. 92–257, the Commission adopted rules providing for the certification of AIS equipment that complies with the international standards for such equipment. In a petition for reconsideration of that decision, MariTEL, Inc. (MariTEL) contended that the adopted AIS equipment certification requirements will have a devastating impact on MariTEL because the international AIS emission mask is not as rigorous as the otherwise applicable U.S. emission mask, and, more importantly, the procedures for measuring compliance with the international mask are flawed so that equipment approved as compliant may not in fact comply even with the more lenient emission mask. MariTEL further argued that, in adopting AIS equipment certification requirements that incorporate by reference the international standards for such equipment, the Commission effectively ceded its authority over domestic spectrum use to international authorities, abrogating its obligation to exercise independent judgment to determine whether a particular regulation would serve the domestic public interest.

2. The Commission agrees with MariTEL that the Commission should not incorporate international standards in its own rules automatically, without considering whether, on balance, those international standards would serve the domestic public interest. The Commission believes, however, based on the record, that it serves the public interest for the Commission to establish AIS equipment certification standards that conform to the international standards. The adoption of U.S.-specific standards for AIS equipment could preclude the development of a seamless global AIS network and complicate international AIS coordination. This would reduce the effectiveness of AIS as a tool against terrorism. It would also reduce the value of AIS for maritime safety, especially if U.S.-certified equipment were not interoperable with AIS equipment approved under the international standards. It could also lead to the premature obsolescence of installed AIS devices meeting the international standards, and result in stranded inventory for AIS equipment manufacturers who have relied on the international standards in designing AIS devices. In addition, adoption of a separate standard could increase the costs to U.S. vessels of complying with the domestic AIS carriage requirement (and potentially also increase AIS costs for foreign-flagged vessels transiting U.S. waters) by making U.S.-approved AIS equipment more expensive and/or necessitating carriage of two different AIS devices. Adding to the cost of AIS equipment would also create a disincentive to voluntary AIS carriage, further undermining the effectiveness of AIS. Furthermore, the current record in this proceeding does not provide a basis for immediate adoption of an alternative AIS equipment standard. Therefore, if the Commission were to grant MariTEL's petition for reconsideration, it would appear that the Commission would also have to request further comment to determine precisely what standard should be adopted in part 80 in lieu of incorporating the international standards by reference. This would engender considerable uncertainty in both the maritime and the manufacturing communities, internationally as well as domestically, for a significant period of additional time. All of these factors would serve to delay and limit effective, efficient and expeditious AIS implementation in the United States, which would clearly be contrary to the public interest. On the other hand, continued reliance on the international standards in certifying AIS equipment under part 80 would permit domestic AIS deployment to proceed unabated, provide certainty to the affected entities, encourage voluntary AIS carriage, minimize the costs of AIS implementation (for the United States Government as well as private sector entities), and permit the development of a seamless global AIS network in which

the vessel monitoring capabilities of AIS are maximized.

3. MariTEL did not directly dispute these benefits. Rather, MariTEL contended that the Commission must weigh against those public interest benefits the interference to VHF Public Coast station operations that will be caused by the introduction of AIS technology as contemplated by the international standards, and the adverse impact of such interference on MariTEL's ability to develop a viable maritime communications service. However, the Commission continues to believe that MariTEL overstates the interference impact of AIS equipment authorized on the basis of international standards, and that the challenges that may be presented by such potential interference can be surmounted using existing technology. In particular, the Commission continues to disagree with MariTEL's contention that the AIS emission mask is not as stringent as the emission mask typically applicable to maritime transmitters under part 80 of the Commission's rules. The Commission concludes that the public interest benefits of conforming its part 80 rules governing the certification of AIS equipment with those used in other nations and internationally clearly outweigh the costs, and that adoption of an alternative AIS certification standard would be in derogation of the paramount public interest in maximizing homeland security and maritime safety. The Commission therefore denies MariTEL's petition for reconsideration.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

1. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public, including businesses with fewer than 25 employees.

B. Report to Congress

2. The Commission will send a copy of this *Fourth Memorandum Opinion and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–16844 Filed 10–11–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Department of the Army

48 CFR Parts 5125 and 5152

Contractor Personnel Deployment

AGENCY: Department of the Army, DoD.

ACTION: Final Rule.

SUMMARY: This action removes regulations pertaining to the deployment of contractor personnel in support of military operations. The regulations are superseded by a higher regulation, Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.74, Defense Contractors Outside the United States.

DATES: *Effective Date:* Effective October 12, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Jaren, (703) 604–7105.

SUPPLEMENTARY INFORMATION:

A. Background

In the November 28, 2003 issue of the **Federal Register** (68 FR 66738 and 68 FR 66740), the Department of the Army issued two interim final rules to add 48 CFR part 5125, section 5125.74–9000 and amend 48 CFR part 5152. Subsequent amendments to the DFARS, on May 5, 2005 (70 FR 23790) and June 16, 2006 (71 FR 34826), added DoD policy addressing situations that require contractor personnel to provide in-theater support to United States military forces engaged in contingency, humanitarian or peacekeeping, or certain other operations outside the United States, and incorporated significant terminology from the Army Federal Acquisition Regulation Supplement (AFARS), rendering the regulations at 48 CFR part 5125 and 48 CFR 5152.225–74–9000 obsolete.

B. Regulatory Flexibility Act

These rules 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 rules add no new requirements for contractors. These rules remove AFARS text that has become unnecessary as a result of policy that was added to the DFARS.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 5125 and 5152

Government contracts, Government procurement.

■ Accordingly, for reasons stated in the preamble, under the authority of 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR 1.301, and DoD FAR Supplement 201.3, 48 CFR part 5125 is removed.

PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 5152 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

5152.225–74–9000 [Removed]

■ 2. Section 5152.225–74–9000 is removed.

[FR Doc. 06–8563 Filed 10–11–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060525140–6221–02; I.D. 092606D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the 2006 Golden Tilefish and Snowy Grouper Commercial Fisheries

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fisheries for golden tilefish and snowy grouper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS has determined that the golden tilefish and snowy grouper quotas for the commercial fisheries will have been reached by October 23, 2006. This closure is necessary to protect the golden tilefish and snowy grouper resources.

DATES: Closure is effective 12:01 a.m., local time, October 23, 2006, until 12:01 a.m., local time, on January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, telephone 727–824–5350, fax 727–824–5308, e-mail *Jason.Rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Resources of the South Atlantic (FMP). The FMP was prepared by the South Atlantic Fishery Management 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. Those regulations set the commercial quota for golden tilefish in the South Atlantic at 295,000 lb (133,810 kg), gutted weight (GW), and 151,000 lb (68,492 kg), GW, for snowy grouper for the current fishing year, January 1 through December 31, 2006.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 295,000 lb (133,810 kg), GW, for golden tilefish and 151,000 lb (68,492 kg), GW, for snowy grouper will be reached on or before October 23, 2006. Accordingly, NMFS is closing the commercial golden tilefish and snowy grouper fisheries in the South Atlantic EEZ from 12:01 a.m., local time, on October 23, 2006, until 12:01 a.m., local time, on January 1, 2007. The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having golden tilefish and/or snowy grouper aboard must have landed and bartered, traded, or sold such golden tilefish and/or snowy grouper prior to 12:01 a.m., local time, October 23, 2006.

During the closure, the appropriate bag limits specified in 50 CFR 622.39(d)(1) and the applicable possession limits specified in 50 CFR 622.39(d)(2) apply to all harvest or possession of golden tilefish and snowy grouper in or from the South Atlantic EEZ, and the sale or purchase of golden tilefish or snowy grouper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of golden tilefish or snowy grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 23, 2006, and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fisheries constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quotas of South Atlantic golden tilefish and snowy grouper, given the capacity of the fishing fleet to harvest the quotas quickly. Any delay in implementing this action would be impractical and contrary to the Magnuson-Stevens Act, the FMP, and the public interest. For these same reasons, NMFS finds good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: October 5, 2006.

James P. Burgess,

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

[FR Doc. E6–16934 Filed 10–11–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 100506C]

Fisheries of the Economic Exclusive Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2006 Atka mackerel total allowable catch (TAC) specified for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 7, 2006, through 2400 hrs, A.l.t., December 31, 2006.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 23, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *atka@noaa.gov* and include in the subject line of the e-mail comment the document identifier: aieamckro (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI under § 679.20(d)(1)(iii) on September 2, 2006 (71 FR 48485, August 21, 2006).

NMFS has determined that as of September 20, 2006, approximately 1,884 metric tons of Atka mackerel remain in the 2006 Atka mackerel TAC specified for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to allow the Atka mackerel fishery to resume, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the fishery, not allow the full utilization of the Atka mackerel TAC specified for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 4, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the Atka mackerel fishery by vessels using other gear in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 23, 2006.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: October 5, 2006.

James P. Burgess,

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

[FR Doc. 06–8637 Filed 10–6–06; 2:19 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 100606A]

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 2006 Pacific halibut prohibited species catch (PSC) limit specified for vessels using trawl gear in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 8, 2006, until 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 Pacific halibut PSC limit for vessels using trawl gear is 2,000 metric tons as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.21(d)(7)(i), that the 2006 Pacific halibut PSC limit specified for vessels using trawl gear in the GOA has been reached. Therefore, NMFS is closing directed fishing for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for groundfish by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 5, 2006.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 6, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–8638 Filed 10–6–06; 2:19 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 100506B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Western

Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 Atka mackerel total allowable catch (TAC) in the Western Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 6, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The 2006 Atka mackerel TAC in the Western Aleutian District of the BSAI is 14,338 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 Atka mackerel TAC in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,328 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 4, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 5, 2006.

James P. Burgess,

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

[FR Doc. 06–8636 Filed 10–6–06; 2:19 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 197
Thursday, October 12, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26043; Directorate Identifier 2005–NM–010–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model 717–200 airplanes. This proposed AD would require inspecting the power conversion distribution unit (PCDU) to determine its part number, and modifying certain PCDUs. This proposed AD is prompted by reports of failed PCDUs, the loss of an electrical bus, and the presence of a strong electrical burning odor in the flight deck and forward cabin. We are proposing this AD to prevent the loss of an electrical bus due to a PCDU failure, which could result in an abnormally long time for all flight deck displays to reconfigure, and consequent emergency landing.

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

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2006–26043; the directorate identifier for this docket is 2005–NM–010–AD.

FOR FURTHER INFORMATION CONTACT: Thomas Phan, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5342; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–26043; Directorate Identifier 2005–NM–010–AD'' in the subject line 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 submitted 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 can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can 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 DMS receives them.

Discussion

We have received reports of failed power conversion distribution units (PCDUs). Such failures resulted, by design, in the loss of an electrical bus (both AC and DC power). Following the loss of the electrical bus, the flight deck displays took an abnormally long time to reconfigure, and a strong electrical burning odor was noted in the flight deck and forward cabin. Investigation revealed a short in the power supply of the PCDU's generator control unit. The strong electrical burning odor in the cabin has been attributed to a failed PCDU on which a short condition can result in overheating of the power supply T1 transformer. Further, service history has shown that an intermittent loss of engine N2 speed signal to the PCDU can result in a bus tie lockout condition and automatic activation of the emergency power. The loss of an electrical bus due to a failed PCDU could result in an abnormally long time for all flight deck displays to reconfigure, and consequent emergency landing.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 717–24A0028, Revision 1, dated December 20, 2005. The service bulletin describes procedures for modifying PCDUs having part number 762904E. The modification involves modifying the printed wiring board (PWB) assembly A4 and installing new PCDU firmware.

The Boeing service bulletin refers to Hamilton Sundstrand Service Bulletin 40EGS22P–24–10, dated August 4, 2004, as an additional source of service information for the modification.

Hamilton Sundstrand Service Bulletin 40EGS22P–24–10 specifies the concurrent accomplishment of the actions specified in the Hamilton Sundstrand service bulletins listed in the following table:

CONCURRENT SERVICE BULLETINS

Actions	Hamilton Sundstrand Service Bulletin	Revision level	Date
Reworking the transformer rectifier unit assembly (TRU)	40EGS22P–24–3	Original	June 30, 2000.
Reworking the W3 wiring harness assembly to install direct lead wires to the TRU.			
Adding a ground wire to the TRU transformer.			
Adding an insulated spacer to the PCDU top cover.			
Installing new PCDU 186 firmware	40EGS22P–24–4	Original	April 26, 2001.
		1	January 2, 2002.
Installing new PCDU 186 firmware	40EGS22P–24–6	Original	July 25, 2002.
Modifying the top cover of the PCDU	40EGS22P–24–7	Original	September 3, 2003.
Modifying PWB assemblies A4 and A5	40EGS22P–24–8	Original	September 4, 2003.
Checking and applying torque seal to fasteners on the TRU assembly and to PCDU internal fasteners, if necessary.			
Modifying PWB assembly A4	40EGS22P–24–9	Original	November 19, 2003.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require identifying the part number of the PCDU and accomplishing the applicable actions specified in the service information described previously.

Costs of Compliance

There are about 137 airplanes of the affected design in the worldwide fleet and 108 U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS FOR PRIMARY ACTIONS

Boeing Service Bulletin	Work hours	Labor rate per hour	Parts cost	Cost per airplane
Part number identification	1	$80	$0	$80
Modification (717–24A0028)	12	80	0	960

ESTIMATED COSTS FOR CONCURRENT ACTIONS

Hamilton Sundstrand Service Bulletin	Work hours	Labor rate per hour	Parts cost	Cost per airplane
40EGS22P–24–3	6	$80	$154, per airplane	$634
40EGS22P–24–4	3	80	0	240
40EGS22P–24–6	3	80	0	240
40EGS22P–24–7	1 per PCDU	80	10 per PCDU, maximum 3 PCDUs per airplane.	[1] 110
40EGS22P–24–8	10	80	0	800
40EGS22P–24–9	10	80	0	800

[1] Maximum.

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. 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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2006–26043; Directorate Identifier 2005–NM–010–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model 717–200 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of failed power conversion distribution units (PCDUs), the loss of an electrical bus, and the presence of a strong electrical burning odor in the flight deck and forward cabin. We are issuing this AD to prevent the loss of an electrical bus due to a PCDU failure, which could result in an abnormally long time for all flight deck displays to reconfigure, and consequent emergency landing.

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.

Identification of PCDU Part Number

(f) Within 20 months after the effective date of this AD, inspect the PCDU to determine its part number. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review.

(1) If the part number is 762904E, do the actions specified in paragraphs (g) and (h) of this AD.

(2) If the part number is not 762904E, no further work is required by this AD.

Modification

(g) Within 20 months after the effective date of this AD, modify the PCDU in accordance with Boeing Alert Service Bulletin 717–24A0028, Revision 1, dated December 20, 2005. A modification done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 717–24A0028, dated November 24, 2004, is acceptable for compliance with the requirements of this paragraph.

Note 1: Boeing Alert Service Bulletin 717–24A0028 refers to Hamilton Sundstrand Service Bulletin 40EGS22P–24–10, Revision 1, dated May 11, 2005, as an additional source of service information for the modification.

Concurrent Requirements

(h) Before or concurrently with the modification required by paragraph (g) of this AD, do the applicable actions specified in Table 1 of this AD.

TABLE 1.—CONCURRENT SERVICE BULLETINS

Do the following—	In accordance with Hamilton Sundstrand Service Bulletin—
Rework the transformer rectifier unit assembly (TRU)	40EGS22P–24–3, dated June 30, 2000.
Rework the W3 wiring harness assembly to install direct lead wires to the TRU.	
Add a ground wire to the TRU transformer.	
Add an insulated spacer to the PCDU top cover.	
Install new PCDU 186 firmware	40EGS22P–24–4, Revision 1, dated January 2, 2002.
Install new PCDU 186 firmware	40EGS22P–24–6, dated July 25, 2002.
Modify the top cover of the PCDU	40EGS22P–24–7, dated September 3, 2003.
Modify printed wiring board (PWB) assemblies A4 and A5	40EGS22P–24–8, dated September 4, 2003.
Check and apply torque seal to fasteners on the TRU assembly and to PCDU internal fasteners, as applicable.	
Modify the PWB assembly A4	40EGS22P–24–9, dated November 19, 2003.

Credit for Accomplishment of Earlier Service Bulletin

(i) Installation of new PCDU 186 firmware before the effective date of this AD in accordance with Hamilton Sundstrand Service Bulletin 40EGS22P–24–4, dated April 26, 2001, is acceptable for compliance with the corresponding requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–16891 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26046; Directorate Identifier 2006–NM–172–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD would require inspecting for discrepancies of the activation mechanism of certain chemical oxygen generators, and corrective action if necessary. This proposed AD results from several incidents, on certain airplane models, of incorrect installation of the release pin into the safety pin hole of the activation mechanism of the chemical oxygen generator; this resulted in failure to activate the chemical oxygen generator when required. A separate incident occurred on a different airplane model during deployment of the cabin oxygen system, which resulted in failure of the release pin to activate the oxygen generator at a flight attendant station. We are proposing this AD to prevent failure of the activation mechanism of the chemical oxygen generator, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression.

DATES: We must receive comments on this proposed AD by November 13, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Dan Parillo, 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) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–26046; Directorate Identifier 2006–NM–172–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that several incidents, on certain Bombardier airplane models, of incorrect installation of the release pin into the safety pin hole of the activation mechanism occurred in certain chemical oxygen generators; this resulted in failure to activate the chemical oxygen generators when required. A separate incident occurred on a Model CL–600–2C10 airplane during deployment of the cabin oxygen system, due to failure of the release pin to activate the oxygen generator at a flight attendant station. Investigation revealed that the release pin was not aligned with the lanyard tube in the mask container module, preventing activation of the oxygen generator. This condition, if not corrected, could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression.

The design of the activation mechanism of the oxygen generator of the flight attendant and passenger service units on certain Model CL–600–2B19 airplanes is similar to the design of the activation mechanism installed on certain Model CL–600–2C10 airplanes. Therefore, all of these models may be subject to the identified unsafe condition. Further rulemaking is currently in process to address this

unsafe condition for Model CL–600–2C10 airplanes.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–35–014, dated September 25, 2003. The service bulletin describes procedures for inspecting for discrepancies of the release pin in the lanyard tube in the mask container module of the activation (firing) mechanism in the chemical oxygen generator of each flight attendant and lavatory oxygen panel, and each passenger service unit of the passenger oxygen system; and corrective action if necessary. The discrepancies include misalignment of the release pin and failure of the pin to engage with the lanyard tube. The corrective action includes aligning the release pin and engaging it to the lanyard tube.

Bombardier has also issued Service Bulletin 601R–35–016, dated September 8, 2005. The service bulletin describes procedures for inspecting for discrepancies of the release pin of the activation mechanism of the chemical oxygen generator, and corrective action if necessary. The discrepancies include incorrect installation of the release pin into the activation mechanism. The corrective action includes correctly installing the release pin.

Service Bulletin 601R–35–016 refers to B/E Aerospace Service Bulletin 117003–35–4, dated March 29, 2001, as an additional source of service information for accomplishing the inspection and corrective action.

Accomplishing the actions specified in the Bombardier service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2006–11, dated May 31, 2006, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

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

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

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspection'' specified in the Canadian airworthiness directive is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 145 airplanes of U.S. registry.

The inspection proposed in Service Bulletin A601R–35–014 would take about 3 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $34,800, or $240 per airplane.

The inspection proposed in Service Bulletin 601R–35–016 would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $11,600, 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):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2006–26046; Directorate Identifier 2006-NM–172–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 13, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; as identified in Bombardier Alert Service Bulletin A601R–35–014, dated September 25, 2003; and Bombardier Service Bulletin 601R–35–016, dated September 8, 2005.

Unsafe Condition

(d) This AD results from several incidents, on certain airplane models, of incorrect installation of the release pin into the safety pin hole of the activation mechanism of the chemical oxygen generator; this resulted in failure to activate the chemical oxygen generator when required. A separate incident occurred on a different airplane model during deployment of the cabin oxygen system, and resulted in failure of the release

pin to activate the oxygen generator at a flight attendant station. We are issuing this AD to prevent failure of the activation mechanism of the chemical oxygen generator, which could result in the unavailability of supplemental oxygen and possible incapacitation of passengers and cabin crew during an in-flight decompression.

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.

Inspections/Corrective Action

(f) Do the detailed inspections for discrepancies of certain chemical oxygen generators of each flight attendant and lavatory oxygen panel, as applicable, and each passenger service unit of the passenger oxygen system, as specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) For airplanes identified in paragraph 1.A. of Bombardier Alert Service Bulletin A601R–35–014, dated September 25, 2003: Within 550 flight hours after the effective date of this AD, do a one-time inspection for correct alignment and engagement of the release pin with the lanyard tube in the mask container module of the activation (firing) mechanism in the chemical oxygen generator by doing all the actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–35–014, dated September 25, 2003. Do all applicable corrective actions before further flight.

(2) For airplanes identified in paragraph 1.A. of Bombardier Service Bulletin 601R–35–016, dated September 8, 2005: Within 1,100 flight hours after the effective date of this AD; do a one-time inspection for correct installation of the release pin of the activation mechanism of the chemical oxygen generator, by doing all the actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–35–016, dated September 8, 2005. Do all applicable corrective actions before further flight.

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

Note 2: Bombardier Service Bulletin 601R–35–016, dated September 8, 2005, refers to B/E Aerospace Service Bulletin 117003–35–4, dated March 29, 2001, as an additional source of service information for accomplishing the inspection and corrective action specified in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(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) 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

(h) Canadian airworthiness directive CF–2006–11, dated May 31, 2006, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–16881 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26044; Directorate Identifier 2006–NM–098–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. This proposed AD would require a one-time inspection of the left- and right-hand main landing gear (MLG) downlock actuators or a review of the airplane maintenance records to determine the part number of each downlock actuator installed, and replacement of identified MLG downlock actuators with modified MLG downlock actuators. This proposed AD results from a report of a failed downlock actuator, which resulted in the left MLG collapsing during taxi after landing. We are proposing this AD to prevent failure of the downlock actuator, which could prevent the MLG side stay from locking properly, resulting in collapse of the MLG during ground maneuvers or upon landing.

DATES: We must receive comments on this proposed AD by November 13, 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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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–2006–26044; Directorate Identifier 2006–NM–098–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 Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The CAA–NL advises that it received a report that a flightcrew of a Model F.28 Mark 3000 airplane received a ''LH MLG UNSAFE'' warning during approach to landing. The flightcrew made an uneventful landing, but during taxi after landing the left main landing gear (MLG) collapsed. Investigation into the cause of the collapse revealed a failed downlock actuator. The failed downlock actuator prevented the MLG side stay assembly from locking properly, causing the MLG collapse. Investigators determined that the use of an improved (modified) version of the downlock assembly could prevent this condition. Failure of the downlock actuator, if not corrected, could prevent the MLG side stay from locking properly, resulting in collapse of the MLG during ground maneuvers or upon landing.

The MLG downlock actuators installed on Model F.28 Mark 1000, 2000, and 4000 airplanes are identical to those installed on the Model F.28 Mark 3000 airplanes. Therefore, all of these models may be subject to the identified unsafe condition.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin F28/32–163, dated March 8, 2004. The service bulletin describes procedures for removing the MLG downlock actuator, sending it to an approved Dowty Aerospace Hydraulics workshop for modification, and reinstalling the modified downlock actuator. The modification includes replacing certain parts (*i.e.,* spring carrier, nuts, sub-assembly, certain end fittings, and bush inserts) and re-identifying certain other parts. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive 2004–047, dated April 20, 2004, to ensure the continued airworthiness of these airplanes in the Netherlands.

Fokker Service Bulletin F28/32–163 refers to Dowty Aerospace Hydraulics—Cheltenham Service Bulletin 32–501R, Revision 1, dated September 3, 1998, as an additional source of service information for modifying the MLG downlock actuator.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL'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 to require a one-time inspection of the left- and right-hand MLG downlock actuators or a review of the airplane maintenance records to determine the part number (P/N) of each MLG downlock actuator installed, and replacement of identified MLG downlock actuators with modified MLG downlock actuators.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of both MLG downlock actuators (2 per airplane).	1	$80	$0	$80	6	As much as $480.
Review of the airplane maintenance records in lieu of the inspection to determine P/N.	1	80	0	80	6	As much as $480.
Replacement of the MLG downlock actuators (2 per airplane).	[1] 4	80	[1] 16,511	33,662	6	As much as $201,972.

[1] Per actuator.

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):

Fokker Services B.V.: Docket No. FAA–2006–26044; Directorate Identifier 2006–NM–098–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 13, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of a failed downlock actuator, which resulted in the left MLG collapsing during taxi after landing. We are issuing this AD to prevent failure of the downlock actuator, which could prevent the MLG side stay from locking properly, resulting in collapse of the MLG during ground maneuvers or upon landing.

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.

Determination of the Part Number (P/N) of the MLG Downlock Actuators

(f) Within 66 months after the effective date of this AD: Inspect the left- and right-hand MLG downlock actuators to determine if P/N 200497005 or 200498005 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the P/N of the MLG downlock actuators can be conclusively determined from that review. If an MLG downlock actuator does not have a subject P/N, no further action is required by this AD for that MLG only, except as provided by paragraph (h) of this AD.

Replacement of Subject MLG Downlock Actuators

(g) For any MLG downlock actuator identified during the inspection or maintenance records review required by paragraph (f) of this AD, or for which the P/N cannot be determined: Within 66 months after the effective date of this AD, replace the MLG downlock actuator with a modified MLG downlock actuator in accordance with the Accomplishment Instructions of Fokker Service Bulletin F28/32–163, dated March 8, 2004.

Note 1: Fokker Service Bulletin F28/32–163 refers to Dowty Aerospace Hydraulics—Cheltenham Service Bulletin 32–501R, Revision 1, dated September 3, 1998, as an additional source of service information for modifying the MLG downlock actuator.

Parts Installation

(h) As of the effective date of this AD, no person may install an MLG downlock actuator, P/N 200497005 or 200498005, on any airplane.

Alternative Methods of Compliance (AMOCs)

(i)(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

(j) Dutch airworthiness directive 2004–047, dated April 20, 2004, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–16894 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26045; Directorate Identifier 2006–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 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 Airbus Model A300 B2 and B4 series airplanes. The existing AD currently requires modifying the wiring of the autopilot pitch torque limiter switch. This proposed AD would add repetitive operational tests of the autopilot disconnection upon pitch override, and related investigative/corrective actions if necessary. This proposed AD results from the determination that such operational tests are necessary following the modification. We are proposing this AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight of the airplane.

DATES: We must receive comments on this proposed AD by November 13, 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: Thomas 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–2006–26045; Directorate Identifier 2006–NM–145–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 14, 2005, we issued AD 2005–13–33, amendment 39–14170 (70 FR 36833, June 27, 2005), for certain Airbus Model A300 B2 and B4 series airplanes. That AD requires modifying the wiring of the autopilot (AP) pitch torque limiter switch. That AD resulted from several reports of pitch trim disconnect caused by insufficient length in the wiring to the pitch torque limiter lever. We issued that AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2005–13–33, it has been determined that repetitive operational tests of the autopilot disconnection upon pitch override are necessary following the modification to ensure the reliability of AP disconnection by stick force.

Relevant Service Information

AD 2005–13–33 cites Airbus Service Bulletin A300–22–0117, dated September 7, 2004, as the appropriate source of service information for the modification. Airbus has since revised the service bulletin. Revision 01, dated April 20, 2005, and Revision 02, dated September 14, 2005, provide minor changes only.

Airbus has also issued Service Bulletin A300–22–0118, including Appendix 01, dated May 18, 2005. The service bulletin describes procedures for repetitive operational tests of the autopilot disconnection upon pitch override. Related investigative and corrective actions for discrepant results include inspecting for discrepancies (including chafing) of the wiring between the relay and the autopilot flight director logic monitor (AP/FD L/M) computer, replacing the relay with a new relay having the same part number, repairing the torque limiter lever or replacing it with a new one having the same part number, and repairing or replacing the wiring.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, mandated the service information and issued French airworthiness directive F–2005–107, dated July 6, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that 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 2005–13–33 and retain the requirements of that AD. This proposed AD would add repetitive operational tests of the AP disconnection upon pitch override, and related investigative/corrective actions if necessary.

Costs of Compliance

This proposed AD would affect about 29 airplanes of U.S. registry. 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	Fleet cost
Modification	8–11	$80	$1,700–$4,280	$2,340–$5,160	$67,860–$149,640.
Operational test	4	80	0	$320, per test cycle	$9,280, per test 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 39–14170 (70 FR 36833, June 27, 2005) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2006–26045; Directorate Identifier 2006–NM–145–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 13, 2006.

Affected ADs

(b) This AD supersedes AD 2005–13–33.

Applicability

(c) This AD applies to Airbus A300 aircraft, all certified models and all serial numbers, certificated in any category, except for:

(1) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes, A300 B4–605R and B4–622R airplanes, A300 F4–605R and F4–622R airplanes, and A300 C4–605R Variant F airplanes.

(2) Models A300B4–220, A300B4–203, and A300B2–203 in forward facing crew cockpit certified configuration.

Unsafe Condition

(d) This AD results from the determination that repetitive operational tests are necessary following incorporation of the wiring modification required by AD 2005–13–33. We are issuing this AD to prevent possible trim loss when the flightcrew tries to override the autopilot pitch control, which could result in uncontrolled flight of the airplane.

Compliance

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

Restatement of Requirements of AD 2005–13–33

Modification

(f) Within 20 months after August 1, 2005 (the effective date of AD 2005–13–33), modify the wiring of the autopilot pitch torque limiter switch, by doing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–22–0117, dated September 7, 2004; Revision 01, dated April 20, 2005; or Revision 02, dated September 14, 2005. After the effective date of this AD, only Revision 02 may be used.

New Requirements of This AD

Repetitive Operational Tests

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do an operational test of the autopilot disconnection upon pitch override, and do all applicable related investigative and corrective actions. Do the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–22–0118, excluding Appendix 01, dated May 18, 2005; except that this AD does not require a report of the inspection results. Do all applicable related investigative and corrective actions before further flight. Repeat the test thereafter at intervals not to exceed 2,000 flight hours.

(1) For airplanes modified before the effective date of this AD in accordance with Airbus Service Bulletin A300–22–0117, dated September 7, 2004: Do the initial test within 2,000 flight hours after the effective date of this AD.

(2) For airplanes modified in accordance with Airbus Service Bulletin A300–22–0117, Revision 01, dated April 20, 2005; or Revision 02, dated September 14, 2005: Do the initial test within 2,000 flight hours after the modification required by paragraph (f) of this AD, or within 2,000 flight hours after the effective date of this AD, whichever occurs later.

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.

(3) AMOCs approved previously in accordance with AD 2005–13–33 are not approved as AMOCs with this AD.

Related Information

(i) French airworthiness directive F–2005–107, dated July 6, 2005, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–16880 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26047; Directorate Identifier 2006–NM–146–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–605R Airplanes and Model A310–308, –324, and –325 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 B4–605R airplanes and Model A310–308, –324, and –325 airplanes. This proposed AD would require modifying the Bruce floor plan electrical emergency path marking system (FPEEPMS) and, for certain airplanes, modifying the automatic switching of the emergency lighting system. This proposed AD results from a report that in the case of vertical separation of the fuselage forward of

door 1, the FPEEPMS and the exit signs do not turn on. We are proposing this AD to prevent inadequate lighting and marking of the escape path, which could delay or impede the flightcrew and passengers when exiting the airplane during an emergency landing.

DATES: We must receive comments on this proposed AD by November 13, 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 9:00 a.m. and 5:00 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–2006–26047; Directorate identifier 2006–NM–146–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 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 B4–605R airplanes and Model A310–308, –324, and –325 airplanes. The EASA advises that a report has shown that in the case of vertical separation of the fuselage forward of door 1, the Bruce floor plan electrical emergency path marking system (FPEEPMS) and the exit signs do not turn on. This condition, if not corrected, could result in inadequate lighting and marking of the escape path, which could delay or impede the flightcrew and passengers when exiting the airplane during an emergency landing.

Relevant Service Information

Airbus has issued Service Bulletin A300–33–6047, Revision 01, dated January 20, 2006 (for Model A300 B4–605R airplanes); and Service Bulletin A310–33–2045, Revision 01, dated January 20, 2006 (for Model A310–308, –24, and –325 airplanes). The service bulletins describe procedures for modifying the Bruce FPEEPMS. The modification includes the following actions, depending on the configuration of the airplane:

- Modifying equipment and wiring between air bleed panel 436VU and the avionics compartment.
- Modifying terminal block 5700 VT and installing wiring.
- Modifying terminal blocks 4701VT, 4903VT, 5503VT, and 5702VT.
- Removing, installing, and modifying wiring in various locations, such as from the aft power supply unit through the cabin with connection to all other power supply units and the EMERG LIGHT switch 28WL.

Airbus Service Bulletin A310–33–2045, Revision 01, dated January 20, 2006, also specifies prior or concurrent accomplishment of Airbus Service Bulletin A310–33–2025, Revision 01, dated April 17, 2001, for modifying the automatic switching of the emergency lighting system. The modification of the automatic switching involves the following actions:

- Modifying equipment and wiring in the relay box 104VU.
- Modifying equipment and wiring in the relay box 107VU.
- Modifying wiring in the alternating current power center 101VU.
- Modifying equipment and wiring in the avionics compartment, zone 120.
- Modifying wiring between the flight compartment, zone 210, and the avionics compartment, zone 120.
- Doing the actions specified in A310–33–2025 concurrently or prior to the modification of the automatic switching.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated Airbus Service Bulletin A300–33–6047, Revision 01, and Service Bulletin A310–33–2045, Revision 01, and issued airworthiness directive 2006–0077, dated April 3, 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 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.

Difference Between the EASA Airworthiness Directive and This Proposed AD

The applicability of EASA airworthiness directive 2006–0077 excludes airplanes on which Airbus Service Bulletin A310–33–2045, Revision 01, or A300–33–6047, Revision 01, have been accomplished in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in Revision 01 of those service bulletins, as applicable. This requirement would ensure that the actions specified in the applicable service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Clarification of Concurrent Service Bulletin

EASA airworthiness directive 2006–0077 does not specify doing Airbus Service Bulletin A310–33–2025, Revision 01, dated April 17, 2001, which is a concurrent service bulletin for Airbus Service Bulletin A310–33–2045, Revision 01, dated January 20, 2006. This proposed AD specifies doing Airbus Service Bulletin A310–33–2025, Revision 01, dated April 17, 2001. We have coordinated with the EASA that this concurrent action is necessary to ensure continued safety.

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
Modification of FPEEPMS	44 to 47	$80	$2,570 to $2,690	$6,090 to $6,450	1	$6,090 to $6,450.
Modification of automatic switching.	14	80	$534 to $727	$1,654 to $1,847	1	$1,654 to $1,847.

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–2006–26047; Directorate Identifier 2006–NM–146–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 13, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–605R airplanes and Model A310–308, –324, and –325 airplanes, certificated in any category; on which Airbus Modification 06810 or 06934 (Bruce floor proximity emergency escape path marking system (FPEEPMS)) has been installed in production; or on which Airbus Service Bulletin A300–33–6047 or A310–33–2045, both dated March 5, 2004, has been done.

Unsafe Condition

(d) This AD results from a report that in the case of vertical separation of the fuselage forward of door 1, the FPEEPMS and the exit signs do not turn on. We are issuing this AD to prevent inadequate lighting and marking of the escape path, which could delay or impede the flightcrew and passengers when exiting the airplane during an emergency landing.

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) Within 16 months after the effective date of this AD, modify the Bruce FPEEPMS in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–33–6047, Revision 01, dated January 20, 2006 (for Model A300 B4–605R airplanes); or Airbus Service Bulletin A310–33–2045, Revision 01, dated January 20, 2006 (for

Model A310–308, –324, and –325 airplanes); as applicable.

(g) For Model A310–308, –324, and –325 airplanes: Prior to or concurrently with the modification required in paragraph (f) of this AD, modify the automatic switching of the emergency lighting system in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–33–2025, Revision 01, dated April 17, 2001.

Modifications Accomplished According to Previous Issue of Service Bulletin

(h) Modifications accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A310–33–2025, dated March 1, 1993, are considered acceptable for compliance with the corresponding action specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(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

(j) European Aviation Safety Agency (EASA) airworthiness directive 2006–0077, dated April 3, 2006, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–16882 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 143

[DOD–2006–OS–0057]

RIN 0790–AH99

DoD Policy on Organizations That Seek To Represent or Organize Members of the Armed Forces in Negotiation or Collective Bargaining

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This part contains uniform Department of Defense policies for organizations that seek to represent or organize members of the Armed Forces in negotiation or collective bargaining. This updated rule contains editorial changes only as required for internal Department of Defense mandated reconsideration every 5 years.

DATES: Comments must be received by December 11, 2006.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mark Gingras, Office of the Deputy Under Secretary of Defense for Program Integration, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 143 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section 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 this Executive Order.

Unfunded Mandates Reform Act (Section 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. By its terms, this rule applies to state and local governments. It has no impact on ''small entities''.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)''

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 143

Government employees, Labor management relations, Military personnel.

Accordingly 32 CFR part 143 is proposed to be revised to read as follows:

PART 143—DOD POLICY ON ORGANIZATIONS THAT SEEK TO REPRESENT OR ORGANIZE MEMBERS OF THE ARMED FORCES IN NEGOTIATION OR COLLECTIVE BARGAINING

Sec.
143.1 Purpose.
143.2 Applicability.
143.3 Definitions.
143.4 Policy.
143.5 Prohibited activity.
143.6 Activity not covered by this part.
143.7 Responsibilities.
143.8 Guidelines.

Authority: 10 U.S.C 801–940; and 10 U.S.C. 976.

§ 143.1 Purpose.

This part provides DoD policies and procedures for organizations whose objective is to organize or represent members of the Armed Forces of the United States for purposes of negotiating or bargaining about terms or conditions of military service. The policies and procedures set forth herein

are designed to promote the readiness of the Armed Forces to defend the United States. This part does not modify or diminish the existing authority of commanders to control access to, or maintain good order and discipline on, military installations; nor does it modify or diminish the obligations of commanders and supervisors under 5 U.S.C. 7101–7135 with respect to organizations representing DoD civilian employees.

§ 143.2 Applicability.

(a) The provisions of this part apply to:

(1) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred collectively as the ''DoD Components'').

(2) Individuals and groups entering, using, or seeking to enter or use military installations.

(b) This part does not limit the application of the Uniform Code of Military Justice in title 10 U.S.C., sections 901–940 or 10 U.S.C. 976 including the prohibitions and criminal penalties set forth therein with respect to matters that are the subject of this part or that are beyond its scope.

§ 143.3 Definitions.

(a) *Member of the Armed Forces.* A member of the Armed Forces who is serving on active duty, or a member of a Reserve component while performing inactive duty training.

(b) *Military labor organization.* Any organization that engages in or attempts to engage in:

(1) Negotiating or bargaining with any civilian officer or employee, or with any member of the Armed Forces, on behalf of members of the Armed Forces, concerning the terms or conditions of military service of such members in the Armed Forces;

(2) Representing individual members of the Armed Forces before any civilian officer or employee, or any member of the Armed Forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the Armed Forces; or

(3) Striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the Armed Forces, to:

(i) Negotiate or bargain with any person concerning the terms or conditions of military service of any member of the Armed Forces,

(ii) Recognize any organization as a representative of individual members of the Armed Forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the Armed Forces, or

(iii) Make any change with respect to the terms or conditions of military service of individual members of the Armed Forces.

(c) *Civilian officer or employee.* An employee, as defined in 5 U.S.C. 2105.

(d) *Military installations.* Includes installations, reservations, facilities, vessels, aircraft, and other property controlled by the Department of Defense.

(e) *Negotiation or bargaining.* A process whereby a commander or supervisor acting on behalf of the United States engages in discussions with a member or members of the Armed Forces (purporting to represent other such members), or with an individual, group, organization, or association purporting to represent such members, for the purpose of resolving bilaterally terms or conditions of military service.

(f) *Terms or conditions of military service.* Terms or conditions of military compensation or duty including but not limited to wages, rates of pay, duty hours, assignments, grievances, or disputes.

§ 143.4 Policy.

It is the policy of the United States under Public Law 95–610 that:

(a) Members of the Armed Forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

(b) Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

(c) The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the Armed Forces and their military and civilian superiors.

(d) Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the Armed Forces.

(e) Unionization of the Armed Forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the Armed Forces.

(f) The circumstances that could constitute a threat to the ability of the Armed Forces to perform their mission are not comparable to the circumstances that could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the Armed Forces.

§ 143.5 Prohibited activity.

(a) *Membership and enrollment.* (1) A member of the Armed Forces, knowing of the activities or objectives of a particular military labor organization, may not:

(i) Join or maintain membership in such organization; or

(ii) Attempt to enroll any other member of the Armed Forces as a member of such organization.

(2) No person on a military installation, and no member of the Armed Forces, may enroll in a military labor organization any member of the Armed Forces or solicit or accept dues or fees for such an organization from any member of the Armed Forces.

(b) *Negotiation or bargaining.* (1) No person on a military installation, and no member of the Armed Forces, may negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the Armed Forces, on behalf of members of the Armed Forces, concerning the terms or conditions of service of such members.

(2) No member of the Armed Forces, and no civilian officer or employee, may negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the Armed Forces with any person who represents or purports to represent members of the Armed Forces.

(c) *Strikes and other concerted activity.* (1) No person on a military installation, and no member of the Armed Forces, may organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the Armed Forces that is directed against the Government of the United States and that is intended to induce any civilian officer or

employee, or any member of the Armed Forces, to:

(i) Negotiate or bargain with any person concerning the terms or conditions of service of any member of the Armed Forces,

(ii) Recognize any military labor organization as a representative of individual members of the Armed Forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the Armed Forces, or

(iii) Make any change with respect to the terms or conditions of service in the Armed Forces of individual members of the Armed Forces.

(2) No person may use any military installation for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this part.

(3) No member of the Armed Forces, and no civilian officer or employee, may permit or authorize the use of any military installation for any meeting, march, picketing, demonstration, or other similar activity that is for the purpose of engaging in any activity prohibited by this part.

(d) *Representation.* A military labor organization may not represent, or attempt to represent, any member of the Armed Forces before any civilian officer or employee, or any member of the Armed Forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the Armed Forces.

§ 143.6 Activity not covered by this part.

(a) This part does not limit the right of any member of the Armed Forces to:

(1) Join or maintain membership in any lawful organization or association not constituting a ''military labor organization'' as defined in § 146.3 of this part;

(2) Present complaints or grievances concerning the terms or conditions of the service of such member in the Armed Forces in accordance with established military procedures;

(3) Seek or receive information or counseling from any source;

(4) Be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) Petition the Congress for redress of grievances; or

(6) Take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

(b) This part does not prevent commanders or supervisors from giving consideration to the views of any member of the Armed Forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(c) This part does not prevent any civilian employed at a military installation from joining or being a member of an organization that engages in representational activities with respect to terms or conditions of civilian employment.

§ 143.7 Responsibilities.

(a) The Heads of DoD Components shall:

(1) Ensure compliance with this part and with the guidelines contained in § 143.8.

(2) Establish procedures to ensure that any action initiated under this part is reported immediately to the Head of the DoD Component concerned.

(3) Report any action initiated under this part immediately to the Secretary of Defense.

(b) The Deputy Under Secretary of Defense (Program Integration) shall serve as the administrative point of contact in the Office of the Secretary of Defense for all matters relating to this part.

§ 143.8 Guidelines.

The guidelines for making certain factual determinations are as follows:

(a) In determining whether an organization is a military labor organization, whether a person is a member of a military labor organization, or whether such person or organization is in violation of any provision of this part, the history and operation of the organization (including its constitution and bylaws, if any) or person in question may be evaluated, along with evidence on the conduct constituting a prohibited act.

(b) In determining whether the commission of a prohibited act by a person can be imputed to the organization, examples of factors that may be considered include: the frequency of such act; the position in the organization of persons committing the act; whether the commission of such act was known by the leadership of the organization; whether the commission of the act was condemned or disavowed by the leadership of the organization.

(c) Any information about persons and organizations not affiliated with the Department of Defense needed to make the determinations required by this part shall be gathered in strict compliance with the provisions of DoD Directive 5200.27 [1] and shall not be acquired by counterintelligence or security investigative personnel. The organization itself shall be considered a primary source of information.

Dated: October 5, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–16926 Filed 10–11–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2006–25767; CGD09–06–123]

Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings.

SUMMARY: The Coast Guard is announcing that it is adding three more public meetings to its current schedule of public meetings to discuss issues relating to the proposed permanent safety zones located in the Great Lakes to conduct live gunnery training exercises. These meetings will be open to the public and are in addition to the four currently scheduled public meetings.

DATES: The Coast Guard will hold three additional public meetings as follows: Monday, October 30, 2006 in Rochester, NY; Wednesday, November 1, in the Milwaukee, WI/Chicago, IL area; and Friday, November 3, in Charlevoix, MI.

Comments and materials related to these public meetings must reach the Docket Management Facility on or before October 20, 2006. If you are unable to attend, you may submit comments to the Docket Management Facility by November 13, 2006.

You may submit your comments and related material by one of the following means:

(1) By mail to the Docket Management Facility (USCG–2006–2567), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

[1] Copies are available at *http://www.dtic.mil/whs/directives.*

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for the rulemaking. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket by performing a ''Simple Search'' for docket number 25767 on the internet at *http://dms.dot.gov*.

Electronic forms of all comments received into any of our dockets can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor unit, etc.) and is open to the public without restriction. You may review the Department of Transportation'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/*.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice and the public meeting, contact Commander Gustav Wulfkuhle, Chief Enforcement Branch, Ninth Coast Guard District, Cleveland, Ohio at (216) 902–6091. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Meetings

The Coast Guard will hold three additional public meetings as follows: Monday, October 30, 2006 in Rochester, NY; Wednesday, November 1, in the Milwaukee WI/Chicago, IL area; and Friday, November 3, in Charlevoix, MI. These meetings will be held to take comments regarding the proposed Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes, published on August 1, 2006, in the **Federal Register** at 71 FR 43402. Specific times, locations and additional information for the public meetings will be announced in a subsequent notice in the **Federal Register**.

The Coast Guard encourages interested persons to submit written data, views, or comments. Persons submitting comments should please include their name and address and identify the docket number (USCG–2006–2567). You may submit your comments and material by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address under **ADDRESSES**.

Regulatory History

On August 1, 2006, the Coast Guard published a notice of proposed rulemaking (NPRM)(71 FR 43402) to establish permanent safety zones throughout the Great Lakes to conduct live fire gun exercises. The initial comment period for this NPRM ended on August 31, 2006. In response to public requests, the Coast Guard re-opened the comment period on this NPRM. (71 FR 53629, September 12, 2006) Re-opening the comment period from September 12, 2006 to November 13, 2006, provides the public more time to submit comments and recommendations. In addition, the Coast Guard announced on September 19, 2006 it would hold public meetings in Duluth, MN; Grand Haven/Spring Lake, MI; Port Huron/Marysville, MI; and Cleveland, OH to discuss issues related to the proposed permanent safety zones. See, 71 FR 54792. The times and locations of these four meetings were announced in the **Federal Register** on September 27, 2006. (71 FR 56420)

This document announces the decision to include three additional meetings to the list of currently scheduled public meetings. These added meetings will be held as follows: Monday, October 30, 2006 in Rochester, NY; Wednesday, November 1, in the Milwaukee, WI/Chicago, IL area; and Friday, November 3, in Charlevoix, MI. Specific times, locations and additional information for the public meetings will be announced in a subsequent notice in the **Federal Register**.

Background and Purpose

These safety zones are necessary to protect vessels and people from hazards associated with live fire gun exercises. Such hazards include projectiles that may ricochet and damage vessels and/or cause death or serious bodily harm. The thirty-four zones will be located throughout the Great Lakes in order to accommodate 56 separate Coast Guard units. The proposed safety zones are all located at least three nautical miles from the shoreline.

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. If you are unable to attend, you may submit comments to the Docket Management Facility at the address under **ADDRESSES** by November 13, 2006.

Information on Services for Individuals With Disabilities

If you plan to attend the public meeting and require special assistance, such as sign language interpretation or other reasonable accommodations, please contact us as indicated in **FOR FURTHER INFORMATION CONTACT**. Requests for special assistance should reach the Coast Guard within seven (7) business days of the meeting.

Dated: October 3, 2006.

John E. Crowley, Jr.,

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

[FR Doc. E6–16903 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska; Federal Subsistence Regional Advisory Council Membership

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Request for comments.

SUMMARY: This notice solicits written comments and suggestions on the membership qualifications for Federal Subsistence Regional Advisory Councils established under Subsistence Management Regulations. The Federal Advisory Committee Act (FACA) requires that advisory councils be constituted with a balanced membership. The current Federal regulations set a goal of 70 percent subsistence users to 30 percent sport and commercial users on the Federal Subsistence Regional Advisory Councils. This notice is the first step in an administrative action with respect to that regulation, made necessary because of an order entered by the U.S. District Court for Alaska. Because the U.S. District Court has enjoined application of the current 70/30 percent goal after 2006, it is necessary to give further reconsideration to alternative methods for assuring balance in membership for Regional Advisory Councils in time to make any decision applicable to the 2007 appointments. Therefore, no

extension of the review deadline will be granted.

DATES: The Federal Subsistence Board must receive your written public comments and suggestions on this proposed rule no later than November 13, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. *E-mail: Subsistence@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information.

2. *U.S. mail or hand-delivery:* Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503.

3. You may submit comments via the Federal E-Rulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Pete Probasco, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION: Electronic submission of comments to *Subsistence@fws.gov* is preferred. You may submit comments and suggested alternatives and other data as Adobe Acrobat (PDF) or MS Word files, avoiding the use of any special characters and any form of encryption.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretaries of the Interior and Agriculture implement a program to grant a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on Federal public lands and waters. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). With the State unable to create a program in compliance with Title VIII by May 29, 1992, the Departments published a final rule in the **Federal Register** (57 FR 22940). On January 8, 1999 (64 FR 1276), the Departments published a final rule to extend jurisdiction to include certain waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska* v. *Babbitt*.

In Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program. The Board's composition consists of a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of the Federal Subsistence Management Regulations (Subparts A, B, C, and D).

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, Alaska is divided into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for the residents of the particular region with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska Federal public lands and waters.

The Board reviews applications for membership on the Regional Councils and makes recommendations to the Secretaries on the appointments to the Councils. The appointments themselves are then made by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. The Regional Council members represent varied geographical areas, cultures, interests, and resource users within each region. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the Federal public lands and waters therein.

In 1998, Safari Club International and others filed suit in the U.S. District Court for the District of Alaska. This suit, among other things, challenged the balance of membership on the Regional Councils required by the Federal Advisory Committee Act (FACA) of 1972, Public Law 92–463, 86 Stat. 770 (*Safari Club* v. *Demientieff,* No. A98–0414–CV). In the meantime, the Secretary of the Interior, as part of a national review of advisory councils and in response to inquiries related to the Federal Subsistence Regional Advisory Councils in Alaska, requested the Board examine its process for selecting nominees, and ''see that'' groups such as ''residents of non-rural areas, commercial users of fish and wildlife resources and sportsmen are represented on the RACs.'' Based on Board recommendations following that in-depth examination, the Secretary of the Interior, with concurrence of the Secretary of Agriculture, in 2002 increased the size of nine of the Regional Councils; established the goal of making appointments to the Regional Council so as to achieve, where possible, a representation goal of 70 percent subsistence users and 30 percent sport/commercial users; revised the application/evaluation/selection process and forms; and approved a 3-year implementation period (67 FR 30559, May 7, 2002).

The Native Village of Venetie Tribal Government *et al.* were permitted to intervene in the Safari Club case and to challenge the 70/30 ratio representational goals established by the Secretaries. In January 2004, the U.S. District Court for Alaska entered an order recognizing that with respect to the Regional Councils ''* * * a council comprised of only subsistence users is not fairly balanced. Subsistence users are not the only persons directly affected by regional advisory council recommendations and subsistence users

are not the only persons who might be interested in the management of fish and wildlife on Federal lands * * *. Non-subsistence users of fish and wildlife are directly affected by management of fish and wildlife for subsistence uses and have a legitimate interest in the proper scientific management of same * * *. While *all* points of view and all persons directly affected are not entitled to representation on a FACA committee, in this instance, a cross-section of those affected by fish and wildlife management on Federal public lands must be, in a reasonable and fair manner, afforded representation on regional advisory councils.''

In ruling on the cross-claim of the Native Village of Venetie, the Court also invalidated the Secretaries' policy of a goal of a 70/30 (subsistence users/sport and commercial users) membership representation for failure to procedurally comply with the provisions of the Administrative Procedure Act found at 5 U.S.C. 553, and found that the policy should have been put before the public for comment in a rulemaking process. The District Court also ordered that the Secretaries promptly initiate and conclude a rulemaking to promulgate an appropriate Regional Council regulation consistent with FACA after compliance with 5 U.S.C. 553. The Secretaries initiated action with a proposed rule published on April 15, 2004 (69 FR 19964), and received testimony on the proposed rule at a May 2004 public hearing.

On October 14, 2004, the Secretaries published a final rule in the **Federal Register** (69 FR 60957). The underlying purpose of the change to § ____.11(b), while complying with the District Court's order, was to ensure continued compliance with both the fairly balanced representational requirements of FACA and the requirements and purposes of Title VIII of ANILCA in the appointments to the Regional Councils. In the change, the Secretaries recognized that some persons with interests other than subsistence uses are entitled under FACA to be represented on the Regional Councils, while recognizing that Congress intended in Title VIII for rural Alaska residents ''who have personal knowledge of local conditions and requirements * * * to have a meaningful role in the management of fish and wildlife and of subsistence uses on public lands in Alaska,'' and that Congress also intended that ''large urban population centers'' not be allowed to dominate the Regional Council system. This rule established the 70/30 representational goal in the change to § ____.11(b). The purpose was to assure the appropriate representation and meaningful majority role for rural Alaska residents, while providing an appropriate representation for the interests of nonrural residents and nonsubsistence users.

The interveners then challenged the final rule, and on August 8, 2006, the Court declared the 70/30 membership structure to be arbitrary and capricious because the Secretaries and the Board had failed to adequately explain the analysis of the relevant factors and to articulate their rationale in adopting the final rule. That order stated that ''the court has not concluded that the 70/30 rule for RAC membership is contrary to law. The court's holding is that defendants have not submitted to the court an administrative record that provides a rationale for that rule.''

The purpose of the process that the Secretaries and the Board are undertaking, in this notice, is to fulfill the requirements of the district court's August 8, 2006, decision, to lay out a full administrative record, display a complete assessment of alternatives considered, and provide a fuller explanation for the option selected for providing a balanced membership on the Regional Councils.

The Regional Councils must have a balanced membership in accordance with FACA and the court's rulings. This necessitates that representatives from groups such as commercial users of fish and wildlife resources and sportsmen must be sitting as members of each Council. In order to implement that balanced membership, the Secretaries and the Board must have some method of identifying which interest or interests a prospective Council member would represent. Self-identification by an applicant is the best way to obtain that information. Many individuals using the fish and wildlife resources of Alaska do so within different user groups. Subsistence fishermen frequently hold commercial fishing licenses; commercial fishermen may also be sport fishermen or hunters. Sport hunters may have personal use fishing permits, while hunting guides may also hold sport fishing licenses. In almost all cases, however, an individual usually holds certain convictions and beliefs that would cause him or her to represent one of his or her interests more strongly than another interest when making recommendations on potential regulations or policies that would impact his or her use of the resource. For that reason, the Secretaries and the Board requested that each applicant for a Regional Council identify a primary interest. In this way, the Board can identify and recommend to the Secretaries applicants who would provide a balanced membership for each Regional Council.

Even though FACA requires a membership balanced in viewpoints, the purpose of the Regional Councils is to provide Alaska residents ''who have personal knowledge of local conditions and requirements * * * to have a meaningful role in the management of fish and wildlife and of subsistence uses on public lands in Alaska.'' The Secretaries believe that, in order to fulfill this mandate, subsistence interests must constitute a majority of members on each Regional Council. Likewise, since sport and commercial users are also entitled to be represented (where such qualified individuals may be present), a Regional Council composed of only subsistence users is not a Regional Council that meets the requirements of FACA. The Secretaries and the Board, in adopting the current regulations, therefore, considered subsistence, sport, and commercial membership ratios of 60/40, 70/30, 80/20, and 90/10 percent, respectively.

The Secretaries discarded the 90/10 ratio because a single individual on a 10-member Regional Council could not adequately represent both sport and commercial interests and could easily be intimidated by the remaining 90 percent of the Council. Council meetings are routinely held in remote villages and some Council members have difficulty attending meetings, particularly if they are engaged in harvesting fish or wildlife resources at the time or are weathered out. If that is the single person representing sport and commercial users when that happens, then there is no representation of those viewpoints. The Board also discarded the 60/40 ratio. A Council with a 60/40 ratio with one or two members representing subsistence missing from the meeting could easily be dominated by sport and commercial interests. The same domineering situation could exist with an 80/20 membership ratio if one of the sport or commercial representatives were absent. A 70/30 membership ratio provides a majority representation for subsistence users without domination by sport or commercial interests, but the 30 percent membership would also allow both sport and commercial interests to be meaningfully represented. All Regional Council members are still expected to examine each proposal, policy, or plan and develop Regional Council recommendations based on recognized principles of fish and wildlife conservation, satisfaction of subsistence needs, and substantial evidence,

consistent with Title VIII of ANILCA, and are not expected to act as only single interest representatives.

The Regional Councils were first constituted with a 70/30 membership representation goal before their winter 2004 meetings. Since then, the 10 Regional Councils have held 50 regularly scheduled meetings. In almost every instance, these meetings have occurred without rancor or hostility among represented interests. Many members have expressed gratitude for the opportunity to associate and learn from members representing other interests. Part of the success of the balanced Councils results from the fact that all these interests depend on the same fish and wildlife resources, with conservation the main concern.

By way of this notice, the Board and Secretaries are requesting your comments on the existing 70/30 representational membership goal that is currently in regulation for the Regional Councils. This membership requirement is set forth at 36 CFR 242.11(b) and 50 CFR 100.11(b). Your suggestions for any modifications to the existing 70/30 goal are also sought. The Board and Secretaries also invite you to submit any suggested alternative ideas for providing a balanced membership that complies with FACA, while still meeting the intent of ANILCA. Following the close of the comment period as identified in the **DATES** section, the public comments, suggestions, and identified alternatives will be presented to the Regional Councils during their winter 2007 meetings. This procedure will allow both the Regional Councils and the public to have an opportunity to present ideas and testimony related to the issue of a methodology for achieving balanced Regional Councils. This is not required by Section 805(c) of ANILCA and any recommendations the Councils may make are not recommendations subject to Section 805(c). Any suggestions, alternatives, or recommendations from the Regional Councils will then be presented to the Federal Subsistence Board at its May 2007 meeting. There will also be another opportunity for the public to submit suggestions or alternatives at this Board meeting. Following public testimony and Council recommendations, the Board will deliberate various options and recommend a course of action to the Secretaries. A formal rulemaking process would follow, if necessary. The recommendation may also be to make no changes to the current regulations but merely to offer further explanation of that rule.

Drafting Information

William Knauer drafted this notice under the guidance of Pete Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Warren Eastland and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, Alaska Regional Office, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: September 19, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 06–8594 Filed 10–11–06; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2006–0685, FRL–8230–1]

Approval and Promulgation of Implementation Plans; New York; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the State Implementation Plan (SIP) for New York's motor vehicle enhanced inspection and maintenance (I/M) program which includes the adoption of a statewide On-Board Diagnostic (OBD) program. New York has made revisions to Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, ''Motor Vehicle Enhanced Inspection and Maintenance Program Requirements,'' and Title 15 NYCRR Part 79, ''Motor Vehicle Inspection Regulations,'' to comply with EPA regulations and to improve performance of its I/M program. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP and to approve a control strategy that will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: Comments must be received on or before November 13, 2006. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2006–0685, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Werner.Raymond@epa.gov.*
- Fax: 212–637–3901.
- Mail: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- Hand Delivery: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays

Instructions: Direct your comments to Docket ID No. EPA–02–OAR–2006–0685. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

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

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

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I. Background

A. What Are the Clean Air Act Requirements for I/M Programs?

The Clean Air Act (CAA) requires certain states to implement an enhanced inspection and maintenance (I/M) program to detect gasoline-fueled motor vehicles which exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet federal health-based national ambient air quality standards (NAAQS) for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. Section 182 of the CAA requires I/M programs in those areas of the nation that are most impacted by carbon monoxide and ozone pollution. Section 184 of the CAA also created an ''Ozone Transport Region'' (OTR) which geographically includes the 11 states from Maryland to Maine (including all of New York State) and the District of Columbia Consolidated Metropolitan Statistical Area. Depending on the severity of the nonattainment designation(s) and/or geographic location within the OTR, EPA's regulation under 40 CFR 51.350 outlines the appropriate motor vehicle I/M requirements.

As a result of the 1-hr ozone nonattainment designations, New York State's 62 counties were divided into two separate I/M areas. The ''downstate'' 9-county New York Metropolitan Area (NYMA), which includes New York City (Bronx, Kings, New York, Richmond, and Queens Counties), Long Island (Nassau and Suffolk Counties), and Westchester and Rockland Counties, has been classified as a high enhanced I/M area. On January 1, 1998, New York began implementing a high enhanced I/M program (New York refers to this program as its NYTEST program) in the NYMA. By May 1999, this enhanced I/M program was fully functional for the entire NYMA.

The remaining 53 ''Upstate'' counties of New York State were classified as a low enhanced I/M area. Since 1998, the Upstate I/M area featured annual anti-tampering visual inspections including a gas cap presence check.

Since all of New York State is included within the OTR, additional I/M requirements are mandated in the more populated counties of Upstate New York pursuant to 40 CFR 51.350(a). Section 51.350(a)(1) provides that, ''States or areas within an ozone transport region shall implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a 1990 population of 100,000 or more as defined by the Office of Management and Budget (OMB) regardless of the area's attainment classification.'' Further, § 51.350(b)(1) provides that, ''[i]n an ozone transport region, the program shall entirely cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census can be excluded except that at least 50 percent of the MSA population must be included in the program * * *.'' In effect, 16 of the 53 counties located in Upstate New York are required to have low enhanced I/M. The 16 counties are Albany, Broome, Chautauqua, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, Putnam, Rensselaer, Schenectady, Saratoga, Warren and Washington.

On April 5, 2001, EPA published in the **Federal Register** ''Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check'' (66 FR 18156). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD) system on model year 1996 and newer OBD-equipped motor vehicles be conducted as part of states' motor vehicle I/M programs. OBD is part of the sophisticated vehicle powertrain management system and is designed to detect engine and transmission problems that might cause vehicle emissions to exceed allowable limits. OBD is the subject of this proposed rulemaking action.

The OBD system monitors the status of up to 11 emission control related subsystems by performing either continuous or periodic functional tests of specific components and vehicle conditions. The first three testing categories—misfire, fuel trim, and comprehensive components—are continuous, while the remaining eight only run after a certain set of conditions has been met. The algorithms for running these eight periodic monitors are unique to each manufacturer and involve such things as ambient temperature as well as driving conditions. Most vehicles will have at least five of the eight remaining monitors (catalyst, evaporative system, oxygen sensor, heated oxygen sensor, and exhaust gas recirculation or EGR system) while the remaining three (air conditioning, secondary air, and heated catalyst) are not necessarily applicable to all vehicles. When a vehicle is scanned at an OBD–I/M test site, these monitors can appear as either ''ready'' (meaning the monitor in question has been evaluated), ''not ready'' (meaning the monitor has not yet been evaluated), or ''not applicable'' (meaning the vehicle is not equipped with the component monitor in question).

The OBD system is also designed to fully evaluate the vehicle emissions control system. If the OBD system detects a problem that may cause vehicle emissions to exceed 1.5 times the Federal Test Procedure (FTP) standards, then the Malfunction Indicator Light (MIL) is illuminated. By turning on the MIL, the OBD system notifies the vehicle operator that an emission-related fault has been detected, and the vehicle should be repaired as soon as possible thus reducing the harmful emissions contributed by that vehicle.

EPA's revised OBD I/M rule applies to only those areas that are required to implement I/M programs under the CAA, which include the NYMA and certain counties in Upstate New York. This rule established a deadline of January 1, 2002 for states to begin performing OBD checks on 1996 and newer model OBD-equipped vehicles and to require repairs to be performed on those vehicles with malfunctions identified by the OBD check.

EPA's revised I/M rule also provided several options to states to delay implementation of OBD testing, under certain circumstances. An extension of the deadline for states to begin

conducting mandatory OBD checks is permissible provided the state making the request can show just cause to EPA for a delay and that the revised implementation date represents ''the best the state can reasonably do'' (66 FR 18159). EPA's final rule identifies factors that may serve as a possible justification for states considering making a request to the EPA to delay implementation of OBD I/M program checks beyond the January 2002 deadline. Potential factors justifying such a delay include contractual impediments, hardware or software deficiencies, data management software deficiencies, the need for additional training for the testing and repair industries, and the need for public education or outreach.

On May 7, 2001 (66 FR 22922), EPA fully approved New York's enhanced I/M program as it applies to NYMA and included the State's performance standard modeling as meeting the applicable requirements of the CAA. However, the OBD component of that program was not being implemented at that time and therefore was not approved by EPA as satisfying a fully operational OBD program. Additional information on EPA's final approval of New York's enhanced I/M program can be found in EPA's May 7, 2001 final approval notice.

B. What Did New York Include in This Latest Submittal?

On April 4, 2002, the New York State Department of Environmental Conservation (NYSDEC) requested a formal extension of the OBD I/M test deadline, per EPA's I/M requirement rule. New York's request lists contractual impediments, hardware and software deficiencies and data management deficiencies as the factors for its request for an extension of the OBD testing deadline. Based upon the reasons listed by New York, EPA believed that the State's delayed implementation was justified.

On February 27, 2006, NYSDEC submitted to EPA a revision to its SIP which incorporates OBD system requirements in the NYMA and the 53 counties located in Upstate New York. New York's SIP revision includes revisions to the NYSDEC regulation found at Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, ''Motor Vehicle Enhanced Inspection and Maintenance Program Requirements,'' and the New York State Department of Motor Vehicles (NYSDMV) regulation found at Title 15 NYCRR Part 79, ''Motor Vehicle Inspection Regulations,'' and a performance standard modeling demonstration.

C. What Action Is EPA Taking Today?

The EPA is proposing to approve a revision to the New York SIP pertaining to New York's enhanced I/M program which incorporates OBD testing requirements and procedures in the NYMA and the 53 counties located in Upstate New York (New York refers to this program as the New York Vehicle Inspection Program (NYVIP)).

D. What Are the OBD Requirements and How Does New York's I/M Program Address Them? .

The OBD program requires scan tool equipment to read the vehicle's built-in computer sensors in model year 1996 and newer vehicles. The OBD–I/M check consists of two types of examination: a visual check of the dashboard display function and status and an electronic examination of the OBD computer itself. The failure criteria for OBD testing is any Diagnostic Trouble Code (DTC) or combination of DTCs that results in the Malfunction Indicator Light (MIL) to be commanded on. A DTC is a code that indicates an emission control system or component which may cause emissions to increase to 1.5 times the limit due to malfunction. New York has incorporated this OBD component into its NYVIP program.

If the OBD scan reveals DTCs that have not commanded the MIL on, the motorist should be advised of the issue, but the vehicle should not be failed unless other non-DTC-based failure criteria have been met. Vehicles may fail inspection if the vehicle connector is missing, tampered with or otherwise inoperable, if the MIL is commanded on and is not visually illuminated, and if the MIL is commanded on for 1 or more DTCs as defined in Society of Automotive Engineering (SAE) J2012 guidance document.

Vehicles are rejected from testing if the scan of the OBD system reveals a ''not ready'' code for any OBD component. EPA guidance allows states the flexibility to permit model year 1996 to 2000 vehicles with 2 or fewer unset readiness codes, and model year 2001 and newer with 1 unset readiness code to complete OBD–I/M inspection without being rejected. Vehicles would still fail if the MIL was commanded on or if other failure criteria were met, or be rejected if 3 or more unset readiness codes were encountered. If the MIL is not commanded to be illuminated the vehicle would pass the OBD inspection even if DTCs are present. New York's NYVIP program is consistent with the EPA recommended readiness failure criteria.

There are several reasons why a vehicle may arrive at a testing facility without the required readiness codes set. These reasons include the following: (1) Failure to operate the vehicle under the conditions necessary to evaluate the monitors in question; (2) a recent resetting of the OBD system due to battery disconnection or replacement, or routine maintenance immediately prior to testing; (3) a unique, vehicle-specific OBD system failure; (4) an as-of-yet undefined system design anomaly; or (5) a fraudulent attempt to avoid I/M program requirements by clearing OBD codes just prior to OBD–I/M testing. New York's NYVIP program provides for a 10-day time extension under limited conditions. This time extension is necessary to allow motorists (or technicians) the ability to drive a vehicle following an OBD readiness criteria failure and to comply with DMV regulations. Without the time extension provision, a motorist with an expired sticker would not be able to legally drive the vehicle in an effort to re-set monitors. For these reasons, NYVIP will authorize a 10-day time extension (once per inspection cycle) under the following conditions: (1) The vehicle's inspection sticker has expired and was removed by the inspector per state regulation; (2) the vehicle fails only the OBD inspection and for only the readiness criteria; and (3) the vehicle passes all other inspection requirements (safety, emission control device checks, gas cap check). Once the cause for rejection has been corrected, the vehicle must return for reinspection.

The EPA believes that for an OBD–I/M test program to be most effective, it should be designed to allow for: (1) Real-time data link connections to a centralized testing database; (2) quality-controlled input of vehicle and owner identification information; and (3) automated generation of test reports. New York has incorporated these OBD program elements into its NYVIP program.

New York outlines the procedure for its OBD inspection program in Title 6 NYCRR Subpart 217–1 of the NYSDEC regulations and in conjunction with Title 15 NYCRR 79.24 of the NYSDMV regulations. The State requires certain procedures to implement its OBD program that are in accordance with the procedures set forth by EPA. For this reason, and as detailed above, EPA is proposing that New York's NYVIP program meets federal requirements and is approvable.

New York has gone through the phase-in period of Beta testing, and all

the systems have been updated with the appropriate software and hardware. Certified inspectors at licensed inspection facilities must pass an on-line exam before they are allowed to complete OBD inspections. New York has also taken steps to limit potential inspection fraud, human error, tampering and/or abuse of equipment. A motor vehicle emission inspector license may be suspended or revoked if any fraudulent vehicle emission inspection is conducted.

E. What Are the Performance Standard Requirements and Does New York's I/M Program Satisfy Them?

Revisions to EPA's I/M regulations (40 CFR part 51) were published in the **Federal Register** on September 18, 1995 (60 FR 48029) and July 25, 1996 (61 FR 39032). These changes to EPA's Part 51 outlined two new enhanced performance standards: The Alternate Low Enhanced Performance Standard, under § 51.351(g), and the OTR Low-Enhanced Performance Standard, under § 51.351(h).

The pertinent modeling requirement is noted under § 51.351(h), where an I/M jurisdiction may select the OTR low-enhanced I/M performance standard in lieu of either the more stringent high enhanced or alternate low enhanced performance standards as long as the difference in emission reductions between the alternate low enhanced standard and OTR low-enhanced standard are achieved through other measures. As stated previously, 16 of the 53 counties located in Upstate New York are required to have low enhanced I/M. Because New York implements its NYVIP program in all 53 counties located in Upstate New York, the 37 counties that were not required to implement any form of enhanced I/M are used as an offsetting measure.

Included in New York's February 27, 2006 submittal is the appropriate MOBILE 6 Vehicle Emission Modeling Software modeling demonstration considering the required performance standards and the actual NYVIP program as it applies to the 53 counties located in Upstate New York. The modeling runs considered summer and winter evaluations with a 2009 compliance date. To complete the modeling demonstration, three Mobile 6 modeling runs were performed by New York. The first run reflects the pre-existing Upstate I/M program prior to the roll-out of the OBD program in the Upstate areas. This program included expanded anti-tampering visual checks and a gas cap presence check that began in 1998. This modeling run establishes the Upstate I/M baselines from which the reductions of the other two runs were calculated. The second run is EPA's Alternate Low Enhanced I/M Performance Standard, § 51.351(g), modeled in the required 16 Upstate counties. The difference between this run and the first run represents the required reductions. The third run is the actual OBD program (NYVIP) as it applies in all 53 Upstate counties. The difference between this run and the baseline represents the estimated Upstate OBD program reductions. New York has demonstrated that the actual reductions from its OBD based I/M program being implemented in the 53 counties located in Upstate New York (NYVIP) achieves greater emission reduction credits than that of an alternate low enhanced I/M program required in the 16 counties of Upstate New York. EPA is therefore proposing to approve New York's performance standard modeling demonstration for its 53 county Upstate I/M program (NYVIP).

As noted previously, on May 7, 2001 (66 FR 22922), EPA fully approved New York's enhanced I/M program, which included the State's performance standard modeling as it applies to NYMA, as meeting the applicable requirements of the CAA.

II. Summary of Conclusions and Proposed Action

EPA's review of the materials submitted indicates that New York has revised its I/M program in accordance with the requirements of the CAA, 40 CFR part 51 and all of EPA's technical requirements for an approvable OBD program. EPA is proposing to approve the revisions to the NYSDEC regulation Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, ''Motor Vehicle Enhanced Inspection and Maintenance Program Requirements,'' effective on October 30, 2002, and the New York State Department of Motor Vehicles (NYSDMV) regulation Title 15 NYCRR Part 79 ''Motor Vehicle Inspection Regulations,'' effective on May 4, 2005, which incorporate the State's OBD motor vehicle inspection program requirements. The CAA gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met. EPA is also proposing to approve New York's performance standard modeling demonstration, which reflects the State's I/M program as it is currently implemented in the 53 counties located in Upstate New York (NYVIP), as meeting the required EPA alternate low enhanced I/M performance standards.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 28, 2006.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E6–16931 Filed 10–11–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[WT Docket No. 04–344; FCC 06–108]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) requests additional comment on issues pertaining to maritime Automatic Identification Systems (AIS). AIS is an important tool for enhancing maritime safety and homeland security. Having determined in the *Report and Order* in this proceeding that VHF maritime Channels 87B and 88B should be allocated for exclusive AIS use, in keeping with the international allocation of those channels for AIS, the Commission now seeks comment on whether the designation of those channels for ASIS should be effective throughout the Nation or, as the Commission initially proposed, only in the nine maritime VHF public coast (VPC) service areas (VPCSAs). The Commission asks commenters to consider, in this regard, the United States Coast Guard's plans to develop satellite AIS tracking capabilities. Second, the Commission requests comment on equipment standards and other issues pertaining to AIS base stations. Finally, the Commission requests comment on a proposed standard for authorizing Class B AIS devices.

DATES: Submit comments on or before November 13, 2006, and reply comments are due on or before November 27, 2006.

ADDRESSES: You may submit comments, identified by WT Docket No. 04–344; FCC 06–108, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Further Notice of Proposed Rulemaking (FNPRM)* in WT Docket No. 04–344, FCC 06–108, adopted on July 20, 2006, and released on July 24, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The Commission tentatively concluded in the Notice of Proposed Rule Making in this proceeding (*AIS NPRM*) that Channel 87B should be designated for exclusive AIS use only in the nine maritime VPCSAs. The National Telecommunications and Information Administration (NTIA) and other commenters disagree, arguing that the designation of Channel 87B for AIS should apply throughout the Nation, including the inland VPCSAs as well as the maritime VPCSAs. Although the proponents of a nationwide designation offer several considerations in support of their position, NTIA and ORBCOMM, Inc. have emphasized that satellite AIS capabilities may be developed, and that the effectiveness of satellite AIS depends to a great deal on the establishment of a truly nationwide AIS channel designation. The possibility of satellite AIS was not discussed in the *AIS NPRM,* however, and was not introduced into the record of this proceeding until NTIA filed comments, and ORBCOMM, Inc. reply comments, addressing the issue. The Commission therefore believes that it would be beneficial to obtain further information regarding satellite AIS before deciding this important and complex issue. The Commission requests, in particular, that interested parties provide technical and operational information regarding satellite AIS, including its susceptibility to interference from terrestrial stations, and discuss the public interest costs and benefits of satellite AIS. Commenters should also address whether satellite AIS can function adequately without a nationwide designation of Channel 87B for AIS.

2. In addition to providing information specifically with respect to satellite AIS, interested parties are again invited to address the larger issue of whether the designation of Channel 87B for AIS should be limited to the maritime VPCSAs or should cover the entire Nation, whether or not satellite AIS proves feasible. The Commission would especially welcome input on this issue from licensees of inland VPCSAs. In addition, the Commission requests further comment on the potential benefits of terrestrial AIS in inland areas. The Commission also requests that commenters provide more information on the extent to which vessels on navigable waterways in the inland VPCSAs may benefit from AIS on the one hand, and VPC services, including maritime public correspondence services, on the other.

3. As the Commission noted in the *AIS NPRM,* two duplex channels in each inland VPCSA are set aside for public safety use. These channels are designated for interoperability operations in the inland VPCSAs. The Commission's Universal Licensing

System database indicates that only two public safety entities are licensed for these channels. The Commission has designated other spectrum in the VHF and other bands, for interoperability operations. The Commission therefore seeks comment on whether, in the event it designates Channel 87B for exclusive AIS use nationwide, it would be appropriate to redesignate any of these set-aside channels for VPC use in order to avoid a negative impact on inland VPCSA licensees.

4. NTIA observes that the International Electrotechnical Commission (IEC) is in the process of developing AIS base station equipment standards, and says that the Commission should address issues concerning the authorization, coordination, and operation of AIS base stations. The Commission agrees, and does not believe it necessary to defer requesting comment on these questions until the IEC completes its work. Requesting comment at this stage will permit the Commission to more expeditiously amend its rules following the development of the IEC standards, either to incorporate the IEC standards, promulgate different standards, or take other appropriate action. In addition, it may be possible to crystallize some of the relevant issues even before the IEC publishes its AIS base station standards. The Commission accordingly requests comment on standards and procedures for authorizing AIS base station equipment. The Commission also requests comment on what, if any, rules it should adopt for the licensing and use of AIS base stations, including, for example, license eligibility criteria, an appropriate license term, and whether AIS base station licenses should be assignable. With respect to operational issues, commenters should address, for example, limits on permissible communications, and whether AIS base stations should be permitted to operate on a for-profit basis.

5. NTIA notes that low-cost, Class B AIS devices are being developed for vessels not covered by a mandatory carriage requirement under the International Convention for the Safety of Life at Sea. Class B AIS devices are intended to provide a less expensive alternative to Class A AIS equipment, while still providing vessel information critical to maritime safety and security. In standardizing AIS, the ITU Radiocommunications Sector Recommendation 1371–1, ''Technical characteristics for a universal shipborne Automatic Identification System (AIS) using SOTDMA (Self-Organizing Time Division).''

6. ''Multiple Access in the VHF maritime mobile band,'' provides for a Class B AIS device. The Commission notes, moreover, that the IEC recently adopted and published an international standard, IEC 62287–1, that sets forth requirements and test procedures for Class B AIS equipment. During the development of this Class B AIS standard, concerns arose regarding the potential impact on the operation of the AIS network from widespread deployment of Class B AIS devices that are not compatible with the Class A devices used on SOLAS ships, AIS base stations, and AIS-equipped Aids to Navigation. To resolve these concerns, a network access technology was developed that allows large numbers of Class B-fitted vessels to coexist with Class A-fitted vessels with negligible detrimental effect on the AIS network. This new technology, known as Carrier Sense TDMA (CS or CSTDMA), requires that the Class B CS AIS device ''listen'' to the AIS network, and then determine that the network is free of competing traffic before transmitting. This ''polite'' operation of Class B CS AIS devices minimizes the probability of their causing interference to Class A devices and other AIS network operations.

7. The Commission believes that accommodating Class B devices under its rules will advance the goal of ensuring that AIS is deployed widely, quickly, reliably, cost-effectively, and in a manner that will maximize its capabilities. Class B AIS devices can significantly enhance the overall effectiveness of AIS at a low cost. In addition, the IEC 62287–1 international standard appears to adequately protect the overall AIS network. The Commission tentatively concludes, therefore, that it should amend its part 80 rules to incorporate by reference the IEC 62287–1 standard and provide for the certification of Class B AIS equipment that complies with that standard. The Commission believes this action will promote the domestic public interest by facilitating the sale, installation and use of internationally interoperable Class B AIS devices in the United States. It invites comment on this proposal generally, and, more specifically, on the merits of proposed new § 80.231.

8. In addition, the Commission requests comment on the measures, if any, that it might take to ensure the accuracy of AIS data transmitted via Class B AIS devices. Class B AIS devices broadcast such user-programmed information as Maritime Mobile Service Identity (MMSI) number, vessel name, vessel type, call sign and dimension of the ship and reference point for reported position. They also broadcast such dynamic information as true heading, speed over ground and course over ground. Ships, vessel traffic systems and others often make navigation decisions based upon the accuracy of the information received. The Commission seeks comments regarding means which could be employed to ensure that user-programmed as well as dynamic data on AIS units used on non-compulsory ships is accurate.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

9. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

10. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 13, 2006 and reply comments on or before November 27, 2006. All filings related to this *Further Notice of Proposed Rule Making* should refer to WT Docket No. 04–344.

11. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

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

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

14. Parties who choose to file by paper must file an original and four

copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

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

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

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

19. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com*.

20. *Availability of documents.* The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: *http://www.fcc.gov.* Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at the following e-mail address: *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Paperwork Reduction Act

21. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public, including businesses with fewer than 25 employees.

22. Specifically, in the *FNPRM,* the Commission proposes to establish requirements for the certification of Class B AIS devices. If adopted, the proposed rule would require, among other things, that applicants for certification submit specified information, including copies of test reports and test data, to the United States Coast Guard prior to filing their applications with the Commission, and that they include with their applications to the Commission copies of letters from the United States Coast Guard stating that the device in question satisfies all of the requirements of the pertinent international standard, IEC 62287–1, ''Maritime navigation and radio communication equipment and systems—Class B shipborne equipment of the automatic identification system—Part 1: Carrier-sense time division multiple access (CSTDMA) techniques,'' 2006 (IEC 62287–1). The Commission does not believe that the requirement to submit this information would impose a significant increased administrative burden on businesses with fewer than 25 employees, primarily because such businesses would need to submit the same or similar information in order to obtain certification for Class B AIS devices under international requirements. By incorporating the international standard into the Commission's rules, rather than establishing a different standard, the Commission's proposed rule would avoid subjecting businesses to disparate equipment certification requirements for Class B AIS devices. In addition, whatever burden the Commission's proposed rule might impose on businesses with fewer than 25 employees is more than justified by the underlying purpose of the rule, which to ensure that Class B devices operate effectively and safely, and are interoperable with other AIS devices. Given the important role AIS is to play in promoting homeland security and maritime safety, the public interest in establishing rules for the certification of Class B AIS devices outweighs the minimal burden it might impose on businesses with fewer than 25 employees.

II. Supplemental Initial Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act (RFA) as amended, the Commission has prepared this present supplemental Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this *Further Notice of Proposed Rule Making* in WT Docket No. 04–344 (*FNPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* as provided in paragraph 74 of the item. The Commission will send a copy of the *FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

24. In the *FNPRM,* the Commission contemplates rules changes involving three issues. First, with the objective of ensuring that AIS operations are implemented in an effective and efficient manner without imposing unnecessary restrictions on a VPC operations, the Commission requests comment as to whether there is a need to revisit the issue of the appropriate geographic scope of the AIS set-aside, *i.e.*, whether it should be nationwide or limited to the nine maritime VPCSAs. The Commission seeks comment, in particular, on whether and how the potential development of satellite AIS should weigh in that decision. Second, with the objective of ensuring that AIS base stations operate in a manner consonant with the overall goals and purposes of AIS, the Commission requests comment on equipment certification, licensing, and other issues pertaining to AIS base stations. The Commission notes, in this regard, that AIS base stations are a critical component of the AIS network, and that there is an apparent need for some regulation of AIS base stations just as there is a need for some regulation of AIS ship stations. Finally, with the objective of accommodating Class B as well as Class A AIS devices, the Commission requests comment on the Commission's proposal to incorporate by reference IEC 62287–1, ''Maritime navigation and radio communication equipment and systems—Class B

shipborne equipment of the automatic identification system—Part 1: Carrier-sense time division multiple access (CSTDMA) techniques,'' 2006 (IEC 62287–1), as the standard for certifying Class B AIS devices under part 80 of the Commission's rules.

Legal Basis for Proposed Rules

25. The proposed action is authorized under sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

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

27. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Wireless Telecommunications,'' which is 1,500 or fewer employees. Between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast (VPC) licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed fifteen million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed three million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

28. There are no projected reporting, recordkeeping or other compliance requirements.

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

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

30. In the *FNPRM*, the Commission asks that interested parties, and in particular inland VPCSA licensees, provide information on the potential impact on inland VPCSA licensees of designating Channel 87B for AIS use exclusively throughout the Nation. To the extent that commenters foresee such an impact, they are invited to suggest alternatives that would minimize or eliminate any adverse effect on small entities. For example, commenters may suggest that inland VPCSA licensees be accorded treatment similar to that which we are providing to site-based incumbent licensees, permitting them to continue to operate on Channel 87B on a shared basis with AIS for the remainder of their current license terms, but with no opportunity for renewal of the licenses. Commenters may also address the possibility of migrating such licensees to different channels if such were available.

31. In the *FNPRM*, the Commission also invites comment on rules to govern AIS base stations, including certification standards for AIS base station equipment. In the absence of specific proposals, we invite interested parties to consider generally whether any special measures should be adopted in the AIS base station rules to prevent a significant adverse impact on small entities. Parties providing such comments should also address the extent to which they believe small entities may seek to become AIS base station licensees.

32. Finally, the Commission requests comment in the *FNPRM* on its proposal to incorporate by reference IEC 62287–1, ''Maritime navigation and radio communication equipment and systems—Class B shipborne equipment of the automatic identification system—Part 1: Carrier-sense time division multiple access (CSTDMA) techniques,'' 2006 (IEC 62287–1), as the standard for certifying Class B AIS devices under part 80 of the Commission's rules. The Commission believes that incorporating by reference the international standard for Class B AIS devices will reduce costs to manufacturers by eliminating the possible need to design devices to two potentially conflicting standards, and will reduce costs to users of the devices both from a pass-through of manufacturers' cost savings and by eliminating the possible need to fit their vessels with more than one Class B AIS device if they travel outside U.S. territorial waters, *i.e.*, removing the need to carry one Class B AIS device to function within U.S. territorial waters, and another Class B AIS device to function in international waters or other nations' territorial waters. The Commission notes, in addition, that Class B AIS devices are intended generally for use on vessels that are not required by law to carry AIS devices. Since carriage of Class B AIS devices is voluntary, the establishment of standards for certifying such devices should not impose a new compliance burden on vessel operators. However, to the extent that any commenters believe that he establishment of equipment certification standards for Class B AIS devices may impose a significant new compliance burden on any small entities, the Commission invites them to suggest alternative or complementary approaches that may reduce or eliminate that burden, including, but not limited to, the establishment of less rigorous standards, or the provision of exemptions or grandfathering protection for small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

33. None.

III. Ordering Clauses

34. Pursuant to Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 403, this *Further Notice of Proposed Rule Making* is adopted.

35. It is further ordered that pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Further Notice of Proposed Rulemaking* on or before November 13, 2006 and reply comments on or before November 27, 2006.

36. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Further Notice of Proposed Rulemaking* and the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Communications, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 80 as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.231 is added to read as follows:

§ 80.231 Technical Requirements for Class B Automatic Identification System (AIS) equipment.

(a) Class B Automatic Identification System (AIS) equipment must meet the technical requirements of the International Electrotechnical Commission (IEC) 62287–1 International Standard, ''Maritime navigation and radio communication equipment and systems—Class B shipborne equipment of the Automatic Identification System—Part 1: Carrier -sense time division multiple access (CSTDMA) techniques,'' 2006. The Director of the **Federal Register** approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards can be inspected at the Federal Communications Commission, 445 12th Street, SW., Washington, DC (Reference Information Center) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. IEC publications can be purchased from the International Electro-technical Commission, 3 Rue de Varembe, CH–1211 Geneva 20, Switzerland, or from the American National Standards Institute (ANSI), 25 West 43rd Street, New York, NY 10036, telephone (212) 642–4900.

(b) Prior to submitting a certification application for a Class B AIS device, the following information must be submitted in duplicate to the Commandant (G–PSE), U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001:

(1) The name of the manufacturer or grantee and the model number of the AIS device;

(2) Copies of the test report and test data obtained from the test facility showing that the device complies with the environmental and operational requirements identified in IEC 62287–1.

(c) After reviewing the information described in paragraph (b) of this section, the U.S. Coast Guard will issue a letter stating whether the AIS device satisfies all of the requirements specified in IEC 62287–1.

(d) A certification application for an AIS device submitted to the Commission must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all of the requirements specified in IEC 62287–1, a copy of the technical test data, and the instruction manual(s).

3. Section 80.275 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 80.275 Technical Requirements for Class A Automatic Identification System (AIS) equipment.

(a) Prior to submitting a certification application for a Class A AIS device, the following information must be submitted in duplicate to the Commandant (G–MSE), U.S. Coast Guard, 2100 2nd Street, SW., Washington DC 20593–0001:

* * * * *

4. Section 80.1101 is amended by adding paragraph (c)(12)(vi) to read as follows:

§ 80.1101 Performance standards.

(c) * * *

(12) * * *

(vi) with respect to Class B AIS devices only, IEC 62287–1 International Standard, ''Maritime navigation and radio communication equipment and systems—Class B shipborne equipment of the Automatic Identification System—Part 1: Carrier—sense time division multiple access (CSTDMA) techniques,'' 2006.

* * * * *

[FR Doc. E6–16832 Filed 10–11–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 71, No. 197
Thursday, October 12, 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

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, November 2, 2006. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

The meeting agenda includes the following:

(1) Welcome/Introductions.
(2) Environmental Education.
(3) Promotions Effectiveness Study.
(4) LBL Updates.
(5) Board Discussion of Comments Received.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by October 26, 2006, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on November 2, 2006, 9 a.m. to 3 p.m., CST.

ADDRESSES: The meeting will be held at the Kentucky Dam Village State Resort Park, Gilbertsville, Kentucky, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

Dated: October 5, 2006.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. E6–16879 Filed 10–11–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

Public Forum on the European Union Metric Labeling Directive

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The European Union has developed legislation that could mandate that U.S. businesses only use metrics when manufacturing for sale in the EU. This forum will provide U.S. industries an opportunity to express their concerns and ask relevant questions about the legislation.

DATES: The date of the meeting is October 12, 2006.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *E-mail: Ann_Ngo@ita.doc.gov.*
- *Fax:* 202–482–2897.
- *Mail:* U.S. Department of Commerce, Room 3513, 14th and Constitution Avenue, NW., Washington, DC 20230.
- *Hand Delivery/Courier:* U.S. Department of Commerce, Room 3513, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ann Ngo, Room 3527, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–0010.

SUPPLEMENTARY INFORMATION: Beginning January 1, 2010, the European Union Council Directive of 20 December 1979 (80/181) on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC, otherwise known as the Metric Directive, will allow the use of only metric units, and prohibit the use of any other measurements for most products sold in the European Union (EU). The Metric Directive will make the sole use of metric units obligatory in all aspects of life in the European Union, extending to areas such as product literature and advertising.

The Department of Commerce cordially invites all interested stakeholders to attend a public forum on the European Union's Metric Directive. The meeting is an opportunity for interested parties to provide information and input to the U.S. government on key areas of metric-only labeling. The stakeholders' input will be considered in the development of U.S. government views and actions. Key government officials working directly on this issue from various agencies will be in attendance to make presentations and discuss this important legislation and what stakeholders can do to move this issue to a successful conclusion.

Date: October 12, 2006.
Time: 2:30 p.m.–4:30 p.m.
Where: U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

To gain access to the Department of Commerce, please RSVP by noon on Wednesday, October 11, 2006 to Ann Ngo at (202) 482–0010 or *Ann_Ngo@ita.doc.gov.*

The agenda will be provided at the meeting. Further information on the Metric Labeling directive can be found at: *http://buyusainfo.net/docs_orig/x_3107558.doc* and at *http://www.nist.gov/metric.*

Dated: October 1, 2006.

David DeFalco,

Director, Office of European Union, Department of Commerce.

[FR Doc. E6–16930 Filed 10–11–06; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Fagatele Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Fagatele Bay National Marine Sanctuary is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Non Government Seat: Fishing/Western

Pacific Fisheries Management Council member (voting). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter.

DATES: Applications are due by October 23, 2006.

ADDRESSES: Application kits may be obtained from Bill Kiene and Fagatele Bay National Marine Sanctuary Program, P.O. Box 4318, Pago Pago, AS, 96799. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Bill Kiene, P.O. Box 4318, Pago, Pago, AS 96799, (684) 633–7354, and *William.kiene@noaa.gov.*

Authority: 16 U.S.C. 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: October 2, 2006.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 06–8618 Filed 10–11–06; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary) is seeking applicants for the following three vacant seats on its Sanctuary Advisory Council (Council): University education, Living resources research, and Georgia conservation. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the Council's Charter.

DATES: Applications are due by November 30, 2006.

ADDRESSES: Application information may be obtained from Becky Shortland, 10 Ocean Science Circle, Savannah, Georgia 31411; telephone (912) 598–2381; e-mail *Becky.shortland@noaa.gov.* Applications should be sent to the attention of GRNMS Acting Manager, Cathy Sakas at the same address.

FOR FURTHER INFORMATION CONTACT: Becky Shortland, 10 Ocean Science Circle, Savannah, Georgia 31411; telephone (912) 598–2381; e-mail *Becky.Shortland@noaa.gov*

SUPPLEMENTARY INFORMATION: GRNMS is one of the largest nearshore live-bottom reefs off the southeastern United States, encompassing approximately 17 square nautical miles. The area earned sanctuary designation in 1981. The sanctuary consists of a series of sandstone outcroppings and ledges up to 10 feet in height, in a predominantly sandy, flat-bottomed sea floor. The live bottom and ledge habitat support an abundant reef fish and invertebrate community. Loggerhead sea turtles, a threatened species, also use GRNMS year-round for foraging and resting, and the reef is within the known winter calving ground for the highly endangered Northern right whale. The GRNMS Advisory Council was established in August 1999 to provide advice and recommendations on management and protection of the sanctuary. The Council through its members also serves as liaison to the community regarding sanctuary issues, and represents communuity interests, concerns, and management needs to the sanctuary and NOAA.

Authority: 16 U.S.C. sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 6, 2006.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Oceanic and Atmospheric Administration.

[FR Doc. 06–8635 Filed 10–11–06; 8:45am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100306H]

Endangered and Threatened Species; Initiation of a 5–year review of Johnson's Seagrass

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

ACTION: Notice of initiation of a 5–Year Review; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 5–year review of Johnson's seagrass (*Halophila johnsonii*) under the Endangered Species Act of 1973 (ESA). A 5–year review is a periodic process conducted to ensure that the listing classification of a species is accurate. A 5–year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on Johnson's seagrass that has become available since its original listing as a threatened species in 1998. Based on the results of this 5–year review, we will make the requisite findings under the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than December 11, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit information by any of the following methods:

- Mail: Shelley Norton, National Marine Fisheries Service, 263 13th Avenue South, St. Petersburg, FL 33701.
- E-mail: *shelley.norton@noaa.gov.* Include in the subject line of the e-mail the following identifier: Comments on 5–year review for Johnson's seagrass.
- Fax: 1–727–824–5309, Attention: Shelley Norton

Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Shelley Norton at the above address, or at 727–824–5312.

SUPPLEMENTARY INFORMATION: Under the ESA, a list of endangered and threatened wildlife and plant species must be maintained. The list is published at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a

review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of Johnson's seagrass, currently listed as threatened.

Public Solicitation of New Information

To ensure that the 5–year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of Johnson's seagrass.

The 5–year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include (1) species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and suitability; (3) conservation measures that have been implemented that benefit the species; (4) status and trends of threats; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

If you wish to provide information for this 5–year review, you may submit your information and materials to Shelley Norton (see **ADDRESSES**). Our practice is to make submissions of information, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. We will not, however, consider anonymous submissions. To the extent consistent with applicable law, 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. Information and materials received will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 4, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–16933 Filed 10–11–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092606H]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council has cancelled the conference call that was scheduled for October 18, 2006.

ADDRESSES:

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The notice for the conference call published in the **Federal Register** on October 2, 2006, 71 FR 57927. The Council has cancelled the conference call.

Dated: October 5, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–16850 Filed 10–11–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100506F]

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/Marine Protected Area (MPA)/Ecosystem Committee meeting in October, 2006, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, October 31, 2006, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360: telephone: (508) 747–4900; fax: (508) 746–5386.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review the plan development team's recommendations for a Great South Channel Habitat Area of Particular Concern (HAPC) alternative and potentially recommend an additional HAPC alternative to the Council for inclusion in the Draft Supplemental Environmental Impact Statement (DSEIS) for the Essential Fish Habitat (EFH) Omnibus Amendment. The committee will also review and approve the non-fishing impacts section of the Amendment for consideration by the Council and review and approve the DSEIS for the EFH Omnibus Amendment for consideration by the Council for public comment. In addition, the committee will receive a briefing on current EFH consultations

on non-fishing impact projects in the Northeast. Other topics may be covered at the committee's discretion.

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 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 action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 5, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–16851 Filed 10–11–06; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its AmeriCorps Application Instructions: State Competitive and State Education Award Program. These application instructions are used by current and prospective grantees to apply for funds for these programs.

Copies of the information collection request can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 11, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, Amy Borgstrom, Associate Director for Policy, 1201 New York Ave., NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930 or by e-mail at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background: AmeriCorps grants are generally awarded to eligible organizations to recruit, train, and manage AmeriCorps members who address unmet community needs. AmeriCorps members are individuals who engage in community service. Members may receive a living allowance during their term of service. Upon successful completion of their service members receive an education award from the National Service Trust.

Roughly three quarters of all AmeriCorps grant funding goes to Governor-appointed state service commissions which award subgrants to nonprofit organizations in their states. The AmeriCorps Application Instructions: State Competitive and State Education Award Program, are used by applicants interested in these programs. The application is completed electronically using eGrants, the Corporation's Web-based grants management system.

Current Action: The Corporation seeks to separate the current application instructions into two separate sets of instructions in order to increase clarity and ease of use. The application will be used in the same manner as the existing application. The Corporation also seeks to continue using the current application instructions until the revised application instructions are approved by the Office of Management and Budget (OMB). The current application instructions are due to expire on April 30, 2009.

Type of Review: New, previously part of 3045–0047.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions: State Competitive and State Education Award Program.

OMB Number: None.

Agency Number: None.

Affected Public: State governments.

Total Respondents: 1,500 potential subgrantees and 54 state commissions submitting state competitive and state formula grant requests.

Frequency: Annually.

Average Time per Response: 24 hours for potential subgrantees, 24 hours for state commissions submitting state competitive requests, 8 hours for state commissions submitting state formula requests.

Estimated Total Burden Hours: 37,728 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this Notice will be summarized and/or included in the request for OMB approval of the information collection request; they will become a matter of public record.

Dated: October 4, 2006.

Kristin McSwain,

Director, AmeriCorps State and National.

[FR Doc. E6–16834 Filed 10–11–06; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its AmeriCorps Application Instructions: States without Commissions. These application instructions are used by current and prospective grantees to apply for funds for these programs.

Copies of the information collection request can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 11, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, Amy Borgstrom, Associate Director for Policy, 1201 New York Ave., NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930 or by e-mail at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background: AmeriCorps grants are generally awarded to eligible organizations to recruit, train, and manage AmeriCorps members who address unmet community needs. AmeriCorps members are individuals who engage in community service. Members may receive a living allowance during their term of service. Upon successful completion of their service members receive an education award from the National Service Trust.

Roughly three quarters of all AmeriCorps grant funding goes to Governor-appointed state service commissions which award subgrants to nonprofit organizations in their States. The AmeriCorps Application Instructions: States without Commissions, are used by applicants interested in these programs. The application is completed electronically using eGrants, the Corporation's Web-based grants management system.

Current Action: The Corporation seeks to separate the current application instructions into two separate sets of instructions in order to increase clarity and ease of use. The application will be used in the same manner as the existing application. The Corporation also seeks to continue using the current application instructions until the revised application instructions are approved by the Office of Management and Budget (OMB). The current application instructions are due to expire on April 30, 2009.

Type of Review: New, previously part of 3045–0047.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions: States without Commissions.

OMB Number: None.

Agency Number: None.

Affected Public: State governments.

Total Respondents: 1,500 potential subgrantees and 54 State commissions submitting State competitive and State formula grant requests.

Frequency: Annually.

Average Time per Response: 24 hours for potential subgrantees, 24 hours for State commissions submitting State competitive requests, 8 hours for State commissions submitting state formula requests.

Estimated Total Burden Hours: 37,728 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this Notice will be summarized and/or included in the request for OMB approval of the information collection request; they will become a matter of public record.

Dated: October 4, 2006.

Kristin McSwain,

Director, AmeriCorps State and National.

[FR Doc. E6–16837 Filed 10–11–06; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. Sec. 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed renewal of its Learn and Serve America Progress Report. These reports must be completed by all Learn and Serve America grantees in order to ensure appropriate Federal oversight, determine progress toward meeting program objectives and to make decisions related to continuation funding.

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 11, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Learn and Serve America; Attention: Cara Patrick; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3477, Attention: Cara Patrick, Learn and Serve America.

(4) *Electronically through the Corporation's e-mail address system: cpatrick@cns.gov.*

FOR FUTHER INFORMATION CONTACT: Cara Patrick, (202) 606–6905, or by e-mail at *cpatrick@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

Learn and Serve America provides grants to state education agencies, higher education institutions, tribes and U.S. Territories, national nonprofits and state commissions on national and community service to implement service-learning programs. To ensure appropriate oversight of Federal funds, Learn and Serve America requires all grant recipients to submit Progress Reports describing grant activities and progress toward approved program objectives. Information received from the reports informs continuation funding decisions and how to target training and technical assistance.

Progress Report instructions will be available from the agency Web site and should be completed through our grants management system, eGrants.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Progress Report.

OMB Number: 3045–0089.

Agency Number: None.

Affected Public: State and Local Government, Not-for-profit institutions.

Total Respondents: 103.

Frequency: Twice annually.

Average Time per Response: 2 hours.

Estimated Total Burden Hours: 412 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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: October 3, 2006.

Amy Cohen,

Director, Learn and Serve America.

[FR Doc. E6–16839 Filed 10–11–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2007 Diagnosis Related Group (DRF) Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

It also provides the updated fixed loss cost outliner threshold, cost-to-charge ratios and the Internet address for accessing the updated adjusted standardized amount and DRG relative weights to be used for FY 2007 under the TRICARE DRG-based payment system.

DATES: *Effective Dates:* The rates, weights and Medicare PPS changes which affect the TRICARE DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 2006.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3803.

Questions regarding payment of specific claims under the TRICARE DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32993) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE, is that the TRICARE DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE system will follow the same rules that apply to the Medicare PPS. The Centers for Medicare and Medicaid Services (CMS) publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE DRG-Based Payment System

Following is a discussion of the changes CMS had made to the Medicare PPS that affect the TRICARE DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and the TRICARE DRG-based payment system cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and has implemented thirty-four (34) neonatal DRGs is place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 2001, DRG 435 has been replaced by DRG 523. The TRICARE system has replaced DRG 523 with the two age-based DRGs (900 and 901). For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDC 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. For admissions occurring on or after October 1, 2001, DRGs 512 and 513 were added to the PreMDC DRGs, between DRGs 480 and 103 in the TRICARE grouper hierarchy logic. For admissions occurring on or after October 1, 2004, DRG 483 was deleted and replaced with DRGs 541 and 542, splitting the assignment of cases on the basis of the performance of a major operating room procedure. The description for DRG 480 was changed to ''Liver Transplant and/or Intestinal Transplant'' and the description for DRG 103 was changed to ''Heart/Heart Lung Transplant or Implant of Heart Assist System''. For FY 2007, CMS will implement classification changes, including surgical hierarchy changes. The TRICARE Grouper will incorporate all changes made to the Medicare Grouper, with the exception of the pre-surgical hierarchy changes, which will remain the same as FY 2006.

B . Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE will continue to use the same wage index amounts used for the Medicare PPS. TRICARE will also duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board. In addition, TRICARE will continue to utilize the out commuting wage index adjustment.

C. Revision of the Labor-Related Share of the Wage Index

TRICARE is adopting CMS' percentage of labor related share of the standardized amount. For wage index values greater than 1.0, the labor related portion of the ASA shall equal 69.7 percent. For wage index values less than or equal to 1.0 the labor related portion of the ASA shall continue to equal 62 percent.

D. Hospital Market Basket

TRICARE will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS for all hospitals subject to the TRICARE DRG-based payment system according to CMS' August 18, 2006, final rule.

E. Outlier Payments

Since TRICARE does not include capital payments in our DRG-based payments (TRICARE reimburses hospitals for their capital costs as reported annually to the contractor on a pass through basis), we will use the fixed loss cost outlier threshold calculated by CMS for paying cost outliers in the absence of capital prospective payments. For FY 2007, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY 2007, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $22,639 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

F. National Operating Standard Cost as a Share of Total Costs

The FY 2007 TRICARE National Operating Standard Cost as a Share of Total Costs (NOSCASTC) used in calculating the cost outlier threshold is 0.925. TRICARE uses the same methodology as CMS for calculating the NOSCASTC, however, the variables are different because TRICARE uses national cost to charge ratios while CMS uses hospital specific cost to charge ratios.

G. Indirect Medical Education (IDME) Adjustment

Passage of the MMA of 2003 modified the formula multipliers to be used in the calculation of the indirect medical education IDME adjustment factor. Since the IDME formula used by TRICARE does not include disproportionate share hospitals (DSHs), the variables in the formula are different than Medicare's, however; the percentage reductions that will be applied to Medicare's formula will also be applied to the TRICARE IDME formula. The new multiplier for the IDME adjustment factor for TRICARE for FY 2007 is 1.00.

H. Expansion of the Post Acute Care Transfer Policy

For FY 2007 TRICARE is adopting CMS' expanded post acute care transfer policy according to CMS' final rule published August 18, 2006.

I. Blood Clotting Factor

For FY 2007, TRICARE is adopting CMS' payment methodology for blood clotting factor according to CMS' final rule published August 18, 2006.

II. Cost to Charge Ratio

While CMS uses hospital-specific cost to charge ratios, TRICARE uses a national cost to charge ratio. For FY 2007, the cost-to-charge ratio used for the TRICARE DRG-based payment system for acute care hospitals and neonates will be 0.3897 which is increased to 0.3967 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.4282.

III. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *http://www.tricare.osd.mil* under the sequential headings TRICARE Provider Information, Rates and Reimbursements, and DRG Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE DRG-based payment system during FY 2007 and which is a result of the changes described above. The implementing regulations for the

TRICARE/CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: October 5, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8624 Filed 10–11–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2007 Mental Health Rate Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 2007 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 2007.

DATES: *Effective Date:* The fiscal year 2007 rates contained in this notice are effective for services occurring on or after October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Christine Covie, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3841.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2007, Medicare has recommended a rate of increase of 3.4 percent for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 2007 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for FY 2006 updated by 3.4 percent for FY 2007. Partial hospitalization rates for full day and half day programs will also be updated by 3.4 percent for FY 2007. The cap amount for high volume hospitals and units will also be updated by the 3.4 percent for FY 2007. The beneficiary cost-share for low volume hospitals and units will also be updated by the 3.4 percent for FY 2007. Consistent with Medicare, the wage portion of the regional rate subject to the area wage adjustment is 75.665 percent for FY 2007.

The following reflect an update of 3.4 percent for FY 2007

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME

United States census region	Rate@
Northeast:	
New England	$684
Mid-Atlantic	659
Midwest:	
East North Central	569
West North Central	537
South:	
South Atlantic	678
East South Central	725
West South Central	618
West:	
Mountain	617
Pacific	729
Puerto Rico :	465
@Wage portion of the rate, subject to the area wage adjustment	75.665 percent

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $184 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2006.

Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $860 per day for FY 2007.

The following reflect an update of 3.4 percent for FY 2007.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2007

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (ME, NH, VT, MA, RI, CT)	$275	$207
Mid-Atlantic (NY, NJ, PA)	298	224
Midwest:		
East North Central (OH, IN, IL, MI, WI)	262	196
West North Central (MN, IA, MO, ND, SD, NE, KS)	262	196
South:		
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL)	282	212
East South Central (KY, TN, AL, MS)	305	229
West South Central (AR, LA, TX, OK)	305	229
West:		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	308	232
Pacific (WA, OR, CA, AK, HI)	302	226

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2007—Continued

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Puerto Rico	196	148

The above rates are effective for services rendered on or after October 1, 2006.

Dated: October 5, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8628 Filed 10–11–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Advisory Board meeting convened at 8 a.m., Friday, September 22, 2006, but did not have a quorum. The meeting was allowed and conducted in accordance with the Federal Advisory Committee Act (FACA) exception that no deliberation or voting can take place absent a quorum. These conditions were adhered to. Additionally, hard copies of all briefings from the meeting will be forwarded to the absent members and a confirmation printout of the transmitted briefings will be kept on file as a matter of record.

Location: Pentagon, Room 2E219.

Attendees

Members

David A. Janes, Chairman, DAB; Chairman and CEO, Janes Capital Partners.

Donald V. Esmond, Senior VP Automotive Operations, Toyota Motor Sales.

Walter P. Havenstein, Executive Vice President, BAE Systems North America.

W. Thomas Musser, Chairman of the Board, Tri-M Group, LLC and Tri-M Holdings, LLC.

Kathleen M. Naylor, Director, Worldwide Executive and Leadership Development, UNISYS Corp.

Joyce Reed, Community Relations Manager, Tyson Foods, Inc.

Absent

William T. Powell, President, Institute for Defense and Business.

John T. Gremp, VP–Energy Production Systems, Energy Systems Group, FMC Technologies, Inc.

Bradley T. MacDonald, Chairman and CEO, Medifast, Inc.

Jeffery C. Crowe, Chairman and CEO, Landstar System, Inc.

Michael J. Earley, President and CEO, Bankers Trust Company.

Christopher K. Komisarjevsky, President and CEO, Emeritus, Burson-Marsteller Worldwide.

Kenneth L. Gile, President, Skybus Airlines.

Department of Defense

The Honorable Thomas F. Hall, Assistant Secretary of Defense, Reserve Affairs.

Craig W. Duehring, Principal Deputy Assistant Secretary of Defense, Reserve Affairs.

Bob Hollingsworth, Executive Secretary, DAB.

Mr. Tom Bush, Principal Deputy Manpower & Personnel, Office of the Secretary of Defense, Reserve Affairs.

Phil Pope, Designated Federal Officer, DAB.

Roxie Merritt, Office of the Assistant Secretary of Defense, PA, Internal Com/Public Liaison.

Ted Kehr, Director, Employer Support Division, National Guard Bureau.

Public

Mr. Nick Dawson, Department of Labor, Veterans Employment and Training Services.

Mr. Marcus Bradshaw, Department of Labor, Veterans Employment and Training Services.

Speakers

The Honorable Thomas F. Hall, Assistant Secretary of Defense, Reserve Affairs. Topic: Welcome and Opening Remarks.

Kathleen Naylor, Director, Worldwide Executive and Leadership Development, UNISYS Corp. and Roxie Merritt, Office of the Secretary of Defense, PA for Internal Com/Public Liaison. Topic: Communications/Outreach Update.

Nick Dawson and Marcus Bradshaw, Veteran's Administration Department of Labor. Topic: Uniformed Services Employment and Reemployment Rights Act (USERRA).

Bob Hollingsworth, National Committee for Employer Support of the Guard (NCESGR) and Reserve Executive Director and DAB Executive Secretary. Topic: ESGR Outreach Status Brief.

Tom Bush, Principal Deputy Manpower and Personnel, Office of the Secretary of Defense, Reserve Affairs. Topic: ''Transitioning To An Operational Reserve''.

DAB Meeting Summary

Meeting discussions focused on four primary areas:

(1) Leveraging and implementation of long-range strategic communications plan that uses public affairs tactics designed to assist branding NCESGR, while targeting key messages to employers.

(2) An information brief of USERRA rights and responsibilities as they affect Reserve Component members/employers.

(3) Employer data and impact on employers as Guard and Reserve transition from a Strategic Reserve to an Operational Reserve.

(4) OSD–RA Manpower and Personnel prospective of transition to an Operational Reserve.

Invited speakers discussed more aggressive public affairs efforts to enhance communications with employers; the ongoing process to educate and inform employers and Defense Advisory Board (DAB) members regarding legal rights and responsibilities under the Uniformed Services Employment and Reemployment Rights Act (USERRA); the purpose and function of NCESGR and transitioning from a Strategic Reserve to an Operational Reserve.

Opening Remarks

Secretary Thomas F. Hall, Assistant Secretary of Defense, Reserve Affairs

Secretary Hall thanked Mr. Hollingsworth and his team for a great Leadership Conference, and the culmination of a superb Freedom Award Dinner, which also resulted in late night news coverage emphasizing the significant support provided to the nation's Guard and Reserve by America's exceptional employers. General Cody did a great job with his

speech, as well as WLS–Channel 7 News broadcast reporter Mr. Leon Harris, the event Master of Ceremonies. Later today, 15 distinguished employer recipients of the Secretary of Defense Employer Support Freedom Award will meet with President Bush at the Oval Office.

David Janes, DAB Chairman

On Thursday, September 21, 2006, NCESGR held its annual Leadership Conference in which all State and Territory Field Committee Chairs were in attendance. This is the first time that only the Chairs were invited to the conference without any other Field Committee Executive members. Everyone came with lots of positive energy. We have fielded the best group of volunteer leaders in the past three years, very professional and energetic. Furthermore, a lot of positive changes have taken place in the past three years that has led us to this remarkable team of Field Committee Chairs. This is attributed in large part to the tremendous support received from both NCESGR and the Office of the Secretary of Defense for Reserve Affairs (OSD–RA) staff, which continues to reinforce why ESGR is important. Everyone's hard work has made a difference and that has contributed to making this the strongest Field Committee Chair Team ever.

A number of DAB members have expressed that it would be beneficial for them to visit a training mobilization site while Guardsmen are mobilizing. Fort Dix in New Jersey, Fort McCoy in Wisconsin, and 29 Palms in California are among the potential venues that could be researched. Our next meeting scheduled in February of 2007 could be held at a National Guard Bureau mobility site during an actual training mobilization in order for DAB members to experience what type of preparation guard reserve members go through during mobilization. Mr. Hollingsworth has agreed to investigate possible training sites.

Minutes from the June 2006 meeting have been approved and have been posted in the **Federal Register**, as a matter of public record.

A draft of the September 22, 2006 meeting minutes will be sent to DAB members for review prior to publication and hard copies of all slide presentations will be mailed to the members absent to ensure DAB Committee meeting compliance with FACA guidance absent a quorum.

Meeting Presenters

Kathleen Naylor, Director, Worldwide Executive & Leadership Development, UNISYS Corp.

Roxie Merritt, Office of the Assistant Secretary of Defense, PA (Internal Com/ Public Liaison)

Topic: Communications/Outreach Update

The DAB determined that there is an ongoing need to build stronger partnerships with employers of guard and reserve members. The development of an integrated communications plan has been drafted to address the lack of reliable methods by which the DoD can convey information routinely to employers of guard and reserve members. The premise for this initiative is to establish an ongoing mechanism to communicate information about the Department of Defense, and associated agencies VA, and DoL regarding related plans, policies, mobilizations and training issues for Reserve component members and employers. The following topics were discussed:

Integrated Plan

- Utilize broadcast, Web, print and outreach tools (events) and key individuals to highlight NCESGR and model employers of Guardsmen and Reservists.
- Leverage Freedom Awards Ceremony, America Supports You, Employer Boss Lifts and other contract resources.

Web/News Media Approaches

- Use American Forces Press Service reporters to cover and generate wire stories on events.
- Wire stories can be distributed to more than 1,000 military publications and newspapers world-wide.
- Deploy on-line survey to employers to gain additional insights on their view, perspectives and support they wish.
- Post key communications/messages to *http://www.Defenselink.mil* which receives more than 65,000 unique hits per day.

Broadcast

- Use Pentagon Channel television crew to cover NCESGR events.
- Pentagon Channel can be viewed world-wide and is carried on a number of commercial cable and satellite providers.
- The broadcast piece will be available on *http://www.pentagonchannel.mil* the day the piece airs on Pentagon Channel.
- Event will be promoted on the Pentagon Channel crawler.
- Determine other media possibilities outside government to leverage NCESGR events.

Print/Outreach

- NCESGR events will be included in regular outreach products DoD updates for distribution and releases on the day of the event.
- Events will be posted to OSD-PA event calendar.
- Story to be carried in the National Guard Family Readiness Newsletter.
- Leverage ''Hometown News'' local newspapers and work with America Supports You, and grass roots organizations.
- Use Legislative body to promote/ support outreach (Senators/Internal Legislative Affairs, DoD Legislative Affairs, and White House Legislative Affairs staff).

Online Survey

Utilize/leverage all vehicles available to include DoL, recruiting commands, if feasible, and others to launch survey to employers (sample survey to be developed and will be short/succinct and will leverage work of Freedom Awards recipients).

Outreach by Legislative Body/Media

- Leverage internal resources—share NCESGR/DAB strategy, ask for their input and reach out to those who have stepped forward to bridge gaps and build relationships.
- Feature stories in key publications and at key events (with photos)—Start with leveraging recurring events such as, NCESGR's annual Freedom Awards.

Charting a Way Ahead

- Identify quick ways to deploy an online survey to employers.
- Obtain NCESGR resources to work with OSD–PA, DoD and DAB.
- Identify concise survey topics to address with employers.
- Define how success of media initiatives will be measured.
- Work to engage support and involvement of House and Senate members to promote NCESGR.
- Dedicate internal NCESGR staff to support communications if this initiative is a priority.
- Define actions/dates to leverage existing DoD initiatives i.e., America Supports You.
- Routinely interface with DoL point person to leverage key messages, outreach and DoD/DoL use of the Civilian Employer Information database.
- Commit aggressive support from DAB to move initiative forward.

Mr. Nick Dawson and Mr. Marcus Bradshaw, Department of Labor (DoL), Veterans Employment and Training Services (VETS)

Topic: Uniformed Services Employment and Reemployment Rights Act (USERRA)

A big compliance problem employers' face is a limited knowledge and understanding about USERRA. NCESGR and DoL (VETS) are simultaneously engaged in an ongoing concerted effort to help educate employers, Guardsmen and Reservists about their rights and responsibilities. The following information was discussed:

Who USERRA Covers

- The Uniformed Services Employment and Reemployment Rights Act (USERRA) was enacted in 1994 under Title 38, U.S. Code, 4301–4334.
- USERRA applies to virtually all employers (foreign and domestic) in the United States and its Territories.
- USERRA generally protects persons who perform, have performed or apply to perform service in the uniformed services.
- Service in the uniformed services includes voluntary and involuntary service, both during wartime and in peacetime.
- Since 2002, service by intermittent disaster response personnel for FEMA and training to perform such service is considered service in the uniformed services and is protected by USERRA.

Employment Rights

- Employment rights consist of protections against employment discrimination and employer retaliation.
- Employers may not discriminate in employment, reemployment, retention in employment, promotions or any benefit of employment on the basis of a person's prior military service, current military obligations, or an intent to join one of the uniformed services.
- Also, an employer may not take any adverse action to retaliate against a person who has attempted to enforce his or her rights under USERRA.
- The law also prohibits retaliation against a person who assists or testifies in an investigation or other enforcement action. Such person is protected from retaliation even if he or she has no military connection.

Reemployment Rights

- If the returning employee meets the eligibility criteria, he or she is entitled to prompt reemployment in accordance with what is referred to as the ''escalator principle,'' which was first laid down by the Supreme Court in the first reemployment rights case it decided, in 1946.
- The person is to be reemployed in the position he or she would have attained if he or she had remained continuously employed during the period of military service. If the period of military service was for more than 90 days, the employer has the option to reemploy the person in the ''escalator'' position or in another similar position with like seniority, status and rate of pay. An employer is required to make reasonable efforts to accommodate a disability incurred or aggravated during the period of military service.
- An employee who performs service of 31 or more days, must, upon request of the employer, provide documentation (official orders or DD–214) that shows the employee is eligible for reemployment. However, if the documentation is not readily available or doesn't exist, the employer must still reemploy the returning employee. The employer can also contact the DoD (ESGR) or the employee's command to obtain documentation.
- The employer is excused from the obligation to reemploy if the employer's circumstances have changed so as to make the reemployment impossible or unreasonable. This would apply, for example, if the employer has a bona fide layoff that would have included the service member.
- An employer is also excused from reemployment obligations if the employee in question held a position that was to last for only a brief non-recurrent period with no expectation that it would continue indefinitely or for a significant period of time.

Benefits and Pensions

- Upon reemployment, the employee is entitled to the seniority and seniority-related benefits he or she had at the beginning of the military plus whatever seniority and seniority benefits he or she would have gained during the period of military service.
- While absent to serve in the uniformed services, the employee is considered on furlough or leave of absence and is entitled to rights and benefits not based on seniority as are generally given to similarly situated employees on other types leave of absence.
- An employee and his or her dependents must be allowed (upon request) to receive continued coverage under the employer's health plan while performing military service. The period of coverage is the lesser of 24 months from the beginning of the absence or the actual period of the military leave of absence. If the period of military service is 31 days or more, the employer may require the employee to pay up to 102% of the full premium for continuation coverage. The employee pays only the normal employee share, if any for military service of 30 days or less. If the health plan is discontinued during the period of service, it must be reinstated immediately upon reemployment. There are no exclusions allowed, except for conditions determined by VA to be service-connected.
- Regarding pensions, an employee reemployed following service must be given credit for the period of service for purposes of benefits and vesting. If a plan is contributory, the employee must be allowed to make up missed employee contributions, and the employer must match those contributions in accordance with the plan's provisions.
- Additional USERRA information can be found at *http://www.esgr.org* and *http://www.dol.gov/vets.*

Bob Hollingsworth, Executive Director, ESGR

Topic: ESGR Outreach Status Brief

NCESGR continues to use employer outreach initiatives as a strategic tool to communicate and gain support from employers of Guard and Reserve. Through its outreach efforts, NCESGR has been able to identify and successfully partner with industry leaders, military organizations and government agencies.

ESGR State committees have also conducted proactive outreach to known employers of Reserve component members through direct mail marketing campaigns. Recently NCESGR Executive Director Bob Hollingsworth presented a Civilian Employer Information (CEI) brief presented to the Chairman's Reserve Conference, which was well received. The following CEI information was discussed:

What We Know

- Roughly ⅓ of Select Reserve civilian employers are employed in the public sector.
- Just over ½ of Select Reserve civilian employers employ fewer than 100 total employees.
- Eating and drinking establishments and medical offices are the top two industries that employ Reserve component members.
- Large firms such as, the U.S. Postal Service, Federal Express, Sears Holdings Corp., Wal-Mart Stores, Inc., Lockheed Martin Corp., The Home Depot Inc., and Northrop Grumman Corp., employ hundreds of Reservists each.
- Police, truck drivers, correctional officers, technicians, pilots, and flight engineers, bailiffs, nurses, automotive technicians and retail sales persons comprise the top 10 occupations and

accounts for 26% of National Guardsmen and Reservists.

• Even though NCESGR has pushed to insert the term ''employer'' into every topic, the leaders within the Pentagon are not receptive and do not see the importance to include the employer in topics as they do with ''family'' terminology.

• Job placement, discrimination, harassment, and termination protection are recurring concerns from year to year. This is noteworthy because these areas are most likely to impact recruiting and retention.

Employer Feedback

• Employers' lack of knowledge on USERRA is a barrier to compliance.

• Employers report that the greatest impact of mobilizations on their company is operational.

• Employers' biggest concerns are uncertainty over timing of activations and the length of activations.

Future topics of discussion:

• Does DoD consider the impact on the employers of Guardsmen and Reservists and the impact to civilian employment of Guardsmen and Reservists in the decisionmaking process?

• Does DoD recognize employers as key partners in order to field a viable Reserve component?

• Do employers understand the significance of the change from a Strategic Reserve to an Operational Reserve and how it will impact them?

• Do Guardsmen/Reservists understand the significance of the change from a Strategic Reserve to an Operational Reserve and how it will impact them?

• What is the threshold of pain that employers are willing to accept for Reserve component service?

• What is the threshold of pain that Reservists/Guardsmen are willing to tolerate to their civilian employment?

Tom Bush, Principal Deputy, Manpower and Personnel for the Office of the Secretary of Defense for Reserve Affairs

Topic: ''Transitioning to an Operational Reserve''

More than 30 years have passed since the inception of the all volunteer force in 1973. Historically, Reserve component members have trained for mobilization and responded when called to duty to augment the active forces during war or large scale conflicts—this is the Strategic Reserve. But as forces were drawn down beginning in the mid to late 1980s, the Reserve components were increasingly called upon to support ongoing operational requirements. This began the transition to an Operational Reserve. Today, the Guard and Reserve are more actively engaged in operation than any time since the Korean War, supporting both the Global War on Terror and daily operations.

• As background, the Reserve structure has three major categories: the Ready Reserve (which is comprised of the Selected Reserve and Individual Ready Reserve), the Standby Reserve, and the Retired Reserve. The category that is the most well known is the Selected Reserve since this is the category that regularly performs military duty (48 inactive duty periods or ''drills'' each year and two weeks of annual training).

• During the first Gulf War and since 9/11, the Operational tempo of the Guard and Reserve has increased significantly. The annual average of .09 million duty days served in 1987 to provide operational support has been eclipsed 67 fold to 68.3 million duty days served in 2005 for operational support.

• Volunteerism is a key attribute of the Operational Reserve.

• The long-standing rules governing the use of the Guard and Reserve were designed for a Strategic Reserve—prepare for mobilization (train) and mobilize. To support a continuum of service for an Operational Reserve, the paradigm must shift:

—A ''Rheostat'' approach (each transition between duty statuses) rather than a ''Circuit Breaker'' approach (performing only required training, or being mobilized).
—Flexible system that supports any level of service.
—No more ''workarounds.''
—Easy to transition from civilian to military and back.
—Common pay system that accommodates varying levels of service is required.
—Variable Reserve component pool optimizing assets with flexibility to serve from zero to 365 days.

• What's Needed To Transition to an Operational Reserve:

—Define an ''Operational Reserve.''
—Develop proper expectations.
—Develop new availability and service paradigm.
—Determine the operational role of the National Guard.

• What is the New Guard and Reserve?

—Today's new Guard and Reserve has both a strategic and operational role.
—How will the New Guard and Reserve Support Operational Missions?

The new Guard and Reserve will be organized, equipped and trained to support operational military mission requirements to the same standard as the Regular component. Individuals and units will be tasked to prepare for and participate in missions, across the full spectrum of operations, in a cyclic or periodic manner that provides predictability for service members, their families and employers.

Comments from individual members:

• Mr. Havenstein—He had received an e-mail from his operations officer who recently attended an ESGR state committee Bosslift. The employers who were in attendance were awestruck on how much they learned about their employees while they performed weekend drills. The operations officer wanted this feedback to be told to NCESGR senior leadership ''that Bosslifts are truly important and should continue to be supported.''

• Mr. Havenstein—The ESGR state committee New Hampshire Chair was recently at a concert of more than 6,000 people; when the concert stopped for an intermission, the Chair was able to recognize one of his Guardsmen at the concert. All 6,000 people stood and applauded the service member.

• Ms. Reed—Are the local Chamber of Commerces involved or invited to participate in Bosslifts? Mr. Hollingsworth and Mr. Janes both replied that the local Chambers are notified of Bosslifts, as well as other ESGR state committee events.

• Mr. Musser—There is a big push to institutionalize the term ''employer'' within the Pentagon and as a member of the DAB, I offer to assist in writing a plan and letter to make this initiative happen.

• Mr. Havenstein—Requested the DAB receive a copy of the last Reserve component Chief briefings. Mr. Janes and Mr. Hollingsworth stated they would have a copy of the last Reserve Chief presentation package to the team before the end of the day. A copy of all Reserve Chief briefings was delivered and distributed to the DAB team prior to their departure.

• Mr. Janes and Mr. Hollingsworth—The Pinnacle Advance initiative is a phased direct marketing campaign being mailed to all Guardsmen and Reservists. The process requests support from the service member to provide employer information that promotes USERRA and solicits a statement of support to their employer. The U.S. Army Reserve (USAR) and the Army National Guard (ARNG) were the first recipients of this initiative by NCESGR. Leaders for both the USAR and ARNG are in full support of the Pinnacle Advance initiative. The next Reserve components scheduled to

receive the Pinnacle Advance initiative (pending funding availability) are: USMC Reserve, NAVY Reserve, Coast Guard Reserve, Air National Guard, and the Air Force Reserve Command.

• Mr. Havenstein, Ms. Naylor—It is important that unit commanders develop a partnership with employers. Relationship building may help with the angst of the unpredictability of some deployments. Perhaps this initiative should be considered for all of NCESGR programs, so that we can figure out how to best support it. Although the unit commander's primary responsibility is to ensure their units are combat ready, there still needs to be a directive or mandatory training requirement that includes employer support. We should solicit support and participation from employers and unit commanders to help move the initiative forward.

Closing Comments from Chairman Janes:

Today's meeting did not have a quorum due to the last minute cancellations of three individuals. All items discussed today that had possible taskers will be brought up at the next meeting with a quorum and will then be assigned as official taskers. Additionally, the agenda for the next meeting will be structured to enable those absent to present their slide materials.

Next meeting for the DAB is scheduled for February 2007.

Dated: October 5, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E6–16898 Filed 10–11–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DOD–2006–OS–0206]

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a Computer Matching Agreement.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of computer matching program between VA and DoD that their records are being matched by computer. The purpose is to verify eligibility for the DoD/USCG members of the Reserve forces who receive VA disability compensation or pension to also receive military pay and allowances when performing reserve duty.

DATES: This proposed action will become effective November 13, 2006 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to verify eligibility for the DoD/USCG members of the Reserve forces who receive VA disability compensation or pension to also receive military pay and allowances when performing reserve duty.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by the VA to identify those individuals who are receiving both VA compensation and DoD/USCG payments for those periods when they are performing Reserve duty. By law, the individual must waive his or here entitlement to VA disability compensation or pension if he or she desires to receive DoD/USCG pay and allowances for the period of duty performed. This matching agreement will result in an accurate reconciliation of such payments by permitting the VA to determine which individuals are being paid by DoD/USCG for duty performed and are being paid VA disability compensation or pension benefit for the same period of time without a waiver on file with the VA. If this reconciliation is not done by computer matching, but is done mutually, the cost would be prohibitive and most dual payments would not be detected.

A copy of the computer matching agreement between VA and DoD is available upon request. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on October 2, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator of the Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records about Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 5, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE FOR RESERVE PAY RECONCILIATION

A. PARTICIPATING AGENCIES:

Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMC) of the Department of Defense (DoD). The VA is the source agency, *i.e.*, the activity disclosing the records for the purpose of the match. The DMC is the specific recipient activity or matching agency, *i.e.*, the agency that actually performs the computer matching.

B. PURPOSE OF THE MATCH:

The purpose of this agreement is to verify eligibility for DoD/USCG members of the Reserve forces who receive VA disability compensation or pension to also receive military pay and allowance when performing reserve duty.

C. AUTHORITY FOR CONDUCTING THE MATCH:

The legal authority for conducting the matching program is 38 U.S.C. 5304(c) which provides that VA disability compensation or pension based upon his or her previous military service shall not be paid to a person for any period

for which such person receives active service pay. 10 U.S.C. 12316 further provides that a reservist who is entitled to disability payments due to his or her earlier military service and who performs duty for which he or she is entitled to DoD/USCG compensation may elect to received for that duty either the disability payments or, if he or she waives such payments, the DoD/USCG compensation for the duty performed.

D. RECORDS TO BE MATCHED:

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The DMDC will used the system of records identified as S322.10 DMDC, entitled ''Defense Manpower Data Center Data Base,'' last published June 9, 2004, at 69 FR 31947, as amended on November 16, 2004, 69 FR 67117.

2. The VA will use the system of records identified as ''VA Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22),'' first published at 41 FR 9294 (March 3, 1976), and last amended at 70 FR 34186 (June 13, 2005), with other amendments as cited therein.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM:

Annually, VA will submit to DMDC an electronic file of all VA pension and disability compensation beneficiaries as of the end of September. Upon receipt of the electronic file, DMDC will match this file by SSN with a file of days drilled as submitted to DMDC by the military services and the USCG. Upon a SSN match, or a ''hit,'' of both files, DMDC will provide VA the individual's name and other identifying data, to include the number of days drilled, by Fiscal Year, for each matched record.

The hits will be furnished to VA which will be responsible for verifying and determining that the data in the DMDC electronic file is consistent with the VA files and for resolving any discrepancies or inconsistencies on an individual basis. VA will initiate actions to obtain an election by the individual of which pay he or she wishes to receive and will be responsible for making final determinations as to positive identification, eligibility for, or amounts of pension or disability compensation benefits, adjustments thereto, or any recovery of overpayments, or such other action as authorized by law.

The annual electronic file provided by the VA will contain information on approximately 2.9 million pension and disability compensation recipients.

The DMDC computer database file contains information on approximately 832,000 DoD and 8,000 USCG reservists who received pay and allowances for performing authorized duty.

VA will furnish DMDC the name and SSN of all VA pension and disability compensation recipients and DMDC will supply VA the name, SSN, date of birth, and the number of days drilled by fiscal year of each reservist who is identified as a result of the match.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM:

This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time on an annual basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:

Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. 06–8627 Filed 10–11–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DOD–2006–OS–0205]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice to Add a New System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This Action will be effective without further notice on November 13, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 5, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: October 5, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7801

SYSTEM NAME:

myInvoice System.

SYSTEM LOCATION:

Defense Enterprise Computing Center, 7879 Wardleigh Rd, Hill AFB, UT 84056.

Defense Finance and Accounting Service-Columbus, (DFAS–CSSE/CO), 3990 East Broad Street, Columbus, OH 43213–1105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian employees, Military personnel, DoD contractors, and other government agency employees whose payments are made by the Defense Finance and Accounting Service and who register as a government user in the myInvoice system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's Name, Social Security Number, home address, and e-mail addresses, cage code, Dun and Bradstreet Number (DUNS), Tax Identification Number (TIN), contract number, delivery order number, contract line item number, invoice number, shipment number, invoice

amount, amount paid, status of invoice, invoice date, invoice receipt date, material acceptance date, last action date, payment office, payment due date, actual payment date, voucher number, Electronic Funds Transfer (EFT) trace number, check number, Disbursing Station Symbol Number (DSSN), Receiving Bank ID, Account Number, Payee name, Payee address, discount amount, freight amount, interest paid, reason for interest, deduction amounts and reasons, and voucher remarks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 31 U.S.C. Chapter 33; E.O. 9397 (SSN); and Department of Defense Financial Management Regulation (DoDFMR) 7000.14R Volume 5, Chapter 11.

PURPOSE(S):

The purpose of this system of records is to monitor the status of vendor invoices to assist in monitoring contract and/or funding status; allow contractors/vendors the ability to view for further analysis the payment status of invoices submitted to DFAS for payment; and extract and compile data and reports for management studies and statistical analyses for use internally or externally as required by DoD or other government agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, and local agencies for the purpose of conducting computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

To Federal agencies and individuals who have submitted invoices for payment for purposes of permitting the invoices to be tracked and monitored while being processed by DFAS.

To the U.S. Treasury Department to provide information on check issues and electronic funds transfers.

To the Internal Revenue Service to report taxable earnings and taxes withheld, accounting, and tax audits, and to compute or resolve tax liability.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The DFAS 'Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Records are maintained in electronic databases, on disk, CDs, tape, and hard copy.

RETRIEVABILITY:

Records are retrieved by name and/or Social Security Number of the individual.

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need to know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the record system.

RETENTION AND DISPOSAL:

Records are cut off on closure of the contract and destroyed 6 years and 3 months after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Defense Finance and Accounting Service-Columbus, (DFAS-CSSE/CO), 3990 East Broad Street, Columbus, OH 43213–1105.

NOTIFICATION PROCEDURE:

An individual seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number, current address, and telephone number.

RECORD ACCESS PROCEDURES:

An individual seeking access to information about themselves that is contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Individuals should furnish full name, Social Security Number, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11-R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual concerned, Federal agencies and/or DoD Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–16899 Filed 10–11–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice of Members of Performance Review Board.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Finance and Accounting Service. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides air and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance scores to the Director, DFAS.

DATES: *Effective Date:* November 15, 2006.

FOR FURTHER INFORMATION CONTACT: Jerry Hovey, DFAS SES Program Manager, Defense Finance and Accounting Service, Arlington, Virginia, (863) 815–3709.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Defense Finance and Accounting Service PRB: Teresa McKay, Patrick T.

Shine, Leon J. Krushinski, Audrey Y. Davis, Kathleen D. Noe.

Executives listed will serve a one-year renewable term, effective November 15, 2006.

Dated: October 5, 2006.

C.R. Choate,

Alternate OD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8625 Filed 10–11–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Undergraduate International Studies and Foreign Language Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.016A.

DATES: *Applications Available:* October 13, 2006.

Deadline for Transmittal of Applications: November 17, 2006.

Deadline for Intergovernmental Review: January 17, 2007.

Eligible Applicants: (1) Institutions of higher education (IHEs); (2) combinations of IHEs; (3) partnerships between nonprofit educational organizations and IHEs; and (4) public and private nonprofit agencies and organizations, including professional and scholarly associations.

Estimated Available Funds: The Administration has requested $2,555,000 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 Awards:

Single Institution: $50,000–$90,000.

Consortia/Organization/Associations: $80,000–$140,000.

Estimated Average Size of Awards:

Single Institution: $77,069.

Consortia/Organization/Associations: $110,000.

Maximum Award: We will reject any application that proposes a budget exceeding $90,000 for a single budget period of 12 months for a single institution application and $140,000 for a single budget period of 12 months for a consortia/organization/association application. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 33.

Note: The Department is not bound by any estimates in this notice.

Project Period:

Single Institution: Up to 24 months.

Consortia/Organization/Associations: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Undergraduate International Studies and Foreign Language (UISFL) Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages.

Priorities: This notice contains two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), Competitive Preference Priority 1 is from the regulations for this program (34 CFR 658.35). Competitive Preference Priority 2 is from the notice of final priorities for discretionary grant programs, published in the **Federal Register** on October 11, 2006.

Competitive Preference Priority 1: For FY 2007 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets this priority.

This priority is:

Applications that: (a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction; (b) require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language; or (c) in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Competitive Preference Priority 2: For FY 2007 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional five points to an application that meets this priority.

This priority is:

Projects that support activities to enable students to achieve proficiency or advanced proficiency or to develop programs in one or more of the following less commonly taught languages: Arabic, Chinese, Korean, Japanese, Russian, and languages in the Indic, Iranian, and Turkic language families.

Program Authority: 20 U.S.C. 1124.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations in 34 CFR parts 655 and 658. (c) The notice of final priorities for discretionary grant programs, published in the **Federal Register** on October 11, 2006.

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: Discretionary grants.

Estimated Available Funds: The Administration has requested $2,555,000 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 Awards:

Single Institution: $50,000–$90,000.

Consortia/Organization/Associations: $80,000–$140,000.

Estimated Average Size of Awards:

Single Institution: $77,069.

Consortia/Organization/Associations: $110,000.

Maximum Award: We will reject any application that proposes a budget exceeding $90,000 for a single budget period of 12 months for a single institution application and $140,000 for a single budget period of 12 months for a consortia/organization/association application. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 33.

Note: The Department is not bound by any estimates in this notice.

Project Period:

Single Institutions: Up to 24 months.

Consortia/Organization/Associations: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) IHEs; (2) combinations of IHEs; (3) partnerships between nonprofit educational organizations and IHEs; and (4) public and private nonprofit agencies and organizations, including professional and scholarly associations.

2. *Cost Sharing or Matching:* This program has a matching requirement under title VI, part A, section 604(a)(3) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1124(a)(3) (HEA), and the regulations for this program in 34 CFR 658.41. UISFL Program grantees must provide matching funds in either of the following ways: (a) Cash

contributions from private sector corporations or foundations equal to one-third of the total project costs; or (b) a combination of institutional and non-institutional cash or in-kind contributions including State and private sector corporation or foundation contributions, equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of title III or under title V of the HEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7629 or by e-mail: *christine.corey@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 you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 40 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. However, you may single space 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). However, you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

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: October 13, 2006.

Deadline for Transmittal of Applications: November 17, 2006.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

Deadline for Intergovernmental Review: January 17, 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 program.

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 you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Undergraduate International Studies and Foreign Language program must be submitted electronically using 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.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify 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.*

You may access the electronic grant application for the Undergraduate International Studies and Foreign Language program at: *http://www.grants.gov/.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- 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 submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education 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 the steps in the Grants.gov registration process (see *http://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 qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information typically included on the Application for Federal Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. 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 acknowledgement 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 Technical Issues with the Grants.gov System: 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov 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), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your 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 your statement to: Ms. Christine Corey, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8521. Fax: (202) 502–7659.

Your 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 you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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: 84.016A, 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: 84.016A, 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: 84.016A, 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 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 program are from 34 CFR 658.31 through 658.34. The following criteria are used to evaluate all applications: (a) Plan of operation (15 points); (b) quality of key personnel (10 points); (c) budget and cost effectiveness (10 points); (d) adequacy of resources (5 points); (e) evaluation plan (20 points). The following additional criteria are applied to applications submitted by an IHE or a combination of IHEs: (a) Commitment to international studies (10 points); (b) elements of the proposed international studies program (10 points); and (c) Need for and prospective results of the proposed program (10 points). The following additional criterion is applied to applications from organizations and associations: need for and potential impact of the proposed project in improving international studies and the study of modern foreign languages at the undergraduate level (30 points), (f) competitive priority (5 points).

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. The applicant is required to use the electronic data instrument Evaluation of Exchange, Language, International, and Area Studies (EELIAS), to complete the final report.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the objective for the UISFL program is to meet the nation's security and economic needs through the development of a national capacity in foreign languages, and area and international studies.

The Department will use the following measures to evaluate its success in meeting this objective.

UISFL Performance Measures: (1) Percentage of critical languages addressed/covered by foreign language major, minor, or certificate programs created or enhanced; or by language courses created or enhanced; or by faculty or instructor positions created with UISFL or matching funds in the reporting period. (2) Percentage of projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

If funded, information from your final performance report submitted via the electronic Evaluation of Exchange, Language, International, and Area Studies system will be used to record and evaluate the performance of your project.

VII. Agency Contact

For Further Information Contact: Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7629 or by e-mail: *christine.corey@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: October 6, 2006.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E6–16932 Filed 10–11–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Power Rates

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Pursuant to Delegation Order Nos. 00–037.00, effective December 6, 2001, and 00–001–00B, effective July 28, 2005, the Deputy Secretary has approved and placed into effect on an interim basis Rate Order No. SWPA–56, which increases the power rates for the Integrated System pursuant to the following Integrated System Rate Schedules:

Rate Schedule P–06, Wholesale Rates for Hydro Peaking Power.

Rate Schedule NFTS–06, Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service.

Rate Schedule EE–06, Wholesale Rate for Excess Energy.

The rate schedules supersede the existing rate schedules shown below:

Rate Schedule P–05, Wholesale Rates for Hydro Peaking Power (superseded by P–06).

Rate Schedule NFTS–05, Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service (superseded by NFTS–06).

Rate Schedule EE–05, Wholesale Rate for Excess Energy (superseded by EE–06).

The effective period for the rate schedules specified in Rate Order No. SWPA–56 is October 1 2006, through September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION: Southwestern Power Administration's (Southwestern) Administrator has determined based on the 2006 Integrated System Current Power Repayment Study, that existing rates will not satisfy cost recovery criteria specified in Department of Energy Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The finalized 2006 Integrated System Power Repayment Studies (PRSs) indicate that an increase in annual revenue of $37,703,812, or 27.7 percent, beginning October 1, 2006, will satisfy cost recovery criteria for the Integrated System projects. The proposed Integrated System rate schedules would increase annual revenues from $136,267,400 to $173,971,212, primarily to recover increased investments and replacements in the hydroelectric generating facilities. Additionally, the PRS indicates the need for an annual increase of $8,562,500 in revenues received through the Purchased Power Adder to recover increased average year purchased energy costs. This proposal also includes an increase in size and frequency to the Administrator's Discretionary Purchased Power Adder Adjustment (Adjustment) to a level sufficient to recover purchased power costs for the recent drought conditions experienced in the Southwestern region. The Adjustment allows the Administrator to adjust the purchased power adder up to twice annually, limited to $0.0067 per kilowatthour as necessary, at his/her discretion, under a formula-type rate, with notification to the FERC.

The Administrator has followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' in connection with the proposed rate schedule. On June 16, 2006, Southwestern published notice in the **Federal Register**, (71 FR 34925), of a 60-day comment period, together with a combined Public Information and Comment Forum, to provide an opportunity for customers and other interested members of the public to review and comment on the proposed rate increase for the Integrated System. The forum was canceled since no one expressed an intention to participate. Written comments were accepted through August 15, 2006. Comments from two entities were received and are addressed in this rate proposal.

Information regarding this rate proposal, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, Williams Center Tower I, One West Third Street, Suite 1400, Tulsa, Oklahoma 74103.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–56, on an interim basis, which increases the existing Integrated System annual revenue requirement to $173,971,212 per year for the period October 1, 2006 through September 30, 2010.

Dated: September 28, 2006.

Clay Sell,

Deputy Secretary.

Deputy Secretary of Energy

In the matter of: Southwestern Power Administration; Integrated System Rates; Rate Order No. SWPA–56.

Order Confirming, Approving and Placing Increased Power Rate Schedules in Effect on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, the Secretary of Energy delegated to the Administrator of Southwestern the authority to develop power and transmission rates, delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. Delegation Order No. 0204–108, as amended, was rescinded and subsequently replaced by Delegation Orders 00–037.00 (December 6, 2001) and 00–001–00B (July 28, 2005). The Deputy Secretary issued this rate order pursuant to said delegations.

Background

The Deputy Secretary approved and placed into effect on an interim basis the following Integrated System (System) rate schedules for the period February 1, 2006, through September 30, 2009, and submitted the rate schedules to the FERC for final confirmation and approval:

Rate Schedule P–05, Wholesale Rates for Hydro Peaking Power.
Rate Schedule NFTS–05, Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service.
Rate Schedule EE–05, Wholesale Rate for Excess Energy.
Southwestern Power Administration's (Southwestern), Current Power.

Repayment Study (PRS) indicates that the existing rates will not satisfy present financial criteria regarding repayment of investment within a 50-year period due to increased investments and replacements in the U.S. Army Corps of Engineers (Corps) hydroelectric generating facilities. The revised PRS indicates that an increase in annual revenues of $37,703,812 is necessary beginning October 1, 2006, to accomplish repayment in the required number of years. Accordingly, Southwestern has prepared proposed rate schedules based on the additional revenue requirement and the 2006 Rate Design Study.

An informal meeting was held in April 2006 with customer representatives to review the repayment and rate design processes and present the basis for the 27.7 percent annual revenue increase. In May 2006, Southwestern prepared a proposed 2006 PRS for the Integrated System based on comments received from our customers during this informal meeting.

Title 10, Part 903, Subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustment,'' has been followed in connection with the proposed rate adjustments. More specifically, opportunities for public review and comment on proposed System power rates during a 60-day period were announced by notice published in the **Federal Register**, June 16, 2006, (71 FR 34925). The consultation and comment period was shortened by the Administrator in accordance with Sec. 903.14(a) of 10 CFR part 903, because of the need to assure new rates are in place by October 1, 2006, to respond to financial difficulties resulting from the FY 2006 drought conditions. A Public Information and Comment Forum scheduled for July 12, 2006, in Tulsa, Oklahoma, was canceled since no one

expressed an intention to attend. Written comments were due by August 15, 2006. Southwestern mailed copies of the proposed May 2006 Power Repayment and Rate Design Studies to customers and interested parties that requested the data, for review and comment during the formal period of public participation.

Following conclusion of the comment period on August 15, 2006, comments presented during the formal public participation process were reviewed. Once the comments were evaluated, the 2006 Power Repayment and Rate Design Studies were completed. No changes were made to the 2006 PRS based on comments received. The studies were finalized in August 2006. The Administrator made the decision to submit the rate proposal for interim approval and implementation. The comments resulting from the public participation process and responses, as developed by Southwestern's staff, are contained in this Rate Order.

Discussion

General

The existing rate schedules developed in the 2005 Integrated System PRS were the basis for revenue determination in the August 2006 Integrated System Current PRS. The Current PRS indicates that existing rates are insufficient to produce the annual revenues necessary to accomplish repayment of the capital investment as required by Section 5 of the Flood Control Act of 1944 and Department of Energy (DOE) Order No. RA 6120.2.

A Revised PRS was prepared that increases ultimate annual revenues by $37,703,812 or 27.7 percent, in three steps over a three-year period, which satisfies the cost recovery criteria outlined in DOE Order No. RA 6120.2 and Section 5 of the Flood Control Act of 1944. The first step (October 1, 2006) is an increase in the purchased power adder ($8,562,500 or 6.3 percent) and the discretionary purchased power adder adjustment ($10,085,580 or 7.4 percent) components which will be set to recover future average purchased power expenses and purchased power costs resulting from the recent drought situation in the Southwestern region. The second step (October 1, 2007) will incorporate 1/2 of the full revenue requirement ($9,527,866 or 7 percent) caused by the increased investment and replacement costs. The final step (October 1, 2008 through September 30, 2010) will incorporate the remaining 1/2 ($9,527,866 or 7 percent) to reach the full revenue requirement level. Due to only slight increases in annual operating and maintenance expenses during the cost evaluation period, these revenue increases combined over the three year phase-in will ensure that cost recovery will be accomplished as required.

In Southwestern's 2006 Rate Design proposal, rates were designed to recover the additional revenue requirements in three steps over a three-year period. In FY 2007, the Purchased Power Adder will increase to $0.0067 per kWh to cover the increased expense of future purchased power costs. Also in FY 2007, the Discretionary Purchased Power Adder Adjustment will increase in size and frequency (twice annually limited to $0.0067 per kwh) to a level sufficient to recover the purchased power costs for the recent drought conditions experienced in the Southwestern region. A preliminary amount currently estimated to be $0.0045 per kWh, based on actual data through August 2006, will be collected through this adjustment. The final discretionary PPA adjustment will be determined prior to implementation of this rate proposal using actual data through September 2006 and will become effective October 1, 2006. The demand charge for Federal power will increase in FY 2008 by $0.15 per kW per month, and again in FY 2009 by $0.33 per kW per month to the final rate of $3.51 per kW per month. The energy charge for peaking energy has remained unchanged. The energy charge for supplemental peaking energy and excess energy will increase in FY 2008 by $0.0027 per kWh to $0.0082 per kWh and be equal to the peaking energy rate. The transformation charge remains the same at $0.30 per kW and is applied to the transmission capacity usage at 69 kV and below. In addition, transmission charges for firm service deliveries of non-Federal power will increase beginning in FY 2009.

Consistent with FERC's Order No. 888, Southwestern will continue charging separately for five ancillary services under Rate Schedule P–06 and Rate Schedule NTFS–06, and offering network transmission service under Rate Schedule NFTS–06. Southwestern's rate design has separated the five ancillary services for all transmission service. Two ancillary services, Scheduling, System Control and Dispatch Service together with Reactive and Voltage Support Service, are required for every transmission transaction. These charges are also a part of the capacity rate for Federal power. This is consistent with Southwestern's long-standing practice of charging for the sale and delivery of Federal power in its Federal demand charge. The three remaining ancillary services will be made available to any transmission user within Southwestern's control area, including Federal power customers. The rate schedules for Peaking Power and Non-Federal Transmission Service reflect these charges. Network transmission service is provided to those who request the service, within Southwestern's control area, but only for non-Federal deliveries. The rate for and application of this service are identified in the Non-Federal Transmission/Interconnection Facilities Service Rate Schedule, NFTS–06.

With respect to the Purchased Power Adder (Adder), Southwestern is proposing, as in all previous proposals beginning with the 1983 implementation of the purchased power rate component, that the Adder is set equal to the current average long-term purchased power revenue requirement. As shown in the Rate Design Study, the amount is determined by dividing the estimated total average direct purchased power costs by Southwestern's total annual contractual 1200-hour peaking energy commitments to the customers (exclusive of contract support arrangements). In this rate proposal, the resulting Adder is $0.0067 per kWh of peaking energy. The total revenue created through application of this Adder would enable Southwestern to cover its average annual purchased power costs.

Comments and Responses

The Southwestern Power Administration (Southwestern) responded to questions during the public participation period which are included in the supplemental background information. In addition, Southwestern received comments from two entities during the public participation process. Southwestern's responses are summarized into two general areas of concern, and are as follows:

Future Investments

Comments: The commenter questions why Southwestern bases rates on anticipated future capital expenditures which is not in keeping with the standard industry practice of including capital investments in rates only after the items are placed into service and are ''used and useful'' and when Congressional funding is not a guarantee.

Response: Southwestern follows DOE Order No. RA 6120.2 dated September 20, 1979, as amended October 1, 1983, for interpretation of the statutory requirements for preparing annual

power repayment studies. As stated in Order No. RA 6120.2 (paragraph 10), replacements of investment will be ''included in repayment studies by adding the estimated capital cost of (the) replacement to the unpaid Federal investment in the year each replacement is estimated to go into service.'' Southwestern is required to forecast for replacements and must forecast replacements for the entire period of the PRS. The Corps provides the best data they have available, together with the service lives of the equipment. Southwestern and the Corps review these estimates annually and update the replacement data with the goal to better reflect what will be on the annual financial statements.

The laws, regulations, methods, and standards for establishing rate schedules for Power Marketing Administrations (PMAs) are different from the standards that apply to Investor-Owned Utilities. The ''used and useful'' concept is apparently utilized for testing rates of investor-owned utility companies, but is not accepted in rate making for Federal PMAs. The rationale for this difference is that the Federal projects must be fully operational to allow Southwestern to market power and energy for the entire repayment period to meet the requirements of the law to amortize the investment over a reasonable period of years. Replacements must be included to assure the projects are fully operational for the entire repayment period since most of the projects will be well over 50 years old at the end of the repayment period and would no longer be able to produce power. Our Power Repayment Study system is based on the concept that the older projects will produce power and revenues well beyond their original service lives to help repay the newer projects, thus keeping rates lower overall. RA 6120.2 required estimated costs of capital to be included in the repayment study, not that investment be ''used and useful'' before it can be included. The replacement of hydroelectric power assets is required to assure repayment of the Federal investment, as is the funding of those replacements. Funding sources may include both direct Congressional appropriations and/or other alternative financing methods such as customer funding. In any event, adequate funding is assumed to enable replacements and, hence, to assure repayment.

Unfunded Civil Service Retirement System Benefits

Comment: One commenter reiterated its opposition to including the ''unfunded CSRS'' costs in the PRS.

Response: Statement of Federal Financial Accounting Standards (SFFAS) No. 5, requires all Federal agencies, including Power Marketing Administrations (PMAs), to record the full cost of pension and postretirement benefits in financial statements beginning in fiscal year 1997. SFFAS No. 5 prescribes that the aggregate entry age normal (AEAN) actuarial cost method be used to calculate pension expenses and accrued actuarial liabilities for pension benefits. Under the AEAN method, which is based on dynamic economic assumptions, including future salary increases, the actuarial present value of projected benefits is allocated on a level basis over the earnings or the service of the group between entry age and assumed exit ages and should be applied to pensions on the basis of a level percentage of earnings. The portion of this actuarial present value allocated to a valuation year is called the ''normal cost''. The Office of Personnel Management (OPM) applies the AEAN method to estimate the amount by which employer and employee contributions toward future Civil Service Retirement System (CSRS) pension benefits fall short of the normal cost of those benefits.

Southwestern has included an estimate of the unfunded portion of the CSRS costs in its Power Repayment Studies every year since 1998. All previous rate filings back to 1998 have been submitted through the DOE and ultimately approved by FERC. The FERC confirmed the Southwestern rate filings on a final basis and did not accept arguments to exclude the CSRS costs.

Authority to collect revenues for the unfunded CSRS costs comes primarily from Section 5 of the Flood Control Act of 1944 which, in part, states ''* * * Rate schedules shall be drawn having regard to the recovery'' * * * ''of the cost of producing and transmitting such electric energy, * * *'' Unfunded CSRS has been determined to be a cost of producing and transmitting electricity. The Federal government funds the unfunded portion of the CSRS program just as it funds the funded portion of the CSRS program. All of the CSRS costs are properly included within Southwestern's cost estimates.

Availability of Information

Information regarding this rate proposal, including studies, comments and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, OK 74101.

Administrator's Certification

The August 2006 Revised Power Repayment Study indicates that the increased power rates will repay all costs of the Integrated System including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. In accordance with Delegation Order No. 00–037.00, December 6, 2001, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed System rates are consistent with applicable law and the lowest possible rates consistent with sound business principles.

Environment

The environmental impact of the proposed System rates was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me the Deputy Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective October 1, 2006, the following Southwestern Integrated System Rate Schedules which shall remain in effect on an interim basis through September 30, 2010, or until the FERC confirms and approves the rates on a final basis.

Dated: September 28, 2006.

Clay Sell,
Deputy Secretary.

Department of Energy, Southwestern Power Administration

Rate Schedule P–06 [1] Wholesale Rates for Hydro Peaking Power

Effective: During the period October 1, 2006, through September 30, 2010, in accordance with Rate Order No. SWPA–56 issued by the Deputy Secretary of Energy.

Available: In the marketing area of Southwestern Power Administration (Southwestern), described generally as the States of Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas.

Applicable: To wholesale Customers which have contractual rights from Southwestern to purchase Hydro Peaking Power and associated energy

[1] Supersedes Rate Schedule P–05

(Peaking Energy and Supplemental Peaking Energy).

Character and Conditions of Service: Three-phase, alternating current, delivered at approximately 60 Hertz, at the nominal voltage(s), at the points of delivery, and in such quantities as are specified by contract.

Definitions of Terms: ''Customer'' is the entity which is utilizing and/or purchasing hydroelectric power and associated energy and services from Southwestern pursuant to this rate schedule.

The ''*Demand Period*'' used to determine maximum integrated rates of delivery for the purpose of power accounting is the 60-minute period which begins with the change of hour. The term ''*peak demand*'' means the highest rate of delivery, in kilowatts, for any Demand Period during a particular month, at any particular point of delivery.

For the purposes of this Rate Schedule, the term ''*point of delivery*'' is used to mean either a single physical point at which electric power and energy are delivered from the System of Southwestern (defined below), or a specified set of delivery points which together form a single, electrically integrated load. ''Peak demand'' for such set of delivery points is computed as the coincidental highest rate of delivery among the specified points rather than as the sum of peak demands for each individual physical point of delivery.

The term ''*Peaking Contract Demand*'' means the maximum rate in kilowatts at which Southwestern is, by contract, obligated to deliver Peaking Energy during any Demand Period. Unless otherwise provided by contract, the ''*Peaking Billing Demand*'' for any month shall be equal to the ''Peaking Contract Demand.''

The term ''*Uncontrollable Force*,'' as used herein, shall mean any force which is not within the control of the party affected, including, but not limited to failure of water supply, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, or restraint by court of general jurisdiction, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid.

The term ''*System of Southwestern*'' means the high-voltage transmission lines and related facilities Southwestern owns and operates, and/or has contractual rights to such transmission facilities owned by others.

''*Ancillary Services*'' are those services necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the System of Southwestern in accordance with good utility practice. Definitions of the Ancillary Services are as follows:

''*Scheduling, System Control, and Dispatch Service*'' is provided by Southwestern as Control Area operator and is in regard to interchange and load-match scheduling and related system control and dispatch functions.

''*Reactive Supply and Voltage Control from Generation Sources Service*'' is provided at transmission facilities in the System of Southwestern to produce or absorb reactive power and to maintain transmission voltages within specific limits.

''*Regulation and Frequency Response Service*'' is the continuous balancing of generation and interchange resources accomplished by raising or lowering the output of on-line generation as necessary to follow the moment-by-moment changes in load and to maintain frequency within a Control Area.

''*Spinning Operating Reserve Service*'' maintains generating units on-line, but loaded at less than maximum output, which may be used to service load immediately when disturbance conditions are experienced due to a sudden loss of generation or load.

''*Supplemental Operating Reserve Service*'' provides an additional amount of operating reserve sufficient to reduce Area Control Error to zero within 10 minutes following loss of generating capacity which would result from the most severe single contingency.

''*Energy Imbalance Service*'' corrects for differences over a period of time between schedules and actual hourly deliveries of energy to a load. Energy delivered or received within the authorized bandwidth (defined below) for this service is accounted for as an inadvertent flow and is returned to the providing party by the receiving party in accordance with standard utility practice.

Energy Associated With Hydro Peaking Power

Peaking Energy: 1,200 kilowatthours of Peaking Energy per kilowatt of Peaking Contract Demand will be furnished during each contract year.

Supplemental Peaking Energy: Supplemental Peaking Energy (in addition to Peaking Energy) will be furnished if and when determined by Southwestern to be available, and at rates of delivery which do not exceed the Customer's Peaking Contract Demand.

Monthly Rates for Peaking Contract Demand

Capacity Charge for Hydro Peaking Power:

10/1/2006–9/30/2007	10/1/2007–9/30/2008	10/1/2008–9/30/2010
$3.03 per kilowatt of Peaking Billing Demand ...	$3.18 per kilowatt of Peaking Billing Demand	$3.51 per kilowatt of Peaking Billing Demand.

Services Associated With Capacity Charge for Hydro Peaking Power

The capacity charge for Hydro Peaking Power includes such transmission services as are necessary to integrate Southwestern's resources in order to reliably deliver Hydro Peaking Power and associated energy to Customers. This capacity charge also includes two ancillary services charges, Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service.

Secondary Transmission Service Under Capacity Associated With Hydro Peaking Power

Customers may utilize the capacity associated with Peaking Contract Demand for the transmission of non-Federal energy, on a non-firm, as-available basis, at no additional charge for such transmission service or associated Ancillary Services, under the following terms and conditions:

(1) The sum of the capacity, for any hour, which is used for Peaking Energy, Supplemental Peaking Energy, and Secondary Transmission Service, may not exceed the Peaking Contract Demand;

(2) The non-Federal energy transmitted under such secondary service is delivered to the Customer's point of delivery for Hydro Peaking Power;

(3) The Customer pays for or commits to provide Real Power Losses associated with such deliveries of non-Federal energy; and

(4) Southwestern determines that sufficient transfer capability exists between the point of receipt into the

System of Southwestern of such non-Federal energy and the Customer's point of delivery for Hydro Peaking Power for the time period that such secondary transmission service is requested.

Rates for Energy Associated With Hydro Peaking Power

(a) Peaking Energy Charge:

10/1/2006–9/30/2007	10/1/2007–9/30/2008	10/1/2008–9/30/2010
$0.0082 per kilowatthour of Peaking Energy delivered; plus (c).	$0.0082 per kilowatthour of Peaking Energy delivered; plus (c).	$0.0082 per kilowatthour of Peaking Energy delivered; plus (c).

(b) Supplemental Energy Charge:

10/1/2006–9/30/2007	10/1/2007–9/30/2008	10/1/2008–9/30/2010
$0.0055 per kilowatthour of Peaking Energy	$0.0082 per kilowatthour of Peaking Energy ..	$0.0082 per kilowatthour of Peaking Energy.

(c) A purchased power adder of $0.0067 per kilowatthour of Peaking Energy delivered, as adjusted by the Administrator, Southwestern, in accordance with the procedure within this rate schedule. This adder does not apply to: Supplemental Peaking Energy, or Sales to any Customer which, by contract, has assumed the obligation to supply energy to fulfill the minimum of 1,200 kilowatthours of Peaking Energy per kilowatt of Peaking Contract Demand during a contract year (Contract Support Arrangements).

Monthly Rates for Transformation Service

Capacity Charges for Transformation Service: A charge of $0.30 per kilowatt will be assessed for capacity used to deliver energy at any point of delivery at which Southwestern provides transformation service for deliveries at voltages of 69 kilovolts or less from higher voltage facilities.

Application of Capacity Charges for Transformation Service

For any particular month, charges for transformation service will be assessed on the greater of (1) that month's actual peak demand, or (2) the highest peak demand recorded during the previous 11 months, at any point of delivery. For the purpose of this Rate Schedule, the peak demand will be based on all deliveries, of both Federal and non-Federal energy, from the System of Southwestern, at such point during such month.

Rates for Ancillary Services

Capacity Charges For Ancillary Services:

(a) Regulation and Frequency Response Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly rate	$0.08 per kilowatt of Peaking Billing Demand	$0.09 per kilowatt of Peaking Billing Demand.

(b) Spinning Operating Reserve Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly rate	$0.0079 per kilowatt of Peaking Billing Demand.	$0.0092 per kilowatt of Peaking Billing Demand.
Daily rate	$0.00036 per kilowatt for non-Federal generation inside Southwestern's control area.	$0.00042 per kilowatt for non-Federal generation inside Southwestern's control area.

(c) Supplemental Operating Reserve Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly rate	$0.0079 per kilowatt of Peaking Billing Demand.	$0.0092 per kilowatt of Peaking Billing Demand.
Daily rate	$0.00036 per kilowatt for non-Federal generation inside Southwestern's control area.	$0.00042 per kilowatt for non-Federal generation inside Southwestern's control area.

(d) Energy Imbalance Service:

$0.0 per kilowatt for all reservation periods.

Availability of Ancillary Services

Ancillary Services (a) and (d) listed above are available only for deliveries of power and energy to load centers within Southwestern's Control Area. Ancillary Services (b) and (c) listed above are available only for deliveries of non-Federal power and energy generated by resources located within Southwestern's Control Area and for deliveries of all Hydro Peaking Power and associated energy from and within Southwestern's Control Area. Where available, such Ancillary Services must be taken from Southwestern; unless, subject to Southwestern's approval, they are provided by others.

Application of Ancillary Services Charges

For any month, the charges for Ancillary Services (a), (b), (c) and (d) listed above for deliveries of Hydro Peaking Power shall be based on the Peaking Billing Demand.

The daily charge for Ancillary Services (b) and (c) for non-Federal generation inside Southwestern's Control Area shall be applied to the greater of Southwestern's previous day's estimate of the peak, or the actual peak, in kilowatts, of the internal non-Federal generation.

Provision of Ancillary Services by Others

Customers for which Ancillary Services (a), (b), (c) and (d) are made available as specified above, must inform Southwestern by written notice of the Ancillary Services which they do *not* intend to take and purchase from Southwestern, and of their election to provide all or part of such Ancillary Services from their own resources or from a third party.

Subject to Southwestern's approval of the ability of such resources or third parties to meet Southwestern's technical requirements for provision of such Ancillary Services, the Customer may change the Ancillary Services which it takes from Southwestern and/or from other sources at the beginning of any month upon the greater of 60 days notice or upon completion of any necessary equipment modifications necessary to accommodate such change.

Limitations on Energy Imbalance Service

Energy Imbalance Service primarily applies to deliveries of power and energy which are required to satisfy a Customer's load. As Hydro Peaking Power and associated energy are limited by contract, the Energy Imbalance Service bandwidth specified in Southwestern's Open Access Transmission Service tariff does not apply to deliveries of Hydro Peaking Power, and therefore Energy Imbalance Service is not charged on such deliveries. Customers who consume a capacity of Hydro Peaking Power greater than their Peaking Contract Demand may be subject to a Capacity Overrun Penalty.

Application of Capacity Overrun Penalty

Customers which have loads within Southwestern's Control Area are obligated by contract to provide resources, over and above the Hydro Peaking Power and associated energy purchased from Southwestern, sufficient to meet their loads. A Capacity Overrun Penalty shall be applied only when the formulas provided in Customers' contracts indicate an overrun on Hydro Peaking Power, *and* investigation determines that all resources, both firm and non-firm, which were available at the time of the apparent overrun were insufficient to meet the Customer's load.

Capacity Overrun Penalty

For each hour during which Hydro Peaking Power was provided at a rate greater than that to which the Customer is entitled, the Customer will be charged a capacity overrun penalty at the following rates:

Months associated with charge	Rate per kilowatt
March, April, May, October, November, December	$0.15
January, February, June, July, August, September	0.30

Application of Energy Overrun Penalty: By contract, the Customer is subject to limitations on the maximum amounts of Peaking Energy which may be scheduled during any month or during any four consecutive months. When the Customer schedules an amount in excess of such maximum amounts for any month, or schedules more than 1,200 hours of Peaking Energy per kilowatt of Peaking Contract Demand in any contract year, such Customer is subject to the Energy Overrun Penalty.

Energy Overrun Penalty: For each kilowatthour of overrun: $0.0902 per kilowatthour.

Rates for Real Power Losses

The Customer shall purchase real power losses unless it elects to self-provide such losses under the provision detailed below in *Annual Election to Self Provide Real Power Losses.*

Real Power Losses are computed as four (4) percent of the total amount of non-Federal energy transmitted under a particular Customer's Peaking Contract Demand. The monthly charge for such Real Power Losses will be computed on a per kilowatthour basis as follows:

$$MC = .04 \times NFE \times R$$

With the factors defined as follows:

MC = The monthly charge ($) by Southwestern for Real Power Losses of non-Federal energy transmitted under the capacity associated with Hydro Peaking Power;

NFE = The amount of non-Federal energy (kWh) transmitted under a Customer's Peaking Contract Demand during a particular month; and

R = The rate for Real Power Losses ($ per kWh), is equal to the average of Southwestern's actual costs for the purchase of energy to replace Real Power Losses during the previous fiscal year (October through September), as reflected in Southwestern's financial records.

The rate for Real Power Losses will be posted on Southwestern's OASIS by November 1 of each year. This rate will be effective for one year beginning January 1 of each calendar year.

Annual Election to Self Provide Real Power Losses: The Customer may elect, on an annual basis, to self-provide all loss energy for which it is responsible subject to the following conditions:

(1) Such election for self-provision shall be for a full calendar year (January through December) for that Customer and shall be exercised by execution of a service agreement, or equivalent, before December 1 of the prior calendar year;

(2) Unless otherwise specified in the service agreement, the Customer shall schedule the delivery of real power losses into the System of Southwestern at the rate of one megawatt of real power losses for every 25 megawatts of non-Federal power and energy delivered to Customers' loads served from the points of delivery set forth in the Southwestern/Customer contract;

(3) For any new customer taking transmission service from Southwestern, election to self-provide real power losses shall be made at the time the contract is negotiated. Such service shall be implemented as provided for in the contract and the election to self-provide shall apply through the end of that calendar year for all transmission services.

Requirements Related to Power Factor: Any Customer served from facilities owned by or available by contract to Southwestern will be required to maintain a power factor of not less than 95 percent and will be subject to the following provisions.

Determination of Power Factor: The power factor will be determined for all Demand Periods and shall be calculated under the formula:

$$PF = (kWh) \div \sqrt{(kWh^2 + rkVAh^2)} \ ,$$

With the factors defined as follows:

PF = The power factor for any Demand Period of the month.

kWh = The total quantity of energy which is delivered during such Demand Period to the point of delivery or interconnection.

rkVAh = The total quantity of reactive kilovolt-ampere-hours (kvars) delivered during such Demand Period to the point of delivery or interconnection.

Power Factor Penalty and Assessment: The Customer shall be assessed a penalty for all Demand Periods of a month where the power factor is less than 95 percent lagging. For any Demand Period during a particular month such penalty shall be in accordance with the following formula:

$$C = D \times (.95 - LPF) \times \$0.10.$$

With the factors defined as follows:

C = The charge in dollars to be assessed for any particular Demand Period of such month that the Determination of Power Factor ''PF'' is calculated to be less than 95 percent lagging.

D = The Customer's demand in kilowatts at the point of delivery for such Demand Period in which a low power factor was calculated.

LPF = The lagging power factor, if any, determined by the formula ''PF'' for such Demand Period.

If C is negative, then C = zero (0).

Application of Power Factor Penalty: The Power Factor Penalty is applicable to radial interconnections with the System of Southwestern. The total Power Factor Penalty for any month shall be the sum of all charges ''C'' for all Demand Periods of such month. No penalty is assessed for leading power factor. Southwestern, in its sole judgment and at its sole option, may determine whether power factor calculations should be applied to a single physical point of delivery or to multiple physical points of delivery where a Customer has a single, electrically integrated load served through multiple points or interconnections. The general criteria for such decision shall be that, given the configuration of the Customer's and Southwestern's systems, Southwestern will determine, in its sole judgment and at its sole option, whether the power factor calculation more accurately assesses the detrimental impact on Southwestern's system when the above formula is calculated for a single physical point of delivery or for a combination of physical points or for an interconnection as specified by an Interconnection Agreement.

Southwestern, at its sole option, may reduce or waive power factor penalties when, in Southwestern's sole judgment, low power factor conditions were not detrimental to the System of Southwestern due to particular loading and voltage conditions at the time the power factor dropped below 95 percent lagging.

Adjustment for Reduction in Service: If, during any month, the quantity of Peaking Contract Demand of Southwestern's 1200 hour peaking power sales customers that is scheduled by the customer for delivery is reduced by Southwestern for a period or periods of not less than two consecutive hours by reason of an outage caused by either an Uncontrollable Force or by the installation, maintenance, replacement or malfunction of generation, transmission and/or related facilities on the System of Southwestern, or insufficient pool levels, the Customer's capacity charges for such month will be reduced for each such reduction in service by an amount computed under the formula:

$$R = (C \times K \times H) \div S$$

with the factors defined as follows:

R = The dollar amount of reduction in the monthly total capacity charges for a particular reduction of not less than two consecutive hours during any month, except that the total amount of any such reduction shall not exceed the product of the Customer's capacity charges associated with Hydro Peaking Power times the Peaking Billing Demand.

C = The Customer's capacity charges associated with Hydro Peaking Power for the Peaking Billing Demand for such month.

K = The reduction in kilowatts in Peaking Billing Demand for a particular event.

H = The number of hours duration of such particular reduction.

S = The number of hours that Peaking Energy is scheduled during such month, but not less than 60 hours times the Peaking Contract Demand.

Such reduction in charges shall fulfill Southwestern's obligation to deliver Peaking Power and Peaking Energy.

Procedure for Determining Southwestern's Net Purchased Power Adder Adjustment

Not more than twice annually, the Purchased Power Adder of $.0067 (6.7 mills) per kilowatthour of Peaking Energy, as noted in this Rate Schedule, may be adjusted by the Administrator, Southwestern, by an amount up to a total of (±$.0067 (6.7 mills) per kilowatthour per year, as calculated by the following formula:

$$ADJ = (PURCH - EST + DIF) \div SALES$$

with the factors defined as follows:

ADJ = The dollar amount of the total adjustment, plus or minus, to be applied to the Net Purchased Power Adder, rounded to the nearest $.0001 per kilowatthour, provided that the total ADJ to be applied in any year shall not vary from the then-effective ADJ by more than $.0067 per kilowatthour;

PURCH = The actual total dollar cost of Southwestern's System Direct Purchases as accounted for in the financial records of the Southwestern Federal Power System for the period;

EST = The estimated total dollar cost ($15,064,500 per year) of Southwestern's System Direct Purchases used as the basis for the Purchased Power Adder of $.0067 per kilowatthour of Peaking Energy;

DIF = The accumulated remainder of the difference in the actual and estimated total dollar cost of Southwestern's System Direct Purchases since the effective date of the currently approved Purchased Power Adder set forth in this rate schedule, which remainder is not projected for recovery through the ADJ in any previous periods;

SALES = The annual Total Peaking Energy sales projected to be delivered (2,241,300,000 KWh per year) from the System of Southwestern, which total was used as the basis for the $.0067 per kilowatthour Purchased Power Adder.

Department of Energy, Southwestern Power Administration

Rate Schedule NFTS–06[1] Wholesale Rates For Non-Federal Transmission/ Interconnection Facilities Service

Effective: During the period October 1, 2006, through September 30, 2010, in accordance with Rate Order No. SWPA–56 issued by the Deputy Secretary of Energy.

Available: In the region where Southwestern Power Administration (Southwestern) owns and operates high-voltage transmission lines and related facilities, and/or has contractual rights to such transmission facilities owned by others (System of Southwestern).

Applicable: To Customers which have executed Service Agreements with Southwestern for the transmission of non-Federal power and energy over the System of Southwestern or for its use for interconnections. Southwestern will provide services over those portions of the System of Southwestern in which the Administrator, Southwestern, in his or her sole judgment, has determined that uncommitted transmission and transformation capacities in the System of Southwestern are and will be

[1] Supersedes Rate Schedule NFTS–05.

available in excess of the capacities required to market Federal power and energy pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887,890; 16 U.S.C. 825s).

Character and Conditions of Service: Service will be provided as 3-phase, alternating current, at approximately 60 Hertz, and at the voltage level of the point(s) specified by Service Agreement or Transmission Service Transaction.

Definitions of Terms: A *Customer* is the entity which is utilizing and/or purchasing services from Southwestern pursuant to this rate schedule.

A ''*Service Agreement*'' is a contract executed between a Customer and Southwestern for the transmission of non-Federal power and energy over the System of Southwestern or for interconnections. Service Agreements include:

''*Firm Transmission Service Agreements*'' that provide for reserved transmission capacity on a firm basis, for a particular point-to-point delivery path.

''*Non-Firm Transmission Service Agreements*'' that provide for the Customer to request transmission service on a non-firm basis.

''*Network Transmission Service Agreements*'' that provide for the Customer to request firm transmission service for the delivery of capacity and energy from the Customer's network resources to the Customer's network load, for a period of one year or more.

''*Interconnection Agreements*'' that provide for the use of the System of Southwestern and recognize the exchange of mutual benefits for such use or provide for application of a charge for Interconnection Facilities Service.

A ''*Service Request*'' is made under a Transmission Service Agreement through Southwestern's Open Access Same-Time Information System (OASIS) for reservation of transmission capacity over a particular point-to-point delivery path for a particular period. When a Service Request is approved by Southwestern, it becomes a ''*Transmission Service Transaction.*'' The Customer must submit hourly schedules for actual service in addition to the Service Request.

''*Firm Point-to-Point Transmission Service*'' is transmission service reserved on a firm basis between specific points of receipt and delivery pursuant to either a Firm Transmission *Agreement or to a Transmission Service Transaction. ''Non-Firm Point-to-Point Transmission Service*'' is transmission service reserved on a non-firm basis for specific points of receipt and delivery pursuant to a Transmission Service Transaction. ''*Network Integration Transmission Service*'' is transmission service provided under Part III of Southwestern's Open Access Transmission Service Tariff which provides the Customer with firm transmission service for the delivery of capacity and energy from the Customer's resources to the Customer's load.

''*Secondary Transmission Service*'' is associated with Firm Point-to-Point Transmission Service and Network Integration Transmission Service. For Firm Point-to-Point Transmission Service, it consists of transmission service provided on an as-available, non-firm basis, scheduled within the limits of a particular capacity reservation for transmission service, and scheduled from points of receipt, or to points of delivery, other than those designated in a Long-Term Firm Transmission Agreement or a Transmission Service Transaction for Firm Point-to-Point Transmission Service. For Network Integration Transmission Service, Secondary Transmission Service consists of transmission service provided on an as-available, non-firm basis, from resources other than the Network Resources designated in a Network Transmission Service Agreement, to meet the Customer's Network Load. The charges for Secondary Transmission Service, other than Real Power Losses and Ancillary Services, are included in the applicable capacity charges for Firm Point-to-Point Transmission Service and Network Integration Transmission Service.

The ''*Demand Period*'' used to determine a maximum integrated rate of delivery for the purposes of power accounting is the 60-minute period which begins with the change of hour. The term ''*Peak Demand*'' means the highest rate of delivery, in kilowatts, for any Demand Period during a particular month, at any particular point of delivery or interconnection.

For the purposes of this rate schedule, the term ''*Point of Delivery*'' is used to mean either a single physical point to which electric power and energy are delivered from the System of Southwestern, or a specified set of delivery points which together form a single, electrically integrated load. Peak Demand for such set of points is computed as the coincidental highest rate of delivery among the specified points rather than as the sum of peak demands for each individual physical point.

''*Ancillary Services*'' are those services necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the System of Southwestern in accordance with good utility practice. Ancillary Services include:

''*Scheduling, System Control, and Dispatch Service*'' is provided by Southwestern as Control Area operator and is in regard to interchange and load-match scheduling and related system control and dispatch functions.

''*Reactive Supply and Voltage Control from Generation Sources Service*'' is provided at transmission facilities in the System of Southwestern to produce or absorb reactive power and to maintain transmission voltages within specific limits.

''*Regulation and Frequency Response Service*'' is the continuous balancing of generation and interchange resources accomplished by raising or lowering the output of on-line generation as necessary to follow the moment-by-moment changes in load and to maintain frequency within a Control Area.

''*Spinning Operating Reserve Service*'' maintains generating units on-line, but loaded at less than maximum output, which may be used to service load immediately when disturbance conditions are experienced due to a sudden loss of generation or load.

''Supplemental Operating Reserve Service'' provides an additional amount of operating reserve sufficient to reduce Area Control Error to zero within 10 minutes following loss of generating capacity which would result from the most severe single contingency.

''Energy Imbalance Service'' corrects for differences over a period of time between schedules and actual hourly deliveries of energy to a load.

''Interconnection Facilities Service'' provides for the use of the System of Southwestern to deliver energy and/or provide system support at an interconnection.

Rates for Firm Point-to-Point Transmission Service

Capacity Charges for Firm Transmission Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly	$0.90 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a longer term agreement.	$0.95 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a longer term agreement.
Weekly	$0.225 per kilowatt of transmission capacity reserved in increments of one week of service.	$0.238 per kilowatt of transmission capacity reserved in increments of one week of service.
Daily	$0.0409 per kilowatt of transmission capacity reserved in increments of one day of service.	$0.0432 per kilowatt of transmission capacity reserved in increments of one day of service.

Service Associated with Capacity Charges for Firm Point-to-Point Transmission Service

The capacity charge for firm transmission service includes Secondary Transmission Service, but does not include charges for Ancillary Services or for Real Power Losses associated with actual schedules.

Application of Capacity Charges for Firm Point-to-Point Transmission Service

Capacity charges for firm transmission service are applied to quantities reserved by contract under a Firm Transmission Agreement or in accordance with a Transmission Service Transaction.

Customers, unless otherwise specified by contract, will be charged on the greatest of (1) the Peak Demand at any particular point of delivery during a particular month, rounded up to the nearest whole megawatt, or (2) the highest Peak Demand recorded at such point of delivery during any of the previous 11 months, rounded up to the nearest whole megawatt, or (3) the capacity reserved by contract; which amount shall be considered such Customer's reserved capacity. Secondary Transmission Service for such Customers shall be limited during any month to the most recent Peak Demand on which a particular Customer is billed or to the capacity reserved by contract, whichever is greater.

Rates for Non-Firm Point-to-Point Transmission Service

Capacity Charges for Non-Firm Transmission Service

Monthly: 80 percent of the firm monthly charge of transmission capacity reserved in increments of one month of service.

Weekly: 80 percent of the firm monthly charge divided by 4 of transmission capacity reserved in increments of one week of service.

Daily: 80 percent of the firm monthly charge divided by 22 of transmission capacity reserved in increments of one day of service.

Hourly: 80 percent of the firm monthly charge divided by 352 of transmission capacity reserved in increments of one hour of service.

Application of Charges for Non-Firm Point-to-Point Transmission Service

Capacity charges for Non-Firm Transmission Service are applied to quantities reserved under a Transmission Service Transaction, and do not include charges for Ancillary Services or Real Power Losses.

Rates for Network Integration Transmission Service

Annual Revenue Requirement for Network Integration Service:

10/1/2006–9/30/2008	10/1/2008–9/30/2010
$9,155,900	$9,431,500

Monthly Revenue Requirement for Network Integration Service:

10/1/2006–9/30/2008	10/1/2008–9/30/2010
$762,992	$785,958

Net Capacity Available for Network Integration Service:

10/1/2006–9/30/2008	10/1/2008–9/30/2010
845,000 kilowatts	828,000 kilowatts.

Capacity Charge for Network Integration Transmission Service:

10/1/2006–9/30/2008	10/1/2008–9/30/2010
$0.90 per kilowatt of Network Load ($762,992/845,000 kilowatts.	$0.95 per kilowatt of Network Load ($785,958/828,000 kilowatts.

Application of Charge for Network Integration Transmission Service

Network Integration Transmission Service is available only for deliveries of non-Federal power and energy, and is applied to the Customer utilizing such service exclusive of any deliveries of Federal power and energy. The capacity on which charges for any particular Customer utilizing this service is determined on the greatest of (1) the Peak Demand at any particular point of delivery during a particular month, rounded up to the nearest whole megawatt, or (2) the highest Peak Demand recorded at such point of delivery during any of the previous 11 months, rounded up to the nearest whole megawatt.

For those Customers taking Network Integration Transmission Service who are also taking delivery of Federal Power and Energy, the Peak Demand shall be determined by subtracting the energy scheduled for delivery of Federal Power and Energy for any hour from the metered demand for such hour.

Secondary transmission Service for such Customers shall be limited during any month to the most recent Peak Demand on which a particular Customer is billed. Charges for Ancillary Services and for Real Power Losses shall also be assessed.

Rates for Real Power Losses

The Customer shall purchase real power losses unless it elects to self-provide such losses under the provisions detailed below in Annual Election to Self-Provide Real Power Losses.

Real Power Losses are computed as four (4) percent of the total amount of non-Federal energy transmitted on behalf of a Customer. The monthly charge for such Real Power Losses will be computed on a per kilowatthour basis as follows:

$$MC = .04 \times NFE \times R$$

with the factors defined as follows:

MC = The monthly charge ($) by Southwestern for Real Power Losses of non-Federal energy transmitted on behalf of a Customer;

NFE = The amount of non-Federal energy (kWh) transmitted on behalf of a Customer during a particular month; and

R = The rate for Real Power Losses ($ per kWh), is an average of Southwestern's actual costs for the purchase of energy to replace Real Power Losses during the previous fiscal year (October through September), as reflected in Southwestern's financial records.

The rate for Real Power Losses will be posted on Southwestern's OASIS by November 1 of each year. This rate will become effective for one year beginning January 1 of each calendar year. *Annual Election to Self-Provide Real Power Losses:* The Customer may elect, on an annual basis, to self-provide all loss energy for which it is responsible, subject to the following conditions:

(1) Such election for self-provision shall be for a full calendar year (January through December) for that Customer and shall be exercised by execution of a Service Agreement, or equivalent, before December 1 of the prior calendar year.

(4) Unless otherwise specified in the Service Agreement, the Customer shall schedule the delivery of real power losses in the System of Southwestern at the rate of one megawatt of real power losses for every 25 megawatts of non-Federal power and energy delivered to Customers' loads served from the points of delivery set forth in the Southwestern/Customer contract.

(5) For any new Customer taking transmission service from Southwestern, election to self-provide real power losses shall be made at the time the contract is negotiated. Such service shall be implemented as provided for in the contract and the election to self-provide shall apply through the end of that calendar year for all transmission services.

Monthly Capacity Charges for Transformation Service

A charge of $0.30 per kilowatt will be assessed for capacity used to deliver energy at any point of delivery at which Southwestern provides transformation for deliveries at voltages of 69 kilovolts or less from higher voltage facilities.

Application of Capacity Charges for Transformation Service

For any particular month, charges for transformation service will be assessed on the greater of (1) that month's actual Peak Demand, or (2) the highest Peak Demand recorded during the previous 11 months. For the purpose of this rate schedule, the Peak Demand will be based on all deliveries, of both Federal and non-Federal energy, from the System of Southwestern, at such point during such month.

Rates for Ancillary Services

Capacity Charges for Ancillary Services Associated with Transmission Services

(a) Scheduling, System Control, and Dispatch Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly	$0.06 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.	$0.06 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.
Weekly	$0.015 per kilowatt of transmission capacity reserved in increments of one week of service.	$0.015 per kilowatt of transmission capacity reserved in increments of one week of service.
Daily	$0.0027 per kilowatt of transmission capacity reserved in increments of one day of service.	$0.0027 per kilowatt of transmission capacity reserved in increments of one day of service.
Hourly	$0.00017 per kilowatt of energy delivered as non-firm transmission service.	$0.00017 per kilowatt of energy delivered as non-firm transmission service.

(b) Reactive Supply and Voltage Control from Generation Sources Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly	$0.03 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.	$0.04 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.
Weekly	$0.008 per kilowatt of transmission capacity reserved in increments of one week of service.	$0.010 per kilowatt of transmission capacity reserved in increments of one week of service.
Daily	$0.0014 per kilowatt of transmission capacity reserved in increments of one day of service.	$0.0018 per kilowatt of transmission capacity reserved in increments of one day of service.
Hourly	$0.00009 per kilowatt of energy delivered as non-firm transmission service.	$0.00011 per kilowatt of energy delivered as non-firm transmission service.

(c) Regulation and Frequency Response Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly	$0.08 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.	$0.09 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Weekly	$0.020 per kilowatt of transmission capacity reserved in increments of one week of service.	$0.023 per kilowatt of transmission capacity reserved in increments of one week of service.
Daily	$0.0036 per kilowatt of transmission capacity reserved in increments of one day of service.	$0.0041 per kilowatt of transmission capacity reserved in increments of one day of service.
Hourly	$0.00023 per kilowatt of energy delivered as non-firm transmission service.	$0.00026 per kilowatt of energy delivered as non-firm transmission service.

(d) Spinning Operating Reserve Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly	$0.0079 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.	$0.0092 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.
Weekly	$0.00198 per kilowatt of transmission capacity reserved in increments of one week of service.	$0.023 per kilowatt of transmission capacity reserved in increments of one week of service.
Daily	$0.00036 per kilowatt of transmission capacity reserved in increments of one day of service.	$0.00042 per kilowatt of transmission capacity reserved in increments of one day of service.
Hourly	$0.00002 per kilowatt of energy delivered as non-firm transmission service.	$0.00003 per kilowatt of energy delivered as non-firm transmission service.

(e) Supplemental Operating Reserve Service:

	10/1/2006–9/30/2008	10/1/2008–9/30/2010
Monthly	$0.0079 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.	$0.0092 per kilowatt of transmission capacity reserved in increments of one month of service or invoiced in accordance with a Long-Term Firm Transmission Agreement or Network Transmission Service Agreement.
Weekly	$0.00198 per kilowatt of transmission capacity reserved in increments of one week of service.	$0.0023 per kilowatt of transmission capacity reserved in increments of one week of service.
Daily	$0.00036 per kilowatt of transmission capacity reserved in increments of one day of service.	$0.00042 per kilowatt of transmission capacity reserved in increments of one day of service.
Hourly	$0.00002 per kilowatt of energy delivered as non-firm transmission service.	$0.00003 per kilowatt of energy delivered as non-firm transmission service.

(f) Energy Imbalance Service: $0.0 per kilowatt for all periods of reservation

Availability of Ancillary Services

Ancillary Services (a) and (b) are available for all transmission services in and from the System of Southwestern and shall be provided by Southwestern. Ancillary Services (c) and (f) listed above are available only for deliveries of power and energy serving load within Southwestern's Control Area and shall be provided by Southwestern, unless, subject to Southwestern's approval, they are provided by others. Ancillary Services (d) and (e) are available only for deliveries of power and energy generated by resources located within Southwestern's Control Area and shall be provided by Southwestern, unless, subject to Southwestern's approval, they are provided by others.

Application of Ancillary Services Charges

Charges for all Ancillary Services are applied to the reserved or network transmission service taken by the Customer in accordance with the rates listed above when such services are provided by Southwestern.

The charges for Ancillary Services are considered to include Ancillary Services for any Secondary Transmission Service, except in cases where Ancillary Services (c) through (f) are applicable to a Secondary Transmission Service transaction, but are not applicable to the firm capacity reservation under which Secondary Transmission Service is provided. When charges for Ancillary Services are applicable to Secondary Transmission Service, the charge for the Ancillary Service shall be the hourly rate applied to all energy transmitted utilizing the Secondary Transmission Service.

Provision of Ancillary Services by Others

Customers for which Ancillary Services (c) through (f) are made available as specified above must inform Southwestern by written notice of the Ancillary Services which they do not intend to take and purchase from Southwestern, and their election to provide all or part of such Ancillary Services from their own resources or a third party.

Subject to Southwestern's approval of the ability of such resources or third parties to meet Southwestern's technical requirements for provision of such Ancillary Services, the customer may change the Ancillary Services which it takes from Southwestern and/or from other sources at the beginning of any month upon the greater of 60 days written notice or upon the completion of any necessary equipment modifications necessary to accommodate such change. Such notice requirements also apply to requests for Southwestern to provide Ancillary Services when such services are available as specified above.

Limitations on Energy Imbalance Service

Energy Imbalance Service is authorized for use only within a bandwidth of ±1.5 percent of the actual requirements of the load at a particular point of delivery, for any hour, compared to the resources scheduled to meet such load during such hour. Deviations which are greater than ±1.5 percent, but which are less than ±2,000 kilowatts, are considered to be within the authorized bandwidth. Deviations outside the authorized bandwidth are subject to a Capacity Overrun Penalty.

Energy delivered or received within the authorized bandwidth for this service is accounted for as an inadvertent flow and will be netted against flows in the future. The inadvertent flow in any given hour will only be offset with the flows in the corresponding hour of a day in the same category. The two categories of days are weekdays and weekend days/North American Electric Reliability Council holidays. This process will result in a separate inadvertent accumulation for each hour of the two categories of days. The hourly accumulations in the current month will be added to the hourly inadvertent balances from the previous month, resulting in a month-end balance for each hour.

The Customer is required to adjust the scheduling of resources in such a way as to reduce the accumulation towards zero. It is recognized that the inadvertent hourly flows can be both negative and positive, and that offsetting flows should deter a significant accumulation of inadvertent. In the event any hourly month-end balance exceeds 12 MWHs, the excess will be subject to the *Application of Capacity Overrun Penalty* or the *Unauthorized Use of Energy Imbalance Service by Overscheduling of Resources* provisions, depending on the direction of the accumulation.

Application of Capacity Overrun Penalty

Customers, who receive deliveries within Southwestern's Control Area, are obligated to provide resources sufficient to meet their loads. Such obligation is not related to the amount of transmission capacity that such Customers may have reserved for transmission service to a particular load. Customers whose resources are scheduled by Southwestern are not subject to this provision. In the event that a Customer under schedules its resources to meet its load, resulting in a difference between resources and actual metered load (adjusted for transformer losses as applicable) outside the authorized bandwidth for Energy Imbalance Service for any hour, then such Customer is subject to the following penalty:

Capacity Overrun Penalty

For each hour during which energy flows outside the authorized bandwidth, the Customer will be obliged to purchase such energy at the following rates:

Months associated with charge	Rate per kilowatt
March, April, May, October, November, December	$0.15
January, February, June, July, August, September	$0.30

Unauthorized Use of Energy Imbalance Service by Overscheduling of Resources

In the event that a Customer schedules greater resources than are needed to meet its load, such that energy flows at rates beyond the authorized bandwidth for the use of Energy Imbalance Service, Southwestern retains such energy at no cost to Southwestern and with no obligation to return such energy. Customers whose resources are scheduled by Southwestern are not subject to this provision.

Application of Charge for Interconnection Facilities Service

Any Customer that requests an interconnection from Southwestern which, in Southwestern's sole judgment and at its sole option, does not provide commensurate benefits or compensation to Southwestern for the use of its facilities shall be assessed a capacity charge for Interconnection Facilities Service. For any month, charges for Interconnection Facilities Service shall be assessed on the greater of (1) that month's actual Peak Demand, or (2) the highest Peak Demand recorded during the previous eleven months, as metered at the interconnection. The use of Interconnection Facilities Service will be subject to power factor provisions as specified in this rate schedule. The interconnection customer shall also be assessed charges for Real Power Losses on metered flow through the interconnection where Interconnection Facilities Services is assessed.

Rate for Interconnection Facilities Service

The monthly capacity charge for Interconnection Facilities Service:

10/1/2006–9/30/2008	10/1/2008–9/30/2010
$0.90 per kilowatt	$0.95 per kilowatt.

Requirements Related to Power Factor

Any Customer served from facilities owned by or available by contract to Southwestern will be required to maintain a power factor of not less than 95 percent and will be subject to the following provisions.

Determination of Power Factor

The power factor will be determined for all Demand Periods and shall be calculated under the formula:

$$PF = (kWh) \div \sqrt{(kWh^2 + rkVAh^2)} \ ,$$

With the factors defined as follows:

PF = The power factor for any Demand Period of the month.

kWh = The total quantity of energy which is delivered during such Demand Period to the point of delivery or interconnection.

rkVAh = The total quantity of reactive kilovolt-ampere-hours (kvars) delivered during such Demand Period to the point of delivery or interconnection.

Power Factor Penalty and Assessment

The Customer shall be assessed a penalty for all Demand Periods of a month where the power factor is less than 95 percent lagging. For any Demand Period during a particular month such penalty shall be in accordance with the following formula:

$$C = D \times (.95 - LPF) \times \$0.10$$

with the factors defined as follows:

C = The charge in dollars to be assessed for any particular Demand Period of such month that the Determination of Power Factor ''PF'' is calculated to be less than 95 percent lagging.

D = The Customer's demand in kilowatts at the point of delivery for such Demand Period in which a low power factor was calculated.

LPF = The lagging power factor, if any, determined by the formula ''PF'' for such Demand Period.

If C is negative, then C = zero (0).

Application of Power Factor Penalty

The Power Factor Penalty is applicable to radial interconnections with the System of Southwestern. The total Power Factor Penalty for any month shall be the sum of all charges ''C'' for all Demand Periods of such month. No penalty is assessed for leading power factor. Southwestern, in its sole judgment and at its sole option, may determine whether power factor calculations should be applied to a single physical point of delivery or to multiple physical points of delivery where a Customer has a single, electrically integrated load served through multiple points or interconnections. The general criteria for such decision shall be that, given the configuration of the Customer's and Southwestern's systems, Southwestern will determine, in its sole judgment and at its sole option, whether the power factor calculation more accurately assesses the detrimental impact on Southwestern's system when the above formula is calculated for a single physical point of delivery or for a combination of physical points or for an interconnection as specified by an Interconnection Agreement.

Southwestern, at its sole option, may reduce or waive power factor penalties when, in Southwestern's sole judgment, low power factor conditions were not detrimental to the System of Southwestern due to particular loading and voltage conditions at the time the power factor dropped below 95 percent lagging.

Department of Energy, Southwestern Power Administration

Rate Schedule EE–06 [1] *Wholesale Rate for Excess Energy*

Effective: During the period October 1, 2006, through September 30, 2010, in accordance with Rate Order No. SWPA–56 issued by the Deputy Secretary of Energy.

Available: In the marketing area of Southwestern Power Administration (Southwestern), described generally as the States of Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas.

Applicable: To electric utilities which, by contract, may purchase Excess Energy from Southwestern.

Character and Conditions of Service: Three-phase, alternating current, delivered at approximately 60 Hertz, at the nominal voltage and points of delivery specified by contract.

Energy Associated with this Rate Schedule: Excess Energy will be furnished at such times and in such amounts as Southwestern determines to be available.

Transmission and Related Ancillary Services: Transmission service for the delivery of Excess Energy shall be the sole responsibility of such customer purchasing Excess Energy.

Rate for Excess Energy:

Energy Charge:

10/1/2006–9/30/2007	10/1/2007–9/30/2010
$0.0055 per kilowatthour.	$0.0082 per kilowatthour.

[FR Doc. E6–16912 Filed 10–11–06; 8:45 am]

BILLING CODE 6450–01–P

[1] Supersedes Rate Schedule EE–05.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8230–6; Docket ID No. EPA–HQ–ORD–2004–0002]

Draft Toxicological Review of Dichlorobenzenes: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Public Comment Period, Rescheduled External Peer Review Panel Meeting, and Meeting Format Change.

SUMMARY: The EPA is extending the public comment period and rescheduling an external peer review panel meeting to review selected sections of the EPA National Center for Environmental Assessment (NCEA) final draft document titled, ''Toxicological Review of Dichlorobenzenes: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–03/015), regarding the inhalation reference concentration (RfC) and inhalation cancer assessment for 1,4-dichlorobenzene. The EPA is also changing the format of this external peer review meeting to include both a teleconference and an in-person panel meeting.

On July 11, 2006, EPA published a **Federal Register** notice (71 FR 39113) announcing a comment period that ended August 9 and an external peer review panel meeting (by teleconference) that was scheduled for August 16. On August 11, 2006, EPA published a second **Federal Register** notice announcing an extension of the public comment period to October 10 and a rescheduling of the external peer review meeting to October 30. EPA is extending the public comment period to October 17, 2006, rescheduling the external peer review meeting to November 3, 2006, and changing the format to include both a face-to-face meeting and a teleconference option for participation. This extended public comment period and change in format for the external peer review are in response to requests from the public.

The public comment period and the external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the document. In addition to consideration by EPA, all public comments submitted in accordance with this notice will also be forwarded to EPA's contractor, the Oak Ridge Institute for Science and Education (ORISE), for consideration by the external peer review panel prior to the meeting.

As previously stated in 71 FR 39113 and 71 FR 46220, EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

ORISE invites the public to register to attend this peer review panel meeting as observers, either in person or by telephone. In addition, ORISE invites the public to give brief oral comments at the meeting regarding the draft document under review. The draft document and EPA's peer review charge are available via the Internet on NCEA's home page under the Recent Additions menu at *http://www.epa.gov/ncea*. When finalizing this draft report, EPA will consider ORISE's report of the comments and recommendations from the external peer reviewers and any public comments that EPA receives in accordance with this notice.

DATES: The period for submission of comments on the final draft document will end on October 17, 2006. Technical

comments should be in writing and must be received by EPA by October 17, 2006. Comments submitted to the EPA by October 17, 2006, will be provided to the external peer review panel prior to the panel review meeting. The peer review will be on November 3, 2006, and will begin at 9 a.m. and end approximately at 1 p.m., eastern time.

ADDRESSES: The external peer review panel meeting will be held at the American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009–1277. Under an Interagency Agreement between EPA and the Department of Energy, the Oak Ridge Institute of Science and Education (ORISE) is organizing, convening, and conducting the peer review panel meeting. To attend the meeting, register by October 17, 2006, by calling ORISE at (865) 576–2922, sending a facsimile to (865) 241–3168, or sending an e-mail to Margaret Lyday at *lydaym@orau.gov.* Interested parties may also register via the Internet at *http://www.orau.gov/dichlorobenzene.* You must register by October 17, 2006, if you wish to provide brief oral comments or if you plan to use the teleconference option at the peer review panel meeting.

The draft ''Toxicological Review of Dichlorobenzenes: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–03/015) is available primarily via the Internet on NCEA's home page under the Recent Additions menu at *http://www.epa.gov/ncea.* A limited number of paper copies are available by contacting the IRIS Hotline at (202) 566–1676, (202) 566–1749 (facsimile), or *hotline.iris@epa.gov.* If you are requesting a paper copy, please provide your name, mailing address, the document title, and the EPA number of the requested publication. Copies are not available from ORISE.

Copies of the study by Aiso et al. (2005), referenced in the **SUPPLEMENTARY INFORMATION** section of this notice, are available from the IRIS Hotline in paper or electronic format or via the docket at *http://www.regulations.gov.* If you are requesting a copy from the IRIS Hotline, please provide your name, mailing address or e-mail address, and document citation: Aiso et al. (2005) Carcinogenicity and chronic toxicity in mice and rats exposed by inhalation to parA–dichlorobenzene for two years. J Vet Med Sci 67(10):1019–1029. EPA is providing this study in the interest of transparency. EPA is not endorsing or supporting the study or its findings.

Technical comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics for the external peer review panel meeting and teleconference should be directed to Margaret Lyday, ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, at (865) 576–2922, (865) 241–3168 (facsimile), or *lydaym@orau.gov* (e-mail).

If you have questions about the document, contact Audrey Galizia, Chemical Manager, National Center for Environmental Assessment; telephone: (732) 906–6887; facsimile: (732) 452–6429; e-mail: *galizia.audrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

IRIS is a database that contains Agency scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, the database can be used as a resource for oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

1,4-Dichlorobenzene is widely used as a space deodorant for toilets and refuse containers, as a moth repellent in moth balls or crystals, and in other pesticide applications. The current IRIS assessment for 1,4-dichlorobenzene was placed on the database in 1994 and contains an inhalation RfC. A reassessment of the potential health effects of dichlorobenzenes has been undertaken. The draft assessment for dichlorobenzenes (including the 1,2-, 1,3-, and 1,4-isomers) was subject to an external peer review and 30-day public comment period in February 2004 (69 FR 4514, January 30, 2004). The scope of the current external peer review and public comment is limited to the analyses based on a chronic inhalation bioassay of 1,4-dichlorobenzene published in the peer-reviewed literature (Aiso et al., 2005. J Vet Med Sci 67(10):1019–29) that was not included in the February 2004 external peer review draft. This study was identified originally as an unpublished study report by the Japan Bioassay Research Center (JBRC, 1995). Data from Aiso et al. (2005) were used subsequently in the quantitative dose-response assessments for the 1,4-dichlorobenzene RfC and inhalation cancer assessment.

II. Panel Meeting Information

Members of the public may attend the panel meeting as observers, and there will be a limited time for comments from the public. To make oral comments at the commencement of the peer review meeting, you must pre-register with ORISE indicating your intent to do so. Space is limited, and reservations will be accepted on a first-come, first-served basis.

III. How to Submit Technical Comments to the Docket at http://www.regulations.gov

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

Submit your comments, identified by Docket ID No. EPA-HQ-ORD 2004–0002 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov.*
- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is (202) 566–1752.
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Public Reading Room is (202) 566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2004–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: October 5, 2006.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–16925 Filed 10–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2004–0128; FRL–8095–1]

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides a list of 46 proposed AEGL chemicals that are available for public review and comment. Comments are welcome on both the AEGL values and the technical support documents placed in the docket.

DATES: Comments must be received on or before November 13, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2004–0128, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2004–0128. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2004–0128. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket, EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in EPA West, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room

is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA Web site at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Pollution Prevention and Toxics (7406M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on proposed AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPAs Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

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

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

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPAs Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice on October 31, 1995 (60 FR 55376) (FRL–4987–3) of the establishment of the NAC/AEGL Committee with the stated charter objective as ''the efficient and effective development of AEGLs and the preparation of supplementary qualitative information on the hazardous substances for Federal, State, and Local agencies and organizations in the private sector concerned with [chemical] emergency planning, prevention, and response.'' The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGLs for chemicals through the combined efforts of stakeholder members from both the public and private sectors in a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available.

This action provides notice of availability, for public review and comment, of proposed AEGL values and underlying supporting documents for 46 hazardous substances. These values represent the ninth set of exposure levels proposed and published by the NAC/AEGL Committee. EPA published the first ''proposed'' AEGLs for 12 chemicals from the initial priority list in the **Federal Register** of October 30, 1997 (62 FR 58840–58851) (FRL–5737–3); for 10 chemicals in the **Federal Register** of March 15, 2000 (65 FR 14186–14197) (FRL–6492–4); for 14 chemicals in the **Federal Register** of June 23, 2000 (65 FR 39263–39277) (FRL–6591–2); for 7 chemicals in the **Federal Register** of December 13, 2000 (65 FR 77866–77874) (FRL–6752–5); for 18 chemicals in the **Federal Register** of May 2, 2001 (66 FR 21940–21964) (FRL–6776–3); for 8 chemicals in the **Federal Register** of February 15, 2002 (67 FR 7164–7176) (FRL–6815–8); for 10 chemicals in the **Federal Register** of July 18, 2003 (68 FR 42710–42726) (FRL–7189–8); and for 15 chemicals in the **Federal Register** of September 7, 2004 (69 FR 54144–54148) (FRL–7350–2) in order to provide an opportunity for public review and comment. Background information on the AEGL Program may be found in these earlier **Federal Register** notices, in regulations.gov, or on the AEGL Web site at *http://www.epa.gov/oppt/aegl*.

Chemical name	CAS No.
Acetaldehyde	75–07–0
Acetonitrile	75–05–8
Benzene	71–43–2
Benzonitrile	100–47–0
Bromine pentafluoride	7789–30–2
Bromine trifluoride	7787–71–5
Butadiene	106–99–0
Butane	106–97–8
Butyl acrylate	141–32–2

Chemical name	CAS No.
Chlorine pentafluoride	13637–63–3
Chloroacetaldehye	107–20–0
Chloroacetone	78–95–5
Chloroacetonitrile	107–14–2
Chloroacetyl chloride	79–04–9
Cumene	98–82–8
Dichloroacetyl chloride	79–36–7
Dimethyl sulfate	77–78–1
Disulfur dichloride	10025–67–9
Ethyl acrylate	140–88–5
Ethyl mercaptan	75–08–1
Formaldehyde	50–00–0
Hexane	110–54–3
Hydrogen bromide	10035–10–6
Hydrogen iodide	10034–85–2
Hydrogen selenide	7783–07–5
Isobutyronitrile	78–82–0
Lewisite L-1	541–25–3
Lewisite L-2	40334–69–8
Lewisite L-3	40334–70–1
Malononitrile	109–77–3
Methacrylic acid	79–41–4
Methacrylonitrile	126–98–7
Methyl bromide	74–83–9
Methyl chloride	74–87–3
Methyl methacrylate	80–62–6
Methylene chloride	75–09–2
Oleum	8014–95–7
Piperidine	110–89–4
Propane	74–98–6
Propionaldehyde	123–38–6
Proprionitrile	107–12–0
Styrene	110–42–5
Sulfur trioxide	7446–11–9
Sulfuric acid	7664–93–9
Titanium tetrachloride	7550–45–0
Vinyl chloride	75–01–4

List of Subjects

Environmental protection, Acute Exposure Guideline Levels (AEGLs), Hazardous substances.

Dated: October 5, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. E6–16908 Filed 10–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8230–7; Docket ID No. EPA–HQ–ORD–2006–0756]

Evaluation of the Carcinogenicity of Ethylene Oxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Public Comment Period.

SUMMARY: EPA is announcing an extension of the public comment period for the draft document titled, ''Evaluation of the Carcinogenicity of Ethylene Oxide'' (EPA/635/R–06/003). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development. On September 22, EPA published a **Federal Register** notice (71 FR 55470) announcing a 30-day comment period that ends October 23, 2007. EPA is extending the public comment period to December 8, 2006, in response to requests.

As previously stated in 71 FR 55470, EPA is releasing this draft document solely for the purpose of seeking public comment and for review by the EPA Science Advisory Board (SAB) via a meeting to be held at a later date (time and place to be specified in a separate **Federal Register** notice). This document has not been formally disseminated by EPA. It does not determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The public comment period began September 22, 2006, and ends December 8, 2006. Technical comments should be in writing and must be received by EPA by December 8, 2006.

ADDRESSES: The draft ''Evaluation of the Carcinogenicity of Ethylene Oxide'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from the Technical Information Staff, NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, ''Evaluation of the Carcinogenicity of Ethylene Oxide''.

Comments may be submitted electronically via *www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Henry D. Kahn, D.Sc., NCEA; telephone: 202–564–3269; facsimile: 202–565–0079; or e-mail: *kahn.henry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

Ethylene oxide (EtO) is a gas at room temperature. It is manufactured from ethylene and used primarily as a chemical intermediate in the manufacture of ethylene glycol. It is also used as a sterilizing agent for medical equipment and as a fumigating agent for spices. The largest sources of human exposure are in occupations involving contact with the gas in production facilities and in hospitals that sterilize medical equipment. EtO can also be inhaled by residents living near production or sterilizing/fumigating facilities.

This draft assessment document characterizes the potential for a carcinogenic health hazard from human inhalation exposure to EtO. This is accomplished by a weight-of-evidence evaluation as to how likely EtO is to be a human carcinogen, as well as an evaluation of related dose-response information which leads to the development of lifetime cancer risk estimates per unit of exposure. This assessment, when finalized, will be posted to EPA's Integrated Risk Information System (IRIS) database. The document was prepared by EPA's National Center for Environmental Assessment (NCEA). EPA last published a health assessment of the potential carcinogenicity of EtO in 1985.

The current assessment reviews the more recently developed database on the carcinogenicity of EtO, pertinent data from the 1985 assessment, and several reviews and assessments issued

by other organizations (IARC, 1994; Health Canada, 2001; CalEPA, 1999; EOIC, 2001).

II. How to Submit Technical Comments to the Docket at www.regulations.gov

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2006–0756 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov.*
- Fax: 202–566–1753
- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you submit comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0756. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov or e-mail.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: October 4, 2006.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–16921 Filed 10–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8230–3]

Compliance Assistance Centers; Request for Suggestions on Candidates for Compliance Assistance Center Development

AGENCY: Environmental Protection Agency.

ACTION: Solicitation for suggestions.

SUMMARY: In partnership with industry, academic institutions, environmental groups, and other agencies, the Environmental Protection Agency (EPA) supports fourteen Compliance Assistance Centers (Centers) to help small- and medium-size businesses and local governments better understand and comply with environmental regulations. These Centers provide easy to understand compliance information targeted to specific sectors, geographic and environmental topics: agriculture; automotive service and repair; automotive recycling, chemical manufacturers; construction; Federal facilities; health care; local governments, metal finishing; paints and coatings; printed wiring board manufacturers; printers; transportation; and the U.S. / Mexico / Canada border environmental issues. Additionally, funding has recently been awarded to initiate the development of a Center for the education sector. All Centers can be accessed at *http://www.assistancecneters.net*. EPA would like to expand the Center program to support other sectors, geographical areas or topical issues.

To support new Center development, EPA has funded the National Center for Manufacturing Sciences (NCMS) to develop, operate and maintain the Compliance Assistance Center Platform (Platform) from which new Centers will be ''launched.'' The Platform includes a suite of comprehensive Web-based tools necessary new Centers. States, industry, and compliance assistance providers can work with NCMS to establish Centers that will help the regulated community better understand and more efficiently comply with environmental requirements. The Centers for the metal finishing, printed wiring board manufacturing, paints and coatings, construction sector, automotive recycling sector, health care and U.S. / Mexico / Cananda border environmental issues have been developed in partnership with NCMS and the Platform. Visit *http://www.envcap.org* to access Platform resources.

EPA is exploring new sector, geographical, or topical candidates for

Centers in FY 2007 and beyond. Center candidates will be evaluated initially against the following criteria: impact on health and the environment; patterns of noncompliance; assessment that compliance assistance is an appropriate approach to use; predominately involves or affects small businesses; the problem or issue is prevalent nationally; impact of new environmental regulations; subject to multiple environmental statutes/regulations; and not currently supported by an existing compliance assistance program. Once these threshold criteria have been met, an additional criterion will be applied: willingness of a sector or third-party organization to partner with EPA. At this time, EPA is considering the following sectors for new Center development: (1) Food processing (producers of meat products, seafood, dairy, fruits, oils, flour, vegetables, baked goods, etc.); or (2) marinas /boatbuilding (boat building, repair, servicing, docks, fueling).

EPA invites feedback from interested parties on these and other possible candidates for Center development. Specifically, EPA is interested in feedback on Center development for the food processing and marina/ boatbuilding sectors. The above criterion should be considered in your evaluation and proposal of sector, geographic, or topical candidates. Pursuant to EPA's Grants Competition Policy that went into effect October 1, 2002, EPA will compete any assistance agreement that will be provided to support new Center development in FY 2007.

Interested parties should communicate their suggestions regarding new sectors, geographical areas or topical issues for Center development to EPA by letter or e-mail to the contact listed below.

DATES: Contact by November 13, 2006.

FOR FURTHER INFORMATION CONTACT: Tracy Back, Team Leader, Compliance Assistance Centers, US, EPA (mail code 2224A), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

E-mail: back.tracy@epa.gov. Telephone: 202–564–7076.

Fax: 202–564–0009.

Dated: September 27, 2006.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. E6–16927 Filed 10–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No.: EPA–R08–OW–2006–0627; FRL–8230–2]

Public Water System Supervision Program Revision for the State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On August 24, 2006, EPA proposed the following: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g-2, and 40 CFR 142.13, public notice is hereby given that the State of Utah has revised its Public Water System Supervision (PWSS) Primacy Program by adopting federal regulations for the Arsenic Rule and Filter Backwash Recycling Rule, which correspond to 40 CFR parts 141 and 142. The EPA has completed its review of these revisions in accordance with SDWA, and proposes to approve Utah's primacy revisions for the above stated Rules.

Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: The comment period for this proposal has been extended until November 13, 2006. Any member of the public is invited to request a public hearing on this determination. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective November 13, 2006. If a hearing is granted, then this determination shall not become effective until such time, following the hearing, as the RA issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing shall be addressed to: Robert E. Roberts, Regional Administrator, c/o Jack Theis (8P–W–DW), U.S. EPA, Region 8, 999 18th St., Suite 300, Denver, CO 80202–2466.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Unit, 999 18th St. (4th Floor), Denver, CO 80202–2466; (2) Utah Department of Environment Quality (DEQ) Division of Drinking Water, 1950 West North Temple, Salt Lake City, UT 84114–4830, and/or (3) online at: *http://www.regulations.gov*, with reference to Docket ID No. EPA–R08–OW–2006–0627. However, based on sensitivity, certain materials are available in hardcopy only. The above Web site is an ''anonymous access'' system, which means that should you submit an electronic comment, EPA recommends you provide your identity or contact information in the body of your comment. If you e-mail your comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment(s) that is placed in the public docket and made available on the Internet. If your comment cannot be read due to technical difficulties and you cannot be contacted for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Jack Theis at 303–312–6347.

SUPPLEMENTARY INFORMATION: EPA approved Utah's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of SDWA, 42 U.S.C. 300g–2, and 40 CFR part 142. DEQ administers Utah's PWSS program.

A. Why Are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How Does Today's Action Affect Indian Country in Utah?

This program revision does not extend to ''Indian country,'' as defined in 18 U.S.C. 1151. Indian country includes: (1) Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of Utah:

a. Goshute Indian Reservation;

b. Navajo Indian Reservation;

c. Northwestern Band of Shoshoni Nation of Utah (Washakie) Indian Reservation;

d. Paiute Indian Tribe of Utah Indian Reservation;

e. Skull Valley Band of Goshute Indians of Utah Indian Reservation;

f. Uintah and Ouray Indian Reservation (see below);

g. Ute Mountain Indian Reservation;

(2) any land held in trust by the United States for an Indian tribe; and (3) any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

With respect to the Uintah and Ouray Indian Reservation, Federal courts have determined that certain lands within the exterior boundaries of the Reservation do not constitute Indian country. This State program revision approval will extend to those lands which the courts have determined are not Indian country.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing, and will be made by the RA in the **Federal Register** and newspapers of general circulation in the State. A notice will also be sent to both the person(s) requesting the hearing and the State. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: October 4, 2006.

Kerrigan G. Clough,

Deputy Regional Administrator, Region 8.

[FR Doc. E6–16929 Filed 10–11–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 6, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 11, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0349.

Title: Sections 73.2080, 76.73, 76.75, 76.79, 76.1702, Equal Employment Opportunity (''EEO'') Policy.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 14,178.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping requirement; Annual reporting requirement; Every five-year reporting requirement.

Total Annual Burden: 595,476 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex.

This section also requires that each broadcast station employment unit with 5 or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice.

Section 76.73 provides that equal opportunity in employment shall be afforded by all multichannel video program distributors (''MVPD'') to all qualified persons and no person shall be discriminated against in employment by such entities because of race, color, religion, national origin, age or sex.

Section 76.75 requires that each MVPD employment unit shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a cable entity's policy and practice.

Section 76.79 requires that every MVPD employment unit maintain, for public inspection, a file containing copies of all annual employment reports and related documents.

Section 76.1702 requires that every MVPD place certain information concerning its EEO program in the public inspection file.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–16935 Filed 10–11–06; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 010050–018.

Title: U.S. Flag Discussion Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE Ltd.; A.P. Moller-Maersk A/S; and Hapag-Lloyd USA, LLC.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Farrell Lines Incorporated as a party to the agreement and changes the name of CP Ships USA, LLC to Hapag-Lloyd USA, LLC.

Agreement No.: 011959–001.

Title: Zim/ESL Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Emirates Shipping Line FZE.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Japan to the geographic scope of the agreement. The parties request expedited review.

Agreement No.: 011962–001.

Title: Consolidated Chassis Management Pool Agreement.

Parties: The Ocean Carrier Equipment Management Association and its member lines; the Association's subsidiary Consolidated Chassis Management LLC and its affiliates; China Shipping Container Lines Co., Ltd.; and Mediterranean Shipping Co., S.A.

Filing Party: Jeffrey F. Lawrence, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Australia New Zealand Direct Line, Contship Containerlines, and CP Ships (USA) LLC; adds South Atlantic Consolidated Chassis Pool LLC; Companhia Libra de Navegacao; Hapag-Lloyd USA; Montemar Maritima S.A.; Norasia Container Lines Limited; Matson Navigation Company; Westwood Shipping Lines; and Zim Integrated Shipping Services, Ltd.; and updates the names and addresses of Hapag-Lloyd AG and Hamburg-Süd.

Agreement No.: 011974.

Title: Hanjin/KL/YMUK/UASC Vessel Sharing and slot Chartering Agreement.

Parties: Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Yang Ming (UK), Ltd.; and United Arab Shipping Co., S.A.G.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street; Suite 850; Irvine, CA 92614.

Synopsis: The agreement authorizes the parties to charter slots on and coordinate vessels transiting the Suez Canal in the trades between ports and points in South East Asia, the Indian Subcontinent, Egypt, the Mediterranean, the Red Sea, the Arabian Sea, Europe and North America.

By Order of the Federal Maritime Commission.

Dated: October 6, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–16914 Filed 10–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
017992NF	A&C Import Export Services, Inc., 6317–A 18th Avenue, Suite #302, Brooklyn, NY 11204.	September 8, 2006.
003722NF	Falcon Transportation & Forwarding Corp., 500 Bi-County Blvd., Ste. 213, Farmingdale, NY 11735.	November 20, 2005.
004130F	GSG Investment Inc., dba Worldwide Logistics, Company, dba WWL, dba Trade Passage, 2411 Santa Fe Avenue, Unit C, Redondo Beach, CA 90278.	August 26, 2006.

Peter J. King,

Deputy Director, Bureau of Certification, and Licensing.

[FR Doc. E6–16890 Filed 10–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 017469NF.

Name: Braverman Enterprises, Inc. dba Customs Brokers Intenational.

Address: 5777 W. Century Blvd., Ste. 535, Los Angeles, CA 90045.

Date Revoked: September 26, 2006.

Reason: Failed to maintain valid bonds.

License Number: 002356NF.

Name: Eastern Freight Forwarders, Inc.

Address: 100 West Middle Road, Riviera Beach, FL 33404.

Date Revoked: September 27, 2006.

Reason: Failed to maintain valid bonds.

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–16918 Filed 10–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean

Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

Raylink Shipping Inc., 60 Bay 40th Street, Brooklyn, NY 11214, *Officers:* Tao Zhang (Jason Zhang), President (Qualifying Individual).

AA Connection, LLC, 2198 144th Ave., SE., Bellevue, WA 98007, *Officers:* Mei Mao, Manager (Qualifying Individual), Frances Underhill, Member.

Cybamar Swiss GMBH, Hugostruasse 9 8050 Zurich, Switzerland. *Officer:* Bassem Salhab, Managing Director (Qualifying Individual).

Superior International Group Inc., 355 S. Lemon Avenue, Suite E, Walnut, CA 91789. *Officer:* Steven Wong, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Transportation Freight Group, LLC, 720 Heards Ferry Road, Atlanta, GA 30328, *Officer:* Chad Rosenberg, Member (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Cycle Logical Supply Chain Solutions, LLC, 444 Claude Scott Drive, Canton, GA 30115, *Officer:* Sheila Hines Hewitt, President (Qualifying Individual).

Star USA, Inc., 250 N. Davis Road, Ashland, OH 44805. *Officers:* Michael L. Easton, Vice President (Qualifying Individual), Margaret S. Easton, President.

Dated: October 6, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–16916 Filed 10–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocations

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 018883NF.

Name: Wastaki Freight International, Inc.

Address: 9820 Atlantic Drive, Miramar, FL 33025.

Order Published: FR: 06/28/06 (Volume 71, No. 124, Pg. 36799).

Peter J. King,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. E6–16917 Filed 10–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (EDT), October 16, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED

Parts Open to the Public

1. Approval of the minutes of the September 18, 2006 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Quarterly Investment Policy report.
4. Quarterly Vendor Financial Statement report.
5. Deloitte & Touche Mid-Year Review.
6. Barclays Global Investors' Audit.

Parts Closed to the Public

7. Procurement.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 6, 2006.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 06–8650 Filed 10–6–06; 4:31 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 051 0165]

The Boeing Company, Lockheed Martin Corporation and United Launch Alliance; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 31, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Boeing Lockheed Martin, File No. 051 0165,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Michael R. Moiseyev, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3106.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 3, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/10/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from The Boeing Company (''Boeing''), Lockheed Martin Corporation (''Lockheed''), and United Launch Alliance L.L.C. (''ULA''). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects resulting from the formation of ULA, a joint venture of Boeing and Lockheed that will provide launch services to the Department of Defense (''DoD'') and other U.S. government customers, that are not necessary to achieve the national security benefits that DoD believes will flow from the creation of ULA. The proposed Consent Agreement requires that: (1) ULA cooperate on equivalent terms with all providers of government space vehicles; (2) the space vehicle businesses of Boeing and Lockheed provide equal consideration and support to all launch services providers when seeking any U.S. government delivery in orbit contract; and (3) Boeing, Lockheed, and ULA safeguard competitively sensitive information obtained from other providers of space vehicles and launch services.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to a Joint Venture Master Agreement, dated May 2, 2005, Boeing and Lockheed agreed to form a joint venture to be called ULA (''Proposed Joint Venture''). The Proposed Joint Venture would consolidate manufacturing and development of Boeing and Lockheed's Expendable Launch Vehicles (''ELV''). Sales of launch services to the U.S. government will also be merged into ULA. Boeing and Lockheed will not exchange any cash in the transaction, but each party's contributed businesses are valued in excess of $530.7 million. The Commission's complaint alleges that the Proposed Joint Venture would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the U.S. markets for government medium to heavy (''MTH'') launch services and government space vehicles.

II. The Parties

Boeing maintains its headquarters in Chicago, Illinois. It is the world's largest aerospace company and the second largest supplier to the Department of Defense. Boeing manufactures and sells MTH launch services to the U.S. government on its two ELVs, the Delta II and Delta IV. Delta II provides medium lift capability; Delta IV provides heavy lift capability. Boeing is the third largest supplier of government space vehicles.

Lockheed, based in Bethesda, Maryland, is the largest defense contractor in the United States. Lockheed provides MTH launch services to the U.S. government with its Atlas V ELV. Lockheed is the largest supplier of government space vehicles.

III. Government MTH Launch Services and Space Vehicles

Government MTH launch services are a relevant product market for the purposes of assessing the likely competitive effects of the Proposed Joint Venture. Launch service providers deliver space vehicles (*i.e.,* satellites, interplanetary spacecraft, and other payloads) into earth orbit or beyond into outer space. Payloads in excess of 4,150 pounds require, at minimum, a medium lift launch vehicle to attain low earth orbit, the lowest sustainable orbit. MTH launch vehicles are generally based on a common vehicle configuration, *i.e.,* the Delta IV and Atlas V, and are customized to adjust lift capability by adding ''strap-on'' motors or additional booster engines. There is no alternative technology currently available to deliver satellites and other payloads to space in the medium and heavy weight classes. Light launch vehicles cannot be ''scaled-up'' with strap-on motors or booster engines to increase lift capability. Further, with the U.S. government's demand for communication and reconnaissance capabilities increasing, space vehicles are not expected to become lighter in the future. Accordingly, the U.S. government has no alternatives for the functions performed by space vehicles and no alternative technology to deliver MTH payloads to space.

Government space vehicles are a second relevant product market for the purposes of analyzing the competitive effects of the Proposed Joint Venture. The United States government purchases space vehicles for a multitude of unique (and often classified) applications, including military communications and navigation, reconnaissance, atmospheric observation, and scientific exploratory missions, among other things. Other forms of communication, navigation, reconnaissance, and scientific observation are not substitutes for the unique capabilities of government space vehicles.

The relevant geographic market is the United States. Federal law and national security imperatives require that the U.S. government purchase MTH launch services and space vehicles from domestic companies.

The U.S. markets for government MTH launch services and government space vehicles are highly concentrated. In the U.S. government MTH launch services market, Boeing and Lockheed are the only competitors, and their consolidation will result in a monopoly. Space Exploration Technologies Corp. (''SpaceX'') is attempting to enter the

MTH launch services market, but the timing of its possible entry and the reliability of its MTH launch vehicles is uncertain. Additionally, DoD and other government customers would require several validation launches before purchasing MTH launch services from SpaceX, further postponing the market impact of SpaceX's potential entry. In the U.S. market for government space vehicles, three firms, Boeing, Lockheed, and Northrop Grumman (''Northrop''), account for the large majority of sales.

IV. Entry

Entry into the government MTH launch services market and the government space vehicle market is extremely difficult. For MTH launch vehicles and government space vehicles alike, design and development alone require many years and cost in excess of a billion dollars. Government space vehicles cost approximately $1 billion and take approximately five years to produce. Moreover, because the costs of a launch failure or a space vehicle malfunction are extremely high in terms of dollars and delays in vital national security or scientific services, the U.S. government only procures MTH launch services and space vehicles from firms with an established track record for success. As a result, new entry is unlikely to reverse the anticompetitive effects of the Proposed Joint Venture.

V. Competitive Effects

DoD has contracted with both Boeing and Lockheed to provide MTH launch services through 2011. Under the current procurement program—known as ''Buy III''—Boeing's and Lockheed's fixed costs are covered by DoD, and launch services are purchased at variable cost. The rationale for this program is grounded in a Presidential Decision Directive requiring the U.S. Government to maintain ''assured access to space,'' which is interpreted to require maintaining at least two independent MTH launch vehicle providers.

Despite the absence of current price competition under Buy III, significant anticompetitive effects, including the loss of non-price competition and the loss of potential future price competition, are likely to occur if the proposed transaction is consummated. Under Buy III, launches that are more than two years away may be awarded to either Boeing or Lockheed. As a result, each has an incentive to improve the capability and reliability of its launch services to increase the likelihood that DoD will award it future launches. In addition, Buy III expires in 2011, after which full price and non-price competition pursuant to DoD's usual procurement process may be reinstated. Finally, the creation of the Proposed Joint Venture would deny the government the benefits of a competitive ''down select'' to either the Delta or Atlas ELV if assured access to space is later determined not to require two separate families of launch vehicles.

National security issues, however, are also a vital element of an analysis of the Proposed Joint Venture. To understand the unique national security implications of the Proposed Joint Venture, the Commission has consulted closely with the DoD and other Federal agencies.[2] Indeed, as the primary customer of government MTH launch services and space vehicles and the government agency ultimately responsible for the security of the United States, DoD's views on ULA were particularly significant. Under these unique circumstances, the Commission placed a great deal of weight on DoD's position as to whether ULA would benefit national security and whether the Commission should challenge the Proposed Joint Venture.

DoD has informed the Commission that the creation of ULA will advance U.S. national security interests by improving the United States' ability to access space reliably. DoD considers access to space ''essential'' given the military's increasing dependence on space-based reconnaissance, communication, and munitions-guidance systems. Maximizing the reliability of launch vehicles that provide access to space is of paramount importance to DoD. A single launch failure can result in the loss of a mission-critical payload and threaten military programs by delaying future launches until the cause of the failure is discovered and remedied.

ULA will improve launch vehicle reliability in several ways. First, the single ULA workforce will benefit from a launch tempo (the number of vehicles assembled and launched per year) greater than could be expected from the two separate Lockheed and Boeing workforces. A single workforce with more launch experience will be critical in minimizing mistakes and malfunctions that jeopardize mission success. In addition, integrating the two firms' complementary technologies will infuse each firm's launch vehicles with the technical improvements and innovations of its competitor, further enhancing the reliability of Atlas V and Delta IV. Under these unique circumstances, the increase in reliability can be recognized as an efficiency flowing from the joint venture.

After thorough review, DoD has determined that the national security benefits flowing from ULA would exceed any anticompetitive harm caused by the proposed transaction. DoD has expressed three competitive concerns, however, that are not intrinsically linked to ULA's national security benefits. These vertical issues are competitively significant because ULA's pricing will be regulated, rather than competitive, giving ULA the incentive to exert its monopoly power in related, but unregulated, markets. The first of DOD's concerns is that ULA will favor its parents' space vehicle businesses to the detriment of other space vehicle manufacturers, such as Northrop. Today, competition between Boeing and Lockheed for launch services induces the companies to cooperate with other space vehicle suppliers, notwithstanding the fact that each has incentives to favor its own space vehicle business, out of fear that the other would cooperate and win the launch. The proposed transaction eliminates that threat, and, as a result, reduces the incentives for ULA to optimize its launch vehicles for use with Northrop space vehicles, to the detriment of Northrop and the government.

Second, DoD believes that Boeing and Lockheed may utilize their positions in the space vehicle market to raise barriers to entry in the government MTH launch services market. In this regard, one type of space vehicle procurement presents a problem. Occasionally, DoD requires a space vehicle supplier to select a launch service and provide one price for the space vehicle as well as the launch. In these so-called ''delivery in orbit'' procurements, DoD is concerned that Boeing and Lockheed will have an incentive to defend ULA's monopoly by refusing to consider on equal terms any other launch service competitors that may emerge, such as SpaceX.

Third, the creation of ULA increases the likelihood that competitively sensitive information from third parties will be disclosed among ULA, Boeing, and Lockheed in a manner that harms competition. For example, as vertically integrated suppliers, Boeing and Lockheed may have incentives to share confidential Northrop information obtained as a launch vehicle services suppler with their respective space

[2] *See* Letter from Michael R. Moiseyev, Assistant Director, Bureau of Competition, Federal Trade Commission, to Douglas P. Larsen, Deputy General Counsel (Acquisition & Logistics), Department of Defense, dated July 6, 2006, and Letter from Honorable Kenneth J. Krieg, Under Secretary of Defense for Acquisition, Technology & Logistics, Department of Defense, to Honorable Deborah P. Majoras, Chairman of the Federal Trade Commission, dated August 15, 2006.

vehicle businesses. Similarly, Boeing and Lockheed may have an incentive to share with ULA confidential information that their space vehicle businesses may learn from any future launch vehicle service competitors. This concern arises because third parties, such as Northrop, will no longer be able to utilize competition between Boeing and Lockheed in the MTH launch services market to negotiate the creation of firewalls and other protections for their confidential information.

VI. The Proposed Consent Agreement

To allow the United States to obtain the national security enhancements offered by ULA, the proposed Consent Agreement does not attempt to remedy the loss of direct competition between Boeing and Lockheed Martin under these unique circumstances. Instead, the purpose of the proposed Consent Agreement is to address ancillary competitive harms that DoD has identified as not inextricably tied to the national security benefits associated with the creation of ULA. To ensure that the provisions of the proposed Consent Agreement are followed, it provides for a compliance officer who will be appointed by the Secretary of Defense. The compliance officer will have broad investigative and remedial powers and may interview respondents' personnel, inspect respondents' facilities, and require respondents to provide documents, data, and other information.

To alleviate DoD's concerns in the government space vehicle market, the proposed Consent Agreement requires ULA to cooperate on equivalent terms with all government space vehicle providers seeking to win U.S. government procurement contracts. Because a space vehicle and launch vehicle require significant integration to achieve successful placement of a space vehicle into orbit, space vehicle and launch services providers work closely together pursuant to teaming arrangements when seeking to win government contracts. Pursuant to the proposed agreement, ULA must provide all space vehicle suppliers with equal access to engineering resources, personnel, and technical information. These provisions ensure that ULA cannot give an unfair advantage to the space vehicle businesses of its parents during DoD's space vehicle procurement process.

The proposed Consent Agreement addresses DoD's concern that Boeing and Lockheed will refuse to support or deal with future competitors to ULA by requiring Boeing and Lockheed to provide equal consideration, information, and resources to any launch services competitors of ULA when bidding on a delivery in orbit contract. These provisions prevent Boeing and Lockheed from slowing or deterring entry into the MTH launch services businesses in order to protect ULA's monopoly status. To ensure the parties' compliance with this requirement, Boeing and Lockheed must create selection criteria and have those criteria approved by the compliance officer. Further, the proposed Consent Agreement prohibits Boeing and Lockheed from selecting ULA as a launch services supplier without the prior approval of the compliance officer.

To address DoD's concern that competitive harm may occur as the result of the exchange of confidential information, the proposed agreement forbids ULA, Boeing, and Lockheed from sharing third parties' competitively sensitive information. ULA must establish separate teams to support each space vehicle supplier's efforts to win government contracts and implement procedures, pursuant to the compliance officer's oversight, that will ensure that confidential information is not exchanged among the teams. Additionally, the order requires a number of prophylactic measures designed to ensure that confidential information is not exchanged between ULA and its parents. Pursuant to these provisions, ULA's facilities must be physically separate from those of Boeing and Lockheed, and employees must be able to access only the facilities of their respective employer. If ULA requires technical support from Boeing or Lockheed employees, these employees must sign confidentiality agreements, which must be provided to the compliance officer, agreeing not to disclose the confidential information of any space vehicle supplier teaming with ULA. In addition, for a one-year period, any such employee may not join or assist a Boeing or Lockheed project that is competing with a space vehicle supplier whose confidential information was obtained by the employee during work at ULA.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Pamela Jones Harbour

I concur in the Commission's decision to accept a proposed consent agreement and allow the formation of United Launch Alliance (ULA), a joint venture of The Boeing Company (Boeing) and Lockheed Martin Corporation (Lockheed). I write separately to elaborate on the reasoning behind my vote.

The Analysis to Aid Public Comment (AAPC) states, and I agree, that ''significant anticompetitive effects, including the loss of non-price competition and the loss of potential future price competition, are likely to occur if the proposed transaction is consummated.'' If the proposed ULA joint venture could be scrutinized solely through a competition lens, I would have no choice but to vote for a Commission challenge.

It is impossible, however, to ignore the views of the U.S. Department of Defense (DoD). DoD unequivocally has communicated its position to the Commission: the creation of ULA is critical to protect national security interests, and enabling these unique national security benefits to flow is more important to the public interest than preventing the loss of direct competition between Boeing and Lockheed.

It is my understanding that the Commission and DoD share a long history of cooperation in their review of defense industry transactions, with each agency contributing its specialized expertise and insights. In this case, pursuant to established protocol, staff from the two agencies have worked together for many months to analyze the proposed joint venture.

Moreover, DoD is the primary purchaser of government medium to heavy launch services and government space vehicles. In merger cases outside of the defense context, the Commission and its staff typically rely on customer testimony (among other sources of information) to learn about markets, define the scope of potential competitive harm, and evaluate whether the Commission should take enforcement action.[3] As a matter of legal

[3] *See, e.g.*, Interview with Commissioner Pamela Jones Harbour, Antitrust Source (March 2006), at 9, available at *http://www.abanet.org/antitrust/at-source/06/03/Mar06–HarbourIntrvw3=22f.pdf* (discussing role of customer testimony) (citing, *inter alia,* Deborah Platt Majoras, Recent Actions at the Federal Trade Commission, Remarks Before the

Continued

principle and sound enforcement policy, the views of DoD as a major customer are entitled to no less respect in this case.

From a purely practical perspective, I must consider the potential role of DoD testimony if the Commission were to seek a preliminary injunction over DoD's objections. As a Commissioner, I am responsible for evaluating litigation risk before sending Commission staff into court. Customer testimony, standing alone, certainly would not (and should not) be dispositive, in this or any other merger case. I expect, however, that DoD's conclusions would influence a judge's decision whether to grant a preliminary injunction—especially in light of the national security overlay and DoD's expertise.

The proposed consent order addresses three competitive concerns that, in DoD's view, are not ''intrinsically linked'' to ULA's putative national security advantages. The AAPC acknowledges that the proposed consent agreement ''does not attempt to remedy the loss of direct competition'' and is, instead, intended to ''address ancillary competitive harms that DoD has identified as not inextricably tied to the national security benefits associated with the creation of ULA.''

While I have voted in favor of accepting the proposed consent agreement, I note a few troublesome aspects. The proposed consent agreement departs radically from traditional Commission consent orders in merger cases. Structural remedies are, by far, the preferred way to resolve competitive problems in the horizontal merger context. Conduct restrictions, standing alone, generally are viewed as insufficient to address the underlying market mechanisms from which competitive harm may arise. Here, in lieu of market-based competition, the monopolist ULA will be subjected to an elaborate and highly regulatory system of oversight by a ''compliance officer'' appointed by the Secretary of Defense. Ordinarily, such a system would not be considered an effective remedy for the anticompetitive effects alleged in the Commission's complaint.

I continue to believe that preserving a competitive market structure is the preferred ''fix'' for an anticompetitive horizontal merger. Also, I am somewhat unsettled by the notion that the Commission—an independent, bipartisan federal agency—is, in effect, delegating away too much of its oversight authority to an executive branch agency. I recognize, however, that staff from the Commission and DoD have attempted to craft a workable remedy that will strike an appropriate balance between competition and broader national security interests.

In the end, I am faced with a Hobson's choice: accept a complex and regulatory consent that will prevent some competitive harm; or do nothing, and allow the joint venture to proceed unrestricted. I lack the technical expertise to second-guess DoD's conclusion that allowing the formation of ULA is the best way to preserve national security and protect the public interest. In light of our agencies' established protocol for concurrent review of defense industry transactions, I reluctantly agree that the Commission must give DoD the benefit of the doubt. I therefore vote to accept the proposed consent agreement.

[FR Doc. E6–16862 Filed 10–11–06; 8:45 am]

BILLING CODE 6750–01–P

Dallas Bar Association's Antitrust and Trade Regulation Section (Jan. 18, 2005), available at *http://www.ftc.gov/speeches/majoras/050126recentactions.pdf.*; Chicago Bridge & Iron Co. N.V., *et al.*, FTC Dkt. No. 9300, Opinion of the Commission (2004), available at *http://www.ftc.gov/os/adjpro/d9300/050106opionpublicrecordversion9300.pdf.*; Arch Coal, FTC Dkt. No. 9316, Statement of the Commission (June 13, 2005), available at *http://www.ftc.gov/os/adjpro/d9316/050613commstatement.pdf*; id., Dissenting Statement of Commissioner Pamela Jones Harbour, available at *http://www.ftc.gov/os/adjpro/d9316/050613harbourstatement.pdf*).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology, American Health Information Community Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the ninth meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

DATES: October 31, 2006, from 8:30 a.m. to 1 p.m.

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 800.

FOR FURTHER INFORMATION CONTACT: Visit *http://www.hhs.gov/healthit/ahic.html.*

SUPPLEMENTARY INFORMATION: The Community will discuss personalized healthcare, review standards recommendations from the Health Information Technology Standards Panel, and set priorities for 2007.

A Web cast of the Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/.*

If you have special needs for the meeting, please contact (202) 690–7151.

Dated: October 4, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–8620 Filed 10–11–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

Time and Date:

October 11, 2006 9 a.m.–5 p.m.
October 12, 2006 9 a.m.–5 p.m.

Place: Herbert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: The purpose of the meeting will be to hear testimony on a number of issues of interest to the Subcommittee including but not limited to, concerns and issues regarding implementation of the National Provider Identifier (NPI); recommendations from the Disability Workgroup; an update on the progress of the Medicare Modernization Act electronic prescribing pilots; and standards development organizations (SDOs) recommendations on streamlining the standards adoption process.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Maria Friedman, Health Insurance Specialist, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–6333 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100,

Presidential Building, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 2, 2006.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 06–8621 Filed 10–6–06; 4:12am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a Modified or Altered System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a Modified or Altered System of Records (SOR).

SUMMARY: In accordance with the Privacy Act of 1974, we are proposing to modify or alter an existing SOR, ''Medicare Managed Care Beneficiary Reconsideration (RECON) System,'' System No. 09–70–4003, last published at 67 **Federal Register** 48179 (July 23, 2002). We propose to assign a new CMS identification number to this system to simplify the obsolete and confusing numbering system originally designed to identify the Bureau, Office, or Center within CMS that maintained the system of records. The new assigned identifying number for this system should read: System No. 09–70–0533.

We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will delete routine use number 5 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject. We will broaden the scope of routine uses number 7 and 8, authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers to specific beneficiary/recipient practices that result in unnecessary cost to all Federally-funded health benefit programs

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS' intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this modified system is to collect and maintain information necessary to process requests for reconsideration of service requests or claims by or on behalf of Medicare managed care enrollees, promote the effectiveness and integrity of the Medicare managed care program, and reply to future correspondence related to the case. The information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency; (3) assist third party contacts; (4) assist Quality Improvement Organizations; (5) support litigation involving the agency; and (6) combat fraud, waste, and abuse in Federally-funded health benefit programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the modified or altered routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Date:* CMS filed a modified or altered SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 5, 2006. To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to the CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Beverly Sgroi, Health Insurance Specialist, Division of Appeals Policy, Medicare Enrollment & Appeals Group, Center for Beneficiary Choices, CMS, Mail Stop C2–12–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. She can also be reached by telephone at 410–786–7638, or via e-mail at *Beverly.Sgroi@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1988, CMS established a SOR under the authority of § 1874 of the Social Security Act (the Act) (Title 42 United States Code (U.S.C.) section 1395mm). Notice of this system, RECON, was published in the **Federal Register** (FR) 53 FR 35914 (September 15, 1988), a routine use was added for the Social Security Administration at 61 FR 6645 (February 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), two fraud and abuse routine uses were revised and a third deleted at 65 FR 50552 (August 18, 2000), and the name and security classification were changed as well as deleting a routine use for the state insurance administrator at 67 FR 48179 (July 23, 2002).

I. Description of the Modified or Altered System of Records

A. Statutory and Regulatory Basis for SOR

Authority for maintenance of the system is given under §§ 1852, and 1876

of the Social Security Act (Title 42 U.S.C. 1395w–22, and 1395mm).

B. Collection and Maintenance of Data in the System

RECON contains information concerning Medicare beneficiaries who have been enrolled in a managed care program and who have requested an appeal by CMS, or any person who acts on behalf of these beneficiaries. Information in this system includes, but is not limited to, name, address, social security number, health insurance claim number, health insurance plan name and address, health insurance plan number, medical records and statement of fact, service request/claims data, date of service request/claim received by the health plan, dates of service, beneficiary enrollment form and disenrollment form, verification of enrollment status, date reconsideration request submitted to CMS, and dates of determination by plan and CMS.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release RECON information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of RECON. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to collect and maintain information necessary to process requests for reconsideration of service requests or claims by or on behalf of Medicare managed care enrollees, promote the effectiveness and integrity of the Medicare managed care program, and reply to future correspondence related to the case.

2. Determines that:

a. the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. remove or destroy at the earliest time all patient-identifiable information; and

c. agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or a grantee of a CMS-administered grant program, who have been engaged by the agency to assist in the accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

We contemplate disclosing this information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor, consultant or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. contribute to the accuracy of CMS' proper payment of Medicare benefits,

b. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require RECON information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, other state agencies in their administration of a Federal health program may require RECON information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state.

SSA requires RECON data to enable them to assist in the implementation and maintenance of the Medicare program.

State Insurance Commissioners or other state regulators with similar authority acting in a manner consistent with maintaining the integrity of the Medicare program may require RECON data to assist in accomplishing their activities.

3. To assist a third party contact in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program.

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently

mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, or any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts require RECON information in order to provide support for the individual's entitlement to benefits under the Medicare program, to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

4. To support Quality Improvement Organizations (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care.

The QIO will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. The QIO will assist state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

5. To assist the Department of Justice (DOJ), court or adjudicatory body when:

a. the agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To assist a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require RECON information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that an individual could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National

Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: October 4, 2006.

Charlene Frizzera,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0533

SYSTEM NAME:

''Medicare Managed Care Beneficiary Reconsideration (RECON) System,'' HHS/CMS/CBC.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor sites and at CMS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

RECON contains information concerning Medicare beneficiaries who have been enrolled in a managed care program and who have requested an appeal by CMS, or any person who acts on behalf of these beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes, but is not limited to, name, address, social security number (SSN), health insurance claim number (HICN), health insurance plan name and address, health insurance plan number, medical records and statement of fact, service request/claims data, date of service request/claim received by the health plan, dates of service, beneficiary enrollment form and disenrollment form, verification of enrollment status, date reconsideration request submitted to CMS, and dates of determination by plan and CMS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under §§ 1852, and 1876 of the Social Security Act (Title 42 U.S.C. 1395w-22, and 1395mm).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this modified system is to collect and maintain information necessary to process requests for reconsideration of service requests or claims by or on behalf of Medicare managed care enrollees, promote the effectiveness and integrity of the Medicare managed care program, and reply to future correspondence related to the case. The information retrieved from this system of records will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency; (3) assist third party contacts; (4) assist Quality Improvement Organizations; (5) support litigation involving the agency; and (6) combat fraud, waste, and abuse in Federally-funded health benefit programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or a grantee of a CMS-administered grant program, who have been engaged by the agency to assist in the accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To assist another Federal and/or state agency to:

a. contribute to the accuracy of CMS' proper payment of Medicare benefits,

b. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. assist Federal/state Medicaid programs within the state.

3. To assist a third party contact in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program.

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, or any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

4. To assist Quality Improvement Organizations (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care.

5. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. the agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where the

DOJ has agreed to represent the employee, or

d. the United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To assist a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

7. To assist another Federal agency or an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures.

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that an individual could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on computer diskette and magnetic media.

RETRIEVABILITY:

Information can be retrieved by the name, SSN, and/or HICN of claimant.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will transfer to and maintain in an archival file for a total period not to exceed 7 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Appeals Policy, Medicare Enrollment & Appeals Group, Center for Beneficiary Choices, CMS, Mail Stop C2–12–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, address, date of birth, and gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Sources on information contained in this records system is obtained from the reconsideration requests made by or on behalf of Medicare beneficiaries and from inquiries from congressional offices, health plans, providers, state insurance commissioners, state regulators, disenrollment surveys, Medicare carriers or intermediaries, and QIO records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–16852 Filed 10–11–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0130]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Labeling; Trans Fatty Acids in Nutrition Labeling

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 November 13, 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: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling; Trans Fatty Acids in Nutrition Labeling—21 CFR 101.9(C)(2)(ii) and 101.36(b)(2) (OMB Control Number 0910–0515)—Extension

Section 403(q) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(q)) establishes the requirements for nutrition labeling of foods. In particular, section 403(q)(1)(A) and 403(q)(1)(B) require that the label or labeling of a food bear nutrition information on the amount of nutrients present in a product. Section 403(q)(2) of the act permits FDA to require information about nutrients not specified in section 403(q)(1) if that additional information will assist consumers in maintaining healthy dietary practices. Section 403(q)(5)(F) of the act specifies the nutrition information that must be on the label or labeling of dietary supplements. Under these provisions of the act, FDA issued regulations in § 101.9(c)(2) (21 CFR 101.9(c)(2)) that require information on the amounts of fat and certain fatty acids in food products to be disclosed in the Nutrition Facts panel. Similarly, FDA issued regulations in § 101.36(b) (21 CFR 101.36(b)) that specify the nutrition information that must be on the label or labeling of dietary supplements. In particular, §§ 101.9(c)(2)(ii) and 101.36(b)(2) require that the amount of trans fatty acids present in a food, including dietary supplements, must be declared on the nutrition label of conventional foods, and for dietary supplements, on a separate line immediately under the line for the declaration of saturated fat.

Respondents are expected to be persons and businesses, including small businesses.

In the **Federal Register** of April 11, 2006 (71 FR 18338), FDA published a 60-day notice requesting public comment on the information collection provisions. One comment was received but unrelated to the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Respondent	Total Hours	Total Operating Costs
101.9(c)(2)(ii)	10,490	27	278,100	2	556,200	$155,200
101.36(b)(2)	910	32	29,500	2	59,000	$16,500
Total					615,200	$171,700

[1]There are no capital costs or maintenance costs associated with this collection of information.

FDA believes that the burden associated with the disclosure of trans fatty acid information on labels or in labeling food and dietary supplement products is largely a one-time burden created by the need for firms to revise the labels for those existing products that contain trans fatty acids.

FDA estimated that there were approximately 10,490 firms producing food products and 910 firms producing dietary supplement products that, because they contain trans fatty acids, were affected by §§ 101.9 and 101.36. The agency estimated that these firms needed to revise approximately 278,100 food labels and 29,500 dietary supplement labels, although only about 25 percent of these label changes would have to be made earlier than the firms planned. Because these firms were already disclosing information on total fat, saturated fat, and other significant nutrients on their product labels, based upon its knowledge of food and dietary supplement labeling, FDA estimated that firms would require less than 2 hours per product to comply with the nutrition labeling requirements of §§ 101.9 and 101.36.

Multiplying the total number of responses by the hours per response gives the total hours. FDA estimated operating costs by combining testing and relabeling costs ($44.9 million + $126.8 million). This total was then apportioned between §§ 101.9 and 101.36 according to the proportion of responses for each section. Based on the labeling cost model, FDA expected that, with a compliance period of over 2 years, 75 percent of firms will coordinate labeling revisions required by the trans fat final rule with other planned labeling changes for their products.

Dated: October 5, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–16840 Filed 10–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998D–0777] (formerly Docket No. 98D–0777)

Guidance for Industry on Investigating Out-of-Specification Test Results for Pharmaceutical Production; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Investigating Out-of-Specification (OOS) Test Results for Pharmaceutical Production.'' This guidance provides information for the pharmaceutical industry on how to evaluate laboratory test results that fall outside of specification limits. The guidance is intended to provide clear and consistent communication of

regulatory expectations and to promote voluntary compliance with current FDA requirements.

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

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Paul W. Haynie, Center for Drug Evaluation and Research (HFD–327), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852, 301–827–9020.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Investigating Out-of-Specification (OOS) Test Results for Pharmaceutical Production.'' This guidance document provides guidance to the pharmaceutical industry on investigation of laboratory results that fall outside of specification limits. The guidance addresses investigations of OOS results in the laboratory phase, including responsibilities of the analyst and supervisor, and when indicated, the expansion of an investigation outside of the laboratory to include production processes, and raw materials as appropriate. This guidance is intended to apply to traditional methods of drug product testing and release, based on testing of discrete samples of in-process materials and finished products. The guidance is not intended to address process analytical technology, as routine in-process use of these methods might include other considerations. The agency, in accordance with its August 2002 ''Pharmaceutical CGMPs for the 21st Century'' initiative, encourages modern approaches to manufacturing, monitoring, and control to enhance process predictability and efficiency. The use of continuous on-line testing technologies will be addressed in other agency guidance.

In the **Federal Register** of September 30, 1998 (63 FR 52276), FDA announced the availability of a draft guidance of the same title and gave interested persons an opportunity to submit comments by November 30, 1998. The agency received public comments from a broad spectrum of the pharmaceutical industry. In response to comments received on the draft guidance, the agency made the following changes: (1) Revised the scope and background sections to clarify the applicability of the document, (2) reorganized the sections on investigating OOS results, averaging, and concluding the investigation, and (3) clarified or added more specific guidance on certain issues.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on investigating OOS test results for pharmaceutical production. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–16838 Filed 10–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Genes and Environment Initiative (GEI)—Exposure Biology Program; GEI—Exposure Biology RFA Application Information Meeting

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), DHHS.

ACTION: Notice.

SUMMARY: An Application Information Meeting, hosted by the National Institute of Environmental Health Sciences (NIEHS), the National Cancer Institute (NCI), the National Heart, Lung, and Blood Institute (NHLBI), and the National Institute on Drug Abuse (NIDA), will be held on October 20, 2006, on the NIEHS campus in Research Triangle Park, North Carolina. The meeting will include an overview of the Exposure Biology Program, presentations on the five funding opportunities, an overview of the cooperative agreement mechanism and Grants Management and Review issues, and a question and answer session addressing RFA-related questions.

DATES: October 20, 2006.

ADDRESSES: The GEI-Exposure Biology Program RFA Application Information meeting will be held at the National Institute of Environmental Health Sciences, 111 TW Alexander Drive, Research Triangle Park, North Carolina [Rall Building (Building 101), Rodbell B]. Information on the meeting will be posted on the GEI-Exposure Biology Web site at *http://www.gei.nih.gov/exposurebiology/index.asp.*

FOR FURTHER INFORMATION CONTACT: Anne Thompson, NIEHS, P.O. Box 12233, MD B2–01, Research Triangle Park, NC 27709; telephone: 919–316–4517, or e-mail: *thomps13@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Preliminary Agenda

GEI-Exposure Biology RFA Application Information Meeting, October 20, 2006, National Institute of Environmental Health Sciences, Rall Building (Bldg. 101), Rodbell B, 111 TW Alexander Drive, Research Triangle Park, NC 27709.

1–1:20 p.m. Exposure Biology Program Overview—Brenda Weis (NIEHS).

1:20–1:50 p.m. Biological Response Indicators of Environmental Stress RFAs (U01 and U54)—Sally Tinkle (NIEHS).

1:50–2:10 p.m. Environmental Sensors for Personal Exposure Assessment RFA (U01)—David Balshaw (NIEHS).
2:10–2:30 p.m. Improved Measures of Diet and Physical Activity RFA (U01)—Amy Subar/Cay Loria (NCI/NHLBI).
2:30–2:50 p.m. Field-Deployable Tools for Quantifying Exposures to Psychosocial Stress and to Addictive Substances for Studies of Health and Disease RFA (U01)—Kay Wanke/Kevin Conway (NIDA).
2:50–3:10 p.m. Overview of the ''U'' Mechanism and the Review and Grants Management Process—Gwen Collman (NIEHS).
3:10–3:25 p.m. General Open Discussion and Questions—Everyone.
3:25–3:35 p.m. Break to One-on-One Sessions.
3:35–4 p.m. One-on-One Session—General Q&A.
4–5:30 p.m. One-on-One Session—Individual Q&A.

Attendance, Registration, and Remote Access

The meeting is being held on October 20, 2006, from 1–5:30 p.m. Individuals who plan on attending either in person or by videocast should register on the GEI-Exposure Biology Web site at *http://fmp-8.cit.nih.gov/gei/register.html.* A map of the NIEHS campus, including visitor parking, is available at *http://www.niehs.nih.gov/external/contact.htm.* Please note that a photo ID is required to access the NIEHS campus. Individuals with disabilities, who need Sign Language Interpreters and/or reasonable accommodation to participate in this event, should contact 919–541–2475 voice, 919–541–4644 TTY, through the Federal TTY Relay System at 800–877–8339, or by e-mail: *niehsoeeo@niehs.nih.gov.* Requests should be made at least 5 days in advance of the event.

Availability of Meeting Materials

Meeting details will be posted on the GEI-Exposure Biology Web site at *http://www.gei.nih.gov/exposurebiology/meetings/appinfo06/.* Following the meeting, a recorded videocast of the meeting will be made available on the Web site.

Background Information on the Exposure Biology Program

The Genes and Environment Initiative (GEI) is a four-year, NIH-wide program, which aims to accelerate understanding of genetic and environmental contributions to health and disease. The GEI is comprised of two components—the Genetics Program being led by NHGRI and the Exposure Biology Program being led by NIEHS. The Exposure Biology Program will focus on the development of innovative technologies to measure environmental exposures, diet, physical activity, psychosocial stress, and addictive substances that contribute to the development of disease. The program will support: (1) Development of environmental sensors for measurement of chemicals, dietary intake, physical activity, and psychosocial stressors and addictive substances; (2) development of markers of biological response via common pathogenic mechanisms such as oxidative stress, epigenetic modifications, and DNA damage; (3) integration of biological responses with the development of biosensors; and (4) application of novel assays and biomarkers to GWA studies of gene-environment interaction. This will be accomplished through the use of five cooperative agreements (RFAs) led by three NIH Institutes (NIEHS, NIDA, and NCI/NHLBI). Further information on the GEI-Exposure Biology Program can be found on the GEI-Exposure Biology Web site at: *http://www.gei.nih.gov/exposurebiology/index.asp.*

Dated: October 4, 2006.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences, National Institutes of Health.

[FR Doc. E6–16858 Filed 10–11–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Preparedness Directorate; Proposed Collection; Comment Request; FY03 Domestic Preparedness Program—State and Local Survey

AGENCY: Preparedness Directorate, National Preparedness Task Force (NPTF), Department of Homeland Security (DHS).

ACTION: 60-day notice and request for comments.

SUMMARY: The Preparedness Directorate invites the general public and other Federal agencies the opportunity to comment on the reinstatement of a previously approved information collection request (ICR) OMB 1651–0101 FY03 Domestic Preparedness Program, State and Local Survey. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106).

DATES: Written comments should be received on or before December 11, 2006 to be assured consideration.

ADDRESSES: Direct all written comments to the Preparedness Directorate, NPTF, Attn. Sharon Kushnir, 3801 Nebraska Avenue Complex, Building 3, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Preparedness Directorate, NPTF, Attn.: Sharon Kushnir, 3801 Nebraska Avenue Complex, Building 3, Washington, DC 20528, Tel. (202) 282–9680 or by electronic mail (e-mail) to: *Sharon.kushnir@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Preparedness Directorate invites the general public and other Federal Agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106). Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 submissions of responses.

The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the Preparedness Directorate is soliciting comments concerning the following information collection:

Analysis

Agency: Preparedness Directorate, National Preparedness Task Force

(NPTF), Department of Homeland Security (DHS).

Title: FY03 Domestic Preparedness Program, State and Local Survey.

Type of Collection: Reinstatement with change of a previously approved collection.

OMB Number: 1651–0101.

Frequency: On occasion.

Affected Public: Primary: State, Local and Tribal government; Estimated Number of Respondents: 2,059.

Estimated Time Per Respondent: .33 hours.

Total Burden Hours: 12,242.

Total Burden Cost: (capital/startup): $0.

Total Burden Cost: (operating/maintaining): $0.

Description: This data collection will allow states to: (1) Report current jurisdictional needs for equipment, training, exercises and technical assistance; (2) forecast projected needs for this support and (3) identify the gaps that exist at the jurisdictional level in equipment, training and technical assistance that NPTF and other Federal agencies in the formulation of domestic preparedness policies and with the development of programs to enhance State and local first responder capabilities.

Charlie Church,

Chief Information Officer, Preparedness Directorate, Department of Homeland Security.

[FR Doc. E6–16919 Filed 10–11–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–70]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Contractor's Mortgagor's Cost Breakdowns and Certifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected from mortgagors and contractors to manage and monitor the process of advancing mortgage proceeds for multifamily mortgages on new or rehabilitated housing.

DATES: *Comments Due Date:* November 13, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0044) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications.

OMB Approval Number: 2502–0044.

Form Numbers: HUD–2328, HUD–92330–A, and HUD–2205–A.

Description of the Need for the Information and Its Proposed Use: This information is collected from mortgagors and contractors to manage and monitor the process of advancing mortgage proceeds for multifamily mortgages on new or rehabilitated housing.

Frequency of Submission: On occasion, Occurs once during the construction stage of a multifamily project.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	350	1.92		5.45		3,680

Total Estimated Burden Hours: 3,680.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 5, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–16859 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037-N–71]

Notice of Proposed Information Collection: Comment Request; HUD Initiative for the Removal of Regulatory Barriers

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* December 11, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department or Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202–708–2374 (this is not a toll-free number), or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Rita Yorkshire, AJT, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–0667 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Initiative for the Removal of Regulatory Barriers.

OMB Control Number, if applicable: 2510–0013.

Description of the need for the information and proposed use: This information is to be submitted by grant applicants to obtain higher rating points based on association with successful efforts to remove regulatory barriers which may impede the production of affordable housing.

Agency form numbers, if applicable: HUD–27300.

Members of Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,500	1		3		25,500

Total Estimated Burden Hours: 25,500.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 6, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–16900 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–72]

Notice of Proposed Information Collection: Comment Request; Request Voucher for Grant Payment and Line of Credit Control System (LOCCS) Voice Response System Access Authorization

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 11, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department or Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request Voucher for Grant Payment—LOCCS Voice Response Access Authorization.

OMB Control Number, if applicable: 2535–0102.

Description of the need for the information and proposed use: Request vouchers are used by recipients to request distribution of grant funds through access to the Department's voice activated payments system. Information collected will be used as a mechanism to safeguard Federal funds and to facilitate the payment of funds to recipients.

Agency form numbers, if applicable: HUD–27053, HUD 27054.

Members of Affected Public: Not-for-profit institutions, State, Local or Tribal government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: On occasion.

Reporting Burden: An estimation of the total number of responses annually is 241,176 from 2,000 respondents. The average time per response is 0.27 hours.

Total Estimated Burden Hours: 41,000.

• *Status of the proposed information collection:* Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 6, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–16902 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–24]

Announcement of Funding Awards for Fiscal Year 2006; Tribal Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2006 Tribal Colleges and Universities Program (TCUP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to enable tribal colleges and universities to build, expand, renovate, and equip their own facilities, especially those that are available to and used by the larger community.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8106, Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455 (Telephone number, other than ''800'' TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Tribal Colleges and Universities Program was enacted under section 107 of the CDBG appropriation for Fiscal Year 2006, as part of the ''Veterans Administration, HUD and Independent Agencies Appropriations Act of 2006'' and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Tribal Colleges and Universities Program assist tribal colleges and universities to build, expand, renovate, and equip their own facilities.

The Catalog Federal Domestic Assistance number for this program is 14.519.

On March 8, 2006 (71 FR 11775), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $2.5 million in Fiscal Year (FY) 2006, plus an additional $643,000 that was carried over from last year's competition for the Tribal Colleges and Universities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD funded five applications.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545).

List of Awardees for Grant Assistance Under the FY 2006; Tribal Colleges and Universities Program Funding Competition, by Institution, Address, and Grant Amount

Region VIII

1. Stone Child College, Ms. Melody Henry, Stone Child College, 1082 Bonneau Road, Box Elder, MT 59521. Grant: $600,000.
2. Fort Peck, Mr. Warren Means, Fort Peck, 605 Indian Street, Poplar, MT 59255. Grant: $600.000.
3. Little Big Horn College, Dr. David Yarlott, Little Big Horn, One Forestry Lane, Crow Agency, MT 59022. Grant: $600,000.
4. Turtle Mountain Community College, Mr. David Ripley, Turtle Mountain Community College, Center for Innovation, BIA Road, #7, Belcourt, ND 58316. Grant: $600,000.
5. Dine College, Mr. Cameron Dines, Dine College, 01 Circle Drive Navajo Route 12 Box 188, Tsaile, AZ 86556–0188. Grant: $600,000.

Dated: September 21, 2006.

Darlene F. Williams,

Assistant Secretary.

[FR Doc. E6–16856 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–09]

Delegations of Authority for the Office of Housing-Federal Housing Administration (FHA); Redelegation of Authority to the Office of Affordable Housing Preservation

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: On October 1, 2004, the Assistant Secretary for Housing-Federal Housing Commissioner (Assistant Secretary) redelegated authority to carry out provisions of Multifamily Assisted Housing Restructuring Act (MAHRA) to the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner (General Deputy Assistant Secretary) and to staff within the Office of Affordable Housing Preservation. The purpose of today's notice is to update the redelegation of October 1, 2004.

DATES: *Effective Date:* September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the

Assistant Secretary for Housing—Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, Room 9110, Washington, DC 20410–8000, telephone (202) 708–0614. (This is not a toll-free number.) Persons with hearing or speech impairments may call HUD's toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Office of Affordable Housing Preservation (OAHP) is headed by a Deputy Assistant Secretary and an Associate Deputy Assistant Secretary. OAHP is headquartered in Washington, DC, and has two field offices: one located in Washington, DC, and the other in Chicago, IL. OAHP also has staff out-stationed in New York, NY.

On October 1, 2004, the Assistant Secretary redelegated authority to the General Deputy Assistant Secretary; the OAHP Deputy Assistant Secretary, the OAHP Associate Deputy Assistant Secretary, OAHP Directors, OAHP Deputy Directors, the Bonds and Appeals Manager at HUD Headquarters, and the Rehabilitation Escrow Administration Division Manager out-stationed in New York, NY. That authority has not in any way been revoked or amended and it is reproduced in its entirety in today's notice. However, the Assistant Secretary is now redelegating authority to the OAHP Deputy Assistant Secretary and the OAHP Associate Deputy Assistant Secretary authority to perform two additional functions.

First, the OAHP Deputy Assistant Secretary and the OAHP Associate Deputy Assistant Secretary are being redelegated authority to perform all of the functions of a source selection official. This authority only can be exercised in relation to procurements under the subject matter jurisdiction of OAHP and consistent with HUD procurement policies and procedures, the Federal Acquisition Regulations (FAR), and the HUD Acquisition Regulations (HUDAR).

Second, the OAHP Deputy Assistant Secretary and the OAHP Associate Deputy Assistant Secretary are being authorized to approve, in connection with a project's sale or mortgage refinancing, the assumption, modification, and/or subordination of mortgage restructuring notes and contingent repayment notes previously created during a debt restructuring transaction. This authority is currently redelegated to officials within the Office of Housing's Office of Multifamily Housing programs (as part of the ''asset management'' function category). The authority will continue to be exercised in the Office of Multifamily Housing Programs. Authorizing the OAHP Deputy Assistant Secretary and the OAHP Associate Deputy Assistant Secretary to exercise this authority will ensure that a sale and/or refinancing transaction, that is of the most complex variety, is consummated in a manner that preserves the overall objectives stemming from the original restructuring transaction.

Accordingly, two new functions, numbers (12) and (13), have been added to the authority redelegated under Section I.B below.

The Assistant Secretary for Housing hereby redelegates authority as follows:

I. Authority Redelegated

A. The Assistant Secretary redelegates to the General Deputy Assistant Secretary the following authority:

All authority necessary to carry out the provisions of the Mark-to-Market Program under MAHRA (42 U.S.C. 1437f note), except for the authority to issue and/or waive regulations; and except for the authority to sue and be sued.

B. The Assistant Secretary redelegates to the OAHP Deputy Assistant Secretary and to the OAHP Associate Deputy Assistant Secretary the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer all provisions of MAHRA, including but not limited to the following:

(a) To make eligibility determinations under sections 512 and 516 of MAHRA;

(b) To enter into, modify, and or extend agreements with participating administrative entities under section 513 of MAHRA;

(c) In connection with a restructuring transaction, to make rent and/or mortgage restructuring determinations under sections 514, 515, 517, and 524 of MAHRA; and

(d) To terminate, modify, or affirm any decision on appeal under MAHRA.

(3) In connection with a restructuring transaction, to modify the principal balance, payments, interest rate, and amortization period and other terms of existing FHA-insured and HUD-held mortgages including any HUD or Secretary-held subordinate debt encumbering or otherwise related to a project; and to issue restructuring commitments and closing documents relating to such debt.

(4) To issue HUD forms 92264 and 92264A upon approval of a restructuring plan.

(5) In connection with a restructuring transaction, to approve transfers of physical assets.

(6) In connection with a restructuring transaction, to approve environmental assessment and compliance findings for related laws report, HUD form 4128.1.

(7) To issue a commitment to insure and endorse for insurance a mortgage note given to refinance a HUD-insured or HUD-held mortgage, pursuant to section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n).

(8) For qualified nonprofit entities acquiring projects that are the subject of a restructuring transaction, to modify, assign, or forgive debt created in the restructuring.

(9) To administer escrow accounts and modify the agreement established under the restructuring transaction, for the purpose of addressing immediate and near-term rehabilitation needs of a project.

(10) To perform all source selection official duties, subject to laws, regulations, and HUD policies and procedures governing the procurement process.

(11) To administer grant programs, other than selecting a grantee as only the Assistant Secretary is authorized to function as the Grant Official for the Office of Housing.

(12) To perform all functions of a source selection official in relation to a procurement under the subject matter jurisdiction of OAHP.

(13) To approve, in connection with a project's sale or mortgage refinancing, the assumption, modification, and/or subordination of mortgage restructuring notes and contingent repayment notes previously created during a debt restructuring transaction.

C. The Assistant Secretary redelegates to each OAHP Director and OAHP Deputy Director, in the Field Offices and at Headquarters, the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer the following provisions of MAHRA;

(a) To make eligibility determinations under sections 512 and 516 of MAHRA;

(b) In connection with a restructuring transaction, to make rent and/or mortgage restructuring determinations under sections 514, 515, 517, and 524; and

(c) To reject or hear and decide any appeal made to the Production Office

under 24 CFR 401.645 or another permissible procedure.

(3) In connection with a restructuring transaction, to modify the principal balance, payments, interest rate, and amortization period and other terms of existing FHA-insured and HUD-held mortgages, including any HUD or Secretary-held subordinate debt encumbering or otherwise related to a project; and to issue restructuring commitments and closing documents relating to such debt.

(4) To issue HUD forms 92264 and 92264A upon approval of a restructuring plan.

(5) In connection with a restructuring transaction, to approve transfers of physical assets.

(6) In connection with a restructuring transaction, to approve environmental assessment and compliance findings for related laws report, HUD form 4128.1.

(7) To issue a commitment to insure and endorse for insurance a mortgage note given to refinance a HUD-insured or HUD-held mortgage, pursuant to section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n).

(8) For qualified nonprofit entities acquiring projects that are the subject of a restructuring transaction, to modify, assign, or forgive debt created in the restructuring.

D. The Assistant Secretary redelegates to the Rehabilitation Escrow Administration Manager the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions related to the rehabilitation needs of a project that was the subject of a restructuring transaction, and to waive any directive issued by OAHP that is not mandated by a statute or regulation.

(2) To administer escrow accounts and modify the agreement established under the restructuring transaction, for the purpose of addressing immediate and near-term rehabilitation needs of a project.

E. The Assistant Secretary redelegates to the Bonds and Appeals Manager the following authority:

(1) To modify and sign any documents necessary to perform enumerated functions related to appeals under MAHRA and/or the regulations promulgated under MAHRA.

(2) To reject or hear and decide any appeal under MAHRA and/or the regulations promulgated under MAHRA, except for 24 CFR 401.645.

II. Authority Excepted

The authority redelegated herein does not include the authority to issue or to waive HUD regulations. The authority redelegated herein also does not include the authority to sue or be sued.

III. Further Redelegation

The authority redelegated herein may not be further redelegated.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 15, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–16896 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–08]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA), Redelegation of Authority to the Deputy Assistant Secretary for Finance and Budget

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority to the Office of Finance and Budget.

SUMMARY: On August 11, 2003, the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner issued a comprehensive redelegation of authority to the Deputy Assistant Secretary for the Office of Finance and Budget. This redelegation of authority was published on August 20, 2003. Today's notice updates and republishes in its entirety the redelegation of authority to Office of Finance and Budget.

DATES: *Effective Date:* September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing—Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9110, Washington, DC 20410–8000, phone (202) 708–0614, extension 2125. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section I of this document describes the organization of the Office of Finance and Budget. That organization has not undergone change since the August 20, 2003, publication of the redelegation of authority to Office of Finance and Budget. The August 20, 2003, redelegation of authority was published at 68 FR 50176.

Section II of this notice describes the authority redelegated to the Deputy Assistant Secretary for Finance and Budget. On March 17, 2004, the Assistant Secretary for Housing issued a redelegation of authority (that was not published) authorizing each Office of Housing Deputy Assistant Secretary (DAS) to perform all of the functions of a source selection official. The authority redelegated can only be exercised: (1) In relation to a procurement for which the DAS has subject matter jurisdiction and (2) consistent with HUD procurement policies and procedures, the Federal Acquisition Regulation (FAR), and the HUD Acquisition Regulation (HUDAR). Accordingly, a new function item, designated as L, has been added to the authority redelegated to the Deputy Assistant Secretary for Finance and Budget under Section II below. Otherwise, no change has been made to the authority redelegated to Deputy Assistant Secretary for Finance and Budget on August 11, 2003, and that authority remains in effect.

Section I. Deputy Assistant Secretary for Finance and Budget: Organization

Four offices report to the Deputy Assistant Secretary for Finance and Budget. These are the (1) Office of Evaluation; (2) Office of Budget and Field Resources; (3) Office of Asset Sales; and (4) Office of the Housing-FHA Comptroller. The following is a brief summary of each of these offices.

A. Office of Evaluation

The Office of Evaluation assesses the financial impact of new or revised HUD/FHA programs and policies, new or proposed legislation, and/or new or proposed rules and regulations of the Office of Management and Budget (OMB), the Government Accountability Office (GAO), or the Department of Treasury (Treasury). Based on these assessments, the Office of Evaluation develops recommendations, alternatives, and various scenarios used by managers to determine appropriate actions. The Office of Evaluation is responsible for actuarial analyses and cash flow projections of the FHA insurance funds and evaluates relationships between current market conditions and FHA program goals and objectives. The Office of Evaluation uses both internal and external resources to estimate the financial impact of policy changes or external factors (such as

regional recessions or natural disasters) on FHA programs. The following additional functions are conducted by the Office of Evaluation: monitoring daily cash flows to make sound investments; conducting quarterly analyses of economic developments; and conducting on-going actuarial analyses of FHA's insurance funds.

B. The Office of Budget and Field Resources

The Office of Budget and Field Resources is responsible for the formulation, presentation, and execution of the Office of Housing's program and administrative budgets. This includes fund assignments and control, financial resource management, coordination of financial resources in support of field operations, and budget analysis and reporting. The Office of Budget and Field Resources is responsible for analyzing and evaluating the financial and budgetary impact of new or revised Office of Housing programs and policies, proposed legislation, and new or revised OMB, GAO, or Treasury guidance. The responsibilities and duties of personnel within the Office of Budget and Field Resources pertain to internal HUD matters, do not require rendering decisions that bind HUD in relation to external clients and customers and, therefore, do not require delegations of authority.

C. Office of Asset Sales

The Office of Asset Sales oversees the disposition of mortgage notes acquired by Housing upon a default by the mortgagor and assignment of the note to FHA in return for the payment of a claim. The Office of Asset Sales is responsible for the sale of single family, multifamily, and hospital notes in the manner most advantageous to the federal government. The Office of Asset Sales develops alternative disposition methods that will reduce the acquisition and holding costs of these assets while increasing recovery upon sale.

D. Office of the Housing-FHA Comptroller

The Office of the Housing-FHA Comptroller is a Headquarters operation. The Office of the Housing-FHA Comptroller contains one field component, the Financial Operations Center, located in Albany, New York, that reports to one of the three major Washington, DC, offices within the Office of the Housing-FHA Comptroller. A description of the three major offices follows:

(1) *The Office of Financial Services:* The Office of Financial Services is comprised of three Headquarters divisions, and one field component, the Financial Operations Center, which is located in Albany. The Office of Financial Services provides the policy direction, review, and coordination required to collect insurance premiums, to provide the financial services required to support FHA's multibillion dollar Single Family, Multifamily, and Title I insurance portfolios, and to provide the financial support necessary to manage FHA's asset management and disposition programs. The Office of Financial Services collects and maintains financial data necessary to generate accurate accounting entries to the General and Subsidiary ledgers and FHA's financial statements. The Office of Financial Services supports the systems and staff needed to maintain the insurance operations for FHA programs. The Office of Financial Services provides policy guidance and oversight for FHA's debt management and due diligence activities in the Financial Operations Center and supports FHA's asset sales programs. A summary of each division and the Financial Operations Center follows:

(a) *The Single Family Insurance Operations Division.* This Division is responsible for performing the accounting functions and providing financial management services to FHA approved lenders that originate and/or service FHA Single Family insured mortgages. The Single Family Insurance Operations Division maintains the national portfolio that consists of 13 million insurance records of active and terminated Single Family FHA-insured loans. The Single Family Insurance Operations Division collects the mortgage insurance premiums and processes refunds of premium overpayments to lenders and homeowners.

(b) *The Single Family Post Insurance Division.* This Division is responsible for providing accounting and processing functions necessary to support the FHA single family asset acquisition, management, and disposition operations. The Single Family Post Insurance Division directs and coordinates all operating requirements, systems development, and reporting functions requirements for its areas of responsibility. The Single Family Post Insurance Division provides servicing support, claims processing, and asset disposition processing. It also provides contractor oversight as appropriate.

(c) *The Multifamily Financial Operations Division.* This Division is responsible for performing the accounting and financial management services necessary for the servicing of all multifamily, insured mortgages in the FHA portfolio and the support of the approved lenders that hold FHA-insured mortgages. The Multifamily Financial Operations Division is also responsible for the servicing of HUD-held Multifamily mortgages and the payment of claims for Multifamily defaulted mortgages. These responsibilities include collection of insurance premiums, management of escrow accounts, payments of preservation and protection expenses, and recording of mortgage satisfactions.

(d) *The Financial Operations Center.* The Financial Operations Center (or Center) is responsible for providing policy guidance, system support, and general oversight of FHA debt management, collection, and due diligence/asset liquidation activities for FHA Assets not elsewhere administered. The Center is also responsible for all financial duties relating to the HUD-owned Title I Insurance portfolio such as establishing repayment plans, administering the Treasury offset program, and accepting compromise plans or write-offs.

(2) *The Office of Financial Analysis and Reporting:* The Office of Financial Analysis and Reporting is comprised of three Headquarters Divisions. The Office of Financial Analysis and Reporting is responsible for classifying, summarizing, analyzing, and reporting the financial, accounting, and budgetary activities and transactions for FHA/Housing activities as required for a wholly-owned government corporation, subject to the provisions of the Government Corporation Control Act. The Office of Financial Analysis and Reporting also evaluates the impact of new or proposed OMB, GAO, or Treasury rules and regulations, develops financial performance measures, and oversees cash management and investment. Primary functions include developing and implementing accounting policies and procedures based on Federal Basis Generally Accepted Accounting Principles (FGAAP) requirements and directives and regulations from OMB, Treasury, Congress, and the Administration; reconciling actual cash, accounting, and budgetary events to independent source documents to assure the Department that the general ledger accounts are in order and the budgetary statements accurately represent account balances; participating with auditors, both internal and external, in the planning and conduct of accounting and financial management audits, investigations, and reviews; monitoring daily cash flows; making sound investments; and preparing the FHA Annual Report. A

description of the three divisions follows.

(a) *Financial Analysis and Controls Division.* This Division is responsible for developing and implementing accounting and budgetary reporting policy. It is responsible for ensuring that all requirements, internal and external, relating to financial reporting and accounting are followed in FHA's accounting practices and that any changes to such requirements are communicated to appropriate staff.

(b) *General Ledger Division.* This Division is responsible for the preparation of all the cost accounting, Credit Reform accounting, FGAAP accounting, and budgetary accounting entries that update the General and Subsidiary ledgers of FHA. This includes all daily transactions and FGAAP entries at the end of each accounting period, as required, together with special entries as required by Credit Reform and budgetary accounting.

(c) *The Financial Reporting Division.* This Division monitors and prepares Housing's official responses to audit issues. This involves both program and financial audits performed by both internal and external organizations.

(3) *Office of Systems and Technology:* The Office of Systems and Technology coordinates the development and maintenance of integrated financial and management information systems necessary for accounting and management of the Housing and FHA programs.

Section II. Redelegations to the Office of the Deputy Assistant Secretary for Finance and Budget

The Assistant Secretary redelegates program authority in broad terms to the Deputy Assistant Secretary for Finance and Budget. In addition, the Housing-FHA Comptroller, who reports to the Deputy Assistant Secretary for Finance and Budget, is redelegated concurrent authority, with that of the Deputy Assistant Secretary for Finance and Budget, to oversee the FHA financial operations and other Office of Housing programs. The general functions and a brief description of the authority redelegated are as follows:

A. General Authority

Authority is redelegated to the (1) Deputy Assistant Secretary for Finance and Budget to sign any and all documents necessary to carry out the business of the Office of Finance and Budget, including oversight of FHA financial operations, and (2) the Housing-FHA Comptroller to sign any and all documents necessary to carry out the oversight of FHA financial operations. In concert with the specific authorities redelegated to each of them, the Deputy Assistant Secretary for Finance and Budget and the Housing-FHA Comptroller, in considering a transaction, are also redelegated authority to waive any directives not mandated by statute or regulation, for good cause and with a written justification.

B. Oversight of Financial Operations

The Deputy Assistant Secretary for Finance and Budget is redelegated such authority as is necessary to oversee the financial management and operations of Office of Housing programs. The FHA Comptroller, who reports to the Deputy Assistant Secretary for Finance and Budget, is responsible for overseeing the financial operations of the FHA.

C. Investment of Surplus Funds

The Deputy Assistant Secretary for Finance and Budget is redelegated authority to invest FHA funds in certain specified types of accounts, *e.g.*, U.S. Treasury securities.

D. Borrowing From the U.S. Treasury

The Deputy Assistant Secretary for Finance and Budget is redelegated authority to borrow from the U.S. Treasury such funds as necessary to maintain a positive cash flow in the various FHA insurance funds.

E. Administration of the FHA Title I Loans

The Deputy Assistant Secretary for Finance and Budget is redelegated the authority to perform such duties as are necessary to carry out the financial functions of the FHA Title I Program.

F. Administration of the FHA Title II Insured Loans

The Deputy Assistant Secretary for Finance and Budget is redelegated the authority to perform such actions as may be necessary to carry out the financial functions of all FHA Title II insured loans.

G. Payment of FHA Claims

The Deputy Assistant Secretary for Finance and Budget is redelegated such authority to perform such actions as may be necessary to make FHA claim payments. These duties include but are not limited to determining the appropriate amount of benefits to be paid, making appropriate certifications for payments issued in debentures and/or cash, extending requisite time periods for a lender's submission of financial claim documentation, and collecting, through administrative offset, any indebtedness due HUD.

H. Servicing of HUD-Held Loans

The Deputy Assistant Secretary for Finance and Budget is redelegated the authority to perform such duties as are necessary to carry out the financial responsibilities for HUD-held notes and properties including but not limited to collecting mortgage payments, ensuring the protection and preservation of collateral, establishing and directing the use of funds in escrow accounts, and executing appropriate legal documents upon payment-in-full of a mortgage.

I. Liaison With the U.S. Treasury Department

The Deputy Assistant Secretary for Finance and Budget is redelegated such authority as is necessary to process and effect such transactions with the U.S. Treasury as may be required in the normal operation of FHA operations.

J. Sale of FHA Assets

The Deputy Assistant Secretary for Finance and Budget is redelegated such authority as is necessary to sell Secretary-held mortgages.

K. Management of HUD-Held Mortgages, Notes, and HUD-Owned Properties

The Deputy Assistant Secretary for Finance and Budget is redelegated such authority as is necessary to make disbursements on HUD-owned or managed properties for the payment of property-related expenses, including property taxes, utility bills, property management fees, etc.

L. Source Selection Official

The Deputy Assistant Secretary for Finance and Budget is redelegated authority to perform all functions of a source selection official.

Section III. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary-Deputy Federal Housing Commissioner to the Deputy Assistant Secretary for Finance and Budget may be redelegated by memorandum. A copy of the redelegation will be maintained by the employee receiving the delegation and by the Deputy Assistant Secretary for Finance and Budget and available for public inspection. The Housing-FHA Comptroller may not redelegate the authority redelegated herein.

Section IV. Revocation of Delegations

The Assistant Secretary for Housing-Federal Housing Commissioner or the

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner may, at any time, revoke any of the authority redelegated herein. Notice of any revocation will be published in the **Federal Register**. This redelegation of authority supersedes and/or revokes all prior redelegations of authority to staff in the Office of the Housing-FHA Comptroller.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 15, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E6–16901 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–10]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA); Redelegations of Authority to Other HUD Offices

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegations of authority.

SUMMARY: This notice updates and reiterates the notice of redelegations of authority issued on August 11, 2003, by the Assistant Secretary for Housing—Federal Housing Commissioner to HUD officials in HUD offices other than the Office of Housing, and published on August 20, 2003. This notice also updates the redelegation of authority issued on March 4, 2004, by the Assistant Secretary for Housing—Federal Housing Commissioner to the General Counsel, published on March 12, 2004.

DATES: *Effective Date:* September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing—Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9110, Washington, DC 20410–8000, phone (202) 708–0614, extension 2125. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service number at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Housing legislation and programs are implemented and administered by the Office of Housing. However, in some instances, the nature of a statute or program, or component thereof, requires another HUD office to conduct the program or participate in its administration. On August 11, 2003, the Assistant Secretary for Housing—Federal Housing Commissioner (Assistant Secretary for Housing) redelegated authority to the Office of Fair Housing and Equal Opportunity (FHEO) and the Office of the General Counsel, and revoked all prior redelegations from the Assistant Secretary for Housing to other HUD offices. This notice of redelegations of authority was published on August 20, 2003, at 68 FR 50173.

On March 5, 2004, the Assistant Secretary for Housing issued a redelegation of authority to the General Counsel, the purpose of which was to clarify and supplement the authority that was previously redelegated to the General Counsel. That notice of redelegation of authority was published on March 12, 2004, at 69 FR 11880.

Today's notice reaffirms and consolidates, into this one document, the authority previously redelegated by the Assistant Secretary for Housing to the Assistant Secretary for Fair Housing and Equal Opportunity and to the General Counsel. Please note that the redelegation of authority to the General Counsel does not affect the authority of the Mortgagee Review Board, described in 24 CFR 30.35, or of the Assistant Secretary for Housing to initiate civil money penalty actions.

II. Authority Redelegated

The Assistant Secretary for Housing and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner (General Deputy Assistant Secretary for Housing) retain and redelegate, to the officials listed below, the power and authority described as follows:

A. Assistant Secretary, Office of Fair Housing and Equal Opportunity

Authority is redelegated on a nation-wide basis to exercise the fair housing provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) at 12 U.S.C. 4545, and under the regulations at 24 CFR part 81, subpart C, as described in the **Federal Register** notice of delegation of authority of February 12, 1999 (64 FR 7407), and subject to the limitations and exceptions set forth in that February 12, 1999 notice.

B. General Counsel, Office of the General Counsel

Authority is redelegated to the General Counsel to issue a notice of violation under the terms of a regulatory agreement and a notice of default under the terms of a housing assistance payments contract and to take all actions permitted under 24 CFR 30.36, 24 CFR 30.45, and 24 CFR 30.68.

III. Authority Excepted

The authority delegated in Section II does not include the authority to waive regulations under the program jurisdiction of the Assistant Secretary for Housing.

IV. Further Redelegations

A. The authority redelegated to the Assistant Secretary for Fair Housing and Equal Opportunity may not be redelegated.

B. The General Counsel is authorized to redelegate the authority redelegated in Section II.B. above. This notice has no impact upon the redelegation of authority issued by the General Counsel to the Departmental Enforcement Center on March 5, 2004, and published on March 12, 2004. (See notice of redelegation of authority published on March 12, 2004, at 69 FR 11879.)

V. Prior Redelegations Superseded

The redelegations of authority to the Assistant Secretary for Fair Housing and Equal Opportunity and the General Counsel, published on August 20, 2003 and the redelegation of authority to the General Counsel published on March 12, 2004, are reiterated in this notice.

VI. Revocation of Authority

The Assistant Secretary for Housing—Federal Housing Commissioner may revoke the authority authorized herein, in whole or part, at any time. Any revocation or modification of a redelegation will be published in the **Federal Register**.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 15, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–16893 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–05]

Consolidated Delegation of Authority for the Office of Housing—Federal-Housing Administration (FHA)

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revocation and delegation of authority.

SUMMARY: This notice supersedes the 2003 consolidated delegation of authority to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner, published on August 20, 2003. This delegation supersedes and/or revokes all prior delegations from the Secretary to the Assistant Secretary for Housing—Federal Housing Commissioner. Additionally, the authority now being delegated applies not only to current statutory authorities, but also to later-enacted statutes and statutory amendments that pertain to the legislative acts cited in the delegation.

DATES: *Effective Date:* September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing—Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9110, Washington, DC 20410–8000; telephone (202) 708–1490. (This is not a toll-free number.) Persons with hearing or speech impairments may call HUD's toll-free Federal Information Relay Service at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice supersedes and specifically amends in two ways the prior consolidated delegation of authority issued on August 11, 2003, and published on August 20, 2003 (68 FR 50157). First, it clarifies the nature and scope of the authority delegated to the Assistant Secretary for Housing—Federal Housing Commissioner (Assistant Secretary) and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner (General Deputy Assistant Secretary) in relation to the regulation of government sponsored enterprises (GSEs) under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (FHEFSSA). That authority continues to be set forth in Subpart E of this delegation of authority. In addition, the delegation has been updated (in a new section (32) under Subpart B) to include more recently issued authority, the Legacy Act of 2003 (Public Law 108–186), which was enacted by Congress in December 2003. Finally, section (23) of Subpart B has been updated to indicate that the Assistant Secretary is responsible for carrying out the provisions of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) (42 U.S.C. 1437f note). In connection with the latter authority, the Secretary issued a redelegation of authority to the Assistant Secretary effective October 1, 2004 (69 FR 62070, October 22, 2004), while also revoked authority previously redelegated to the Director of the Office of Multifamily Housing Assistance Restructuring, whose office was terminated on September 30, 2004.

Subpart E of the 2003 consolidated delegation of authority for the Office of Housing referred the reader to a delegation of authority concerning the regulation of the GSEs that was published on February 12, 1999, at 64 FR 7406. However, that 1999 delegation was unclear about the functions that were delegated to the Assistant Secretary regarding determinations whether mortgage data and information received from the GSEs were proprietary or were releasable to the public. This notice makes clear that the Secretary has delegated, to the Assistant Secretary and the General Deputy Assistant Secretary, the portion of the Secretary's general regulatory authority that gives the Secretary the authority to make determinations regarding whether any activity of a GSE is or is not authorized under its Charter Act and to request that the Director of the Office of Federal Housing Enterprise Oversight take action against a GSE that has engaged, is engaging, or is about to engage in any activity that is not authorized under its Charter Act. Authority is also delegated to the Assistant Secretary and the General Deputy Assistant Secretary to determine whether mortgage data or other information provided to HUD by Fannie Mae or Freddie Mac are proprietary or publicly releasable and to issue any rule, regulation, order, notice, letter, or other document regarding such determinations as may be necessary.

HUD is also publishing a separate delegation of authority to the Assistant Secretary for Fair Housing, of all the power and authority under the fair housing provisions of FHEFSSA set forth at 12 U.S.C. 4545, and in HUD's regulations at 24 CFR part 81, subpart C.

Section A. General Delegation of Authority

Unless otherwise stated, the Assistant Secretary and the General Deputy Assistant Secretary are each delegated the power and authority of the Secretary of HUD with respect to all housing programs and functions, including, but not limited to, those listed below in Sections B through E, with authority to redelegate to employees of the Department, unless otherwise specified. Only the Assistant Secretary, however, is delegated the authority to issue rules or regulations to carry out housing programs and to waive regulations. This authority may not be redelegated. The Assistant Secretary, as well as other Office of Housing officials, are authorized to cause the seal of HUD to be affixed to, and to authenticate copies of documents. The authority to affix the seal and authenticate copies of documents is also addressed in a separate delegation of authority. Finally, the authority delegated herein supersedes and revokes prior delegations from the Secretary to the Assistant Secretary and applies both to current authority and later enacted statutory authority.

Section B. Multifamily Programs—Authority Delegated

The authority of the Secretary of HUD with respect to the Office of Housing's multifamily housing programs and functions that are authorized under the following:

(1) Titles I, II, V, VI, VII, VIII, IX, and XI of the National Housing Act (12 U.S.C. 1701 *et seq.*) in exercising the power and authority delegated under this section;

(2) Section 202 of the Housing Act of 1959, as such section existed prior to the enactment of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q note), as amended by section 811 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–561);

(3) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by Subtitle A of Title VIII of the National Affordable Housing Act of 1990, with respect to the provision of capital advances and rental housing assistance for supportive housing for the elderly, as amended by Subtitle C of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–561);

(4) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) with respect to the Rent Supplement program for disadvantaged

persons, including the authority to administer contracts and requirements for rent supplements;

(5) Section 8 Housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), including the authority delegated under Executive Order 11196 to approve the undertaking of any annual contribution, grant, or loan, or any agreement or contract for any annual contribution, grant, or loan;

(6) Section 808 of the National Affordable Housing Act (Public Law 101–625), and sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (42 U.S.C. 13631) with respect to the provision of service coordinators in federally assisted housing;

(7) Sections 201, 202, 203, and 204 of the Housing and Community Development Amendments of 1978, and the amendments contained in Title I of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, 12 U.S.C. 1701 note);

(8) The Housing Development Grant Program, pursuant to Section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o);

(9) Section 4(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3533), which provides that the Assistant Secretary is the Assistant to the Secretary who shall be responsible for providing information and advice to nonprofit organizations desiring to sponsor housing projects assisted under programs administered by the Department;

(10) The authority of the Secretary under the Revolving Fund for Liquidating Programs (12 U.S.C. 1701q) to manage, repair, lease, and otherwise take all actions necessary to protect the financial interest of the Secretary in properties as to which the Secretary is mortgagee-in-possession, and to manage; repair; complete; remodel and convert; administer; dispose of; lease; sell or exchange for cash or credit at public or private sale; pay annual sums in lieu of taxes on; obtain insurance against loss on; and otherwise deal with properties as to which the Secretary has acquired title based on a loan made under the former Section 312 Rehabilitation Loan Program;

(11) The function of the Secretary under Section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)), concerning the sale, exchange, or lease of real or personal property and the sale or exchange of securities or obligations with respect to any multifamily project;

(12) Title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001, *et seq.*);

(13) The authority to endorse any checks or drafts in payment of insurance losses on which the United States of America, acting by and through the Secretary or the Secretary's successors or assigns, is a payee (joint or otherwise) in connection with the disposition of the government's interest in property or lease of such property;

(14) Section 2 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701t);

(15) The Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3701–3717);

(16) To act as an Attesting Officer with authorization to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm, electronic document, or any other document is a true copy of that in the files of the Department;

(17) The Congregate Housing Services Program under Section 802 of the National Affordable Housing Act (42 U.S.C. 8011);

(18) The HOPE for Homeownership of Multifamily Units Program under Title IV, Subtitle B, of the National Affordable Housing Act (42 U.S.C. 12701, 12871);

(19) The Multifamily Risk Sharing Programs pursuant to Section 542 of the Housing and Community Development Act of 1992 (Public Law 102–550, October 28, 1992);

(20) Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715 note), and the Emergency Low-Income and Housing Preservation Act of 1987 (ELIHPRA), as amended by Subtitle A of Title VI of the National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRA), as further amended by Title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*);

(21) Section 811 of Subtitle B of Title VIII of the National Affordable Housing Act of 1990 (42 U.S.C. 8013), with respect to the provision of capital advances and rental housing assistance for supportive housing for persons with disabilities as amended by Subsection C of Title VIII of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569);

(22) Section 581 of the National Affordable Housing Act of 1990 (Pub. L. 101–625) and Chapter 2, Subtitle C of Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 1190 *et seq.*), relating to the federally assisted low-income housing drug elimination program;

(23) The Portfolio Reengineering Demonstration Program authorized under Sections 211 and 212 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, 110 Stat. 2874, approved September 26, 1997), as re-authorized and amended by Section 522(b) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, 111 Stat. 1344, 1446, approved October 27, 1997) (42 U.S.C. 1437f note); all provisions of the Mark-to-Market Extension Act of 2001 (Title VI of Pub. L. 107–116); and all provisions of the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) (42 U.S.C. 1437f note);

(24) To take actions necessary to ensure that participants in HUD programs under the jurisdiction of the Assistant Secretary for Housing comply with the regulations, rules, and procedures of the Department including, but not limited to, imposing limited denials of participation and acting as the debarring official in proceedings under part 24 of Title 24 of the Code of Federal Regulations;

(25) The Rental Assistance Program authorized by Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(26) The management and disposition of HUD-owned multifamily projects and HUD-held mortgages and the provision of grants and loans, as provided under Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204) (12 U.S.C. 1715z–11a);

(27) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u);

(28) To the Assistant Secretary only, without the power to redelegate, the authority to issue regulations under Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) and to waive regulations under Section 7(q)(2) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)(2));

(29) The authority to administer the provisions of Section 7(i) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)), relating but not limited to the foreclosure of mortgages, sales of foreclosed properties, and the modification of terms of the contracts;

(30) The authority to administer the provisions of Section 7(j) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(j)), relating to the establishment of fees and charges;

(31) The authority to administer the provisions of Section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(k)), relating to the acceptance of voluntary services;

(32) The authority to administer the provisions of the Legacy Act of 2003 (Pub. L. 108–186).

Section C. Single Family Programs—Authority Delegated

The authority of the Secretary of HUD with respect to the Office of Housing single family housing programs and functions, and the authority with respect to mortgagee activities (including Title I lenders) for single family programs of the following:

(1) Titles I, II, V, VI, VIII, and IX of the National Housing Act (12 U.S.C. 1701 *et seq.*);

(2) Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

(3) The Interstate Land Sales Full Disclosure Act, Title XIV of the Housing and Urban Development Act of 1968 (15 U.S.C. 1701, *et seq.*);

(4) The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601, *et seq.*);

(5) The authority to prescribe standards for designs, construction, and alteration of structures for programs (other than public housing programs) prescribed under the National Housing Act (12 U.S.C. 1701 *et seq.*);

(6) To approve or disapprove variances from the design or construction standards for all programs (other than public housing programs) under the National Housing Act (12 U.S.C. 1701, *et seq.*);

(7) The authority to evaluate and determine the technical suitability of housing products and materials under Section 21 of the National Housing Act (12 U.S.C. 1735e), and to issue engineering and technical bulletins governing the acceptability of housing system components, materials, and methods of construction;

(8) All matters and requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 and Title VI of the Housing and Community Development Act of 1974 (42 U.S.C. 5401–5426);

(9) To convey and execute deeds of conveyance, deeds of release, assignments, satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein, heretofore, or hereafter acquired by the Secretary pursuant to the National Housing Act (12 U.S.C. 1701, *et seq.*);

(10) To perform the functions of the Secretary under Section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)), concerning the sale, exchange, or lease of real or personal property, and the sale or exchange of securities or obligations with respect to any single family property;

(11) The authority to endorse any checks or drafts in payment of insurance losses on which the United States of America, acting by and through the Secretary or his/her successors or assigns, is a payee (joint or otherwise), in connection with the disposition of the government's interest in property or lease of such property;

(12) The authority of the Secretary under the Revolving Funds for Liquidating Programs (12 U.S.C. 1701q) to manage, repair, lease, and otherwise take all actions necessary to protect the financial interest of the Secretary in properties as to which the Secretary is mortgagee-in-possession and to manage, repair, complete, remodel and convert, administer, dispose of, lease, sell or exchange for cash or credit at public or private sale, pay annual sums in lieu of taxes on, obtain insurance against loss on, and otherwise deal with properties as to which the Secretary has acquired title based on a loan under the former Section 312 Rehabilitation Loan Program;

(13) To act as an Attesting Officer with authorization to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require one and to certify that a copy of any book, record, paper, microfilm, electronic document, or any other document is a true copy of that in the files of the Department;

(14) The Nehemiah Housing Opportunity grant program in Sections 609–613 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715e);

(15) To take actions necessary to ensure that participants in HUD programs comply with regulations, rules, and procedures of the Department including, but not limited to, imposing limited denials of participation and acting as the debarring official in proceedings under part 24 of Title 24 of the Code of Federal Regulations (24 CFR part 24);

(16) To appoint a Special Assistant for Cooperative Housing pursuant to Section 102(h) of the Housing Amendments of 1955 (12 U.S.C. 1715e note);

(17) To the Assistant Secretary only, without the power to redelegate, the authority to issue regulations under Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)) and to waive regulations under Section 7(q)(2) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)(2)).

Section D. Financial Operations and Management Controls-Authority Delegated

(1) To provide financial management for programs administered by the Assistant Secretary;

(2) To formulate and develop financial management and internal control policies; to oversee compliance by the Office of Housing and Federal Housing Administration (FHA) with OMB Circulars A–123 (Management and Accountability Control), A–127 (Financial Management Systems), and A–130 (Federal Information Resources) as they apply to Housing and FHA financial and program operations; to establish and supervise the development and execution of uniform Housing and FHA policies, principles, and procedures necessary for financial management; to issue directions that implement these policies and modification to existing products;

(3) To maintain the FHA General Ledger and the chart of accounts of the FHA funds;

(4) To establish and maintain appropriate financial management controls over Housing and FHA programs; to provide technical guidance to organizational elements under the Assistant Secretary in the field of accounting and fiscal matters; to track Housing and FHA financial activities against the budget and business plan; and to coordinate the development and maintenance of integrated financial management systems needed for accounting and management of housing and FHA programs;

(5) To prepare reports; to report to the Assistant Secretary, other offices, the Department's Chief Financial Officer, and other HUD Regional and Field staff on the financial condition of FHA mortgage insurance programs (including actual and projected cash flows, accounting and performance reports, program effectiveness controls, and insurance reserves analyses); to publish an annual FHA report reflecting prior year accomplishments and the audited financial statements; and to prepare internal reports on the financial condition of Office of Housing and FHA programs;

(6) To develop and maintain integrated financial management systems; and to direct studies and audits of the accounting and financial information and systems functions;

(7) To prepare and execute policies and systems to measure the financial and actuarial soundness of Office of Housing and FHA programs; and to ensure the conduct of an independent annual audit of the FHA program financial statements;

(8) To obtain reports, information, advice, and assistance in carrying out assigned functions; and to develop financial management information to assist in developing budget, financial, accounting, and cost-accounting information on a timely basis;

(9) To direct the investment of money held in the various Office of Housing/FHA insurance funds that is not needed for current operations, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States;

(10) To borrow funds from the Treasury to facilitate credit reform programs.

Section E. Regulations of Government-Sponsored Enterprises (GSEs)-Authority Delegated

(1) With the exception of the income adjustments and determinations under 12 U.S.C. 4502(8)(B), (9), (10)(B), and (19)(B), and the authority and power provided to Administrative Law Judges under 24 CFR 81.82(b)(2) and (b)(3), 81.83(d)(3)–(4), and 81.84, the Secretary delegates to the Assistant Secretary and the General Deputy Assistant Secretary all the power and authority with respect to housing goal activities in 12 U.S.C. 4541 and 4561–89 including, but not limited to: monitoring the GSEs' performance under the housing goals and special affordable subgoals, and enforcing compliance with the housing goals and special affordable subgoals, including determining whether a GSE has failed, or is likely to fail, to meet a housing goal; providing written notices to the GSEs of failure or substantial probability of failure to meet a goal; extending response periods for the GSEs; requiring a housing plan; providing required notices to Congress under the housing goal provisions; reviewing housing plans; approving and disapproving housing plans; monitoring compliance with housing plans; issuing cease-and-desist orders and imposing civil money penalties; requesting the Attorney General to bring actions; settling and depositing civil money penalties; and making orders and agreements publicly available.

(2) With the exception of the authority and power provided to Administrative Law Judges under 24 CFR 81.82(b)(2) and (b)(3), 81.83(d)(3)–(4), and 81.84, the Secretary delegates to the Assistant Secretary and the General Deputy Assistant Secretary all the power and authority with respect to prior approval of new programs under 12 U.S.C. 4542 including, but not limited to: requiring under 24 CFR 81.52 that GSEs submit information about a program and requiring that GSEs submit new program requests; approving and disapproving new program requests; and extending the period for programs of review.

(3) With the exception of the authority and power provided to Administrative Law Judges under 24 CFR 81.82(b)(2) and (b)(3), 81.83(d)(3)–(4), and 81.84, the Secretary delegates to the Assistant Secretary and the General Deputy Assistant Secretary all the power and authority with respect to reporting activities in 12 U.S.C. 1456(e)–(f), 1723a(m)–(n), and 4547, and under 24 CFR 81.102, including but not limited to: determining the form of data submitted; requiring the submission of additional data; requiring additional reports and other information concerning GSE activities; requiring the GSEs to provide data underlying any of the reports required under 24 CFR part 81 and to conduct additional analyses concerning any report required under 24 CFR part 81; to independently verify the accuracy and completeness of data, information, and reports provided by each GSE, including conducting on-site verification when such steps are reasonably related to determining whether a GSE is complying with 12 U.S.C. 4541–4589 and the GSE's Charter Act; determining whether a GSE has failed to provide the certification required under 24 CFR 81.102(b); determining whether a GSE's year-end data contains any errors, omissions, or discrepancies and, if so, if a GSE fails to correct or resolve each error, omission, or discrepancy, making appropriate adjustments to a GSE's year-end data and taking additional enforcement action against a GSE for any material error, omission, or discrepancy in its year-end data under 24 CFR 81.102(c); determining whether there are any errors, omissions, or discrepancies in a GSE's data for a prior year; requiring a GSE to correct any material error, omission, or discrepancy in its data for a prior year and, should a material error, omission, or discrepancy in a GSE's data for a prior year be not corrected by its purchase of a sufficient amount or type of mortgages, issuing a notice that the GSE has failed a housing goal or Special Affordable subgoal for a prior year and seeking additional enforcement remedies and/or pursuing any other available civil or administrative remedies under 24 CFR 81.102(d); taking enforcement action under 24 CFR 81.102(e)(2), if the Assistant Secretary or General Deputy Assistant Secretary determines under 24 CFR 81.102(e)(1) that a GSE has failed to submit data, information, or reports; establishing standards and procedures for and imposing civil money penalties; requesting the Attorney General to bring enforcement actions; settling and depositing civil money penalties; making orders and agreements publicly available; and requesting the Director of the Office of Federal Housing Enterprise Oversight (OFHEO) to bring actions under 12 U.S.C. 4631, 4632, and 12 U.S.C. 4636 for violations of 12 U.S.C. 1456(e)–(f), 1723a(m)–(n), and 4547, and 24 CFR 81.102.

(4) The Secretary delegates to the Assistant Secretary and the General Deputy Assistant Secretary all the power and authority with respect to access to information provided by the GSEs governed by 12 U.S.C. 4525, 4543, and 4546 including, but not limited to: recommending the invocation of 5 U.S.C. 552(b)(3), (4), (5), (6), or (8); and to determine whether mortgage data or other information provided by the GSEs to HUD are proprietary or publicly releasable and to issue any rule, regulation, order, notice, letter, or other document regarding such determinations as may be necessary.

(5) The Secretary delegates to the Assistant Secretary and the General Deputy Assistant Secretary the portion of the Secretary's general regulatory power under 12 U.S.C. 4541 that gives the Secretary the authority to make determinations regarding whether any activity of a GSE is or is not authorized under its Charter Act and to request the Director of the Office of Federal Housing Enterprise Oversight to take action, under 12 U.S.C. 4631(a)(3) and 12 U.S.C. 4632 through 12 U.S.C. 4636, against a GSE that has engaged, is engaging, or is about to engage in any activity that is not authorized under its Charter Act. The authority delegated herein does not include any other portion of the Secretary's general regulatory authority under 12 U.S.C. 4541.

(6) The Secretary delegates to the Assistant Secretary and the General Deputy Assistant Secretary all the power and authority with respect to book-entry procedure activities in 24 CFR part 81, subpart H, including, but

not limited to, establishing certain procedures for Federal Reserve Banks and waiving book-entry regulations.

(7) The Secretary delegates to the Assistant Secretary and the General Deputy Assistant Secretary all the power and authority with respect to OFHEO activities in 12 U.S.C. 4513(c), 4516(g)(1)–(2), and 4548(b), including, but not limited to: reviewing and approving certain actions of the OFHEO Director; and receiving and commenting to Congress on OFHEO's financial plans, forecasts, and operations reports. When taking action relating to OFHEO under this paragraph, the Assistant Secretary and the General Deputy Assistant Secretary shall consult with the Secretary.

(8) The Secretary delegates to the Assistant Secretary only, without the power to redelegate, all the power and authority with respect to issuing regulations under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) and waiving regulations promulgated under that Act.

(9) The Secretary delegates to the Assistant Secretary and the General Deputy Assistant Secretary the power and authority to take any appropriate action to implement the power and authority delegated under this delegation.

Section F. Authority Excepted

Authority excepted from this delegation of authority from the Secretary of Housing and Urban Development to the Assistant Secretary and the General Deputy Assistant Secretary is the authority to sue and be sued.

Section G. Conclusive Evidence of Authority

Any instrument or document executed in the name of the Secretary by an employee of the Department of Housing and Urban Development under the authority of this delegation purporting to relinquish or transfer any right to, title to, or interest in, real or personal property, shall be conclusive evidence of the authority of such employee to act for the Secretary in executing such instrument or document.

Section H. Delegations Revoked

This delegation supersedes and/or revokes all prior delegations from the Secretary to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 15, 2006.

Alphonso Jackson,

Secretary.

[FR Doc. E6–16857 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–06]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA); Redelegation of Authority Regarding Single Family Housing Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority for single family housing programs.

SUMMARY: On August 11, 2003, the Assistant Secretary for Housing-Federal Housing Commissioner issued an up-to-date comprehensive delegation of authority for single family housing programs. This notice of delegation of authority was published on August 20, 2003. This notice amends that redelegation of authority to reflect changes that have occurred since that time.

DATES: *Effective Date:* September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Wanda Sampedro, Special Assistant to the Deputy Assistant Secretary for the Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9282, Washington, DC 20410, telephone (202) 708–2676, extension 2324. (This is not a toll-free number). Persons with hearing or speech impairments may access this number by calling HUD's toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section I. of this notice sets forth the organization of the Office of Single Family Housing. Since publication of the August 20, 2003, delegation of authority (68 FR 50167), a new division, the Home Valuation Policy Division, has been added to the Office of Single Family Program Development. Consequently, Section I. has been amended to reflect the new division in the organization of the Office of Single Family Housing. The authority redelegated to the new division is reflected in Section III.E of this notice.

Also, the redelegation of authority, at Section III, has been amended, at Section III.A, to indicate that source selection official authority has been redelegated by the Assistant Secretary for Housing—Federal Housing Commissioner (Assistant Secretary) to the Deputy Assistant Secretary for Single Family Housing and the Associate Deputy Assistant Secretary for Single Family Housing. Homeownership Center (HOC) Directors have also been redelegated source selection official authority, in Section III.L., subject to a dollar cap on their field-office based contracts, within their respective subject matter and geographical jurisdictions. These unpublished redelegations were most recently issued on March 17, 2004. The exercise of all source selection official authority (exercised in Headquarters and in the field) is subject to compliance with the Federal Acquisition Regulation (FAR); HUD Acquisition Regulation (HUDAR); and HUD's available funding, internal procurement plans, and processes for the approval of any procurement.

On July 18, 2005, the Assistant Secretary issued a redelegation of authority to management and marketing contractors (M&Ms) to execute routine documents necessary for the management and sale of single-family properties acquired by HUD in connection with its Single Family Housing Mortgage Insurance Program. This notice of redelegation of authority was published on July 26, 2005, at 70 FR 43171. The authority redelegated will be incorporated into this comprehensive redelegation of authority in new Section III.Q., Management and Marketing (M&M) Contractors. Therefore, this redelegation of authority supersedes the July 26, 2005 delegation of authority.

On September 17, 2003, the Assistant Secretary issued an unpublished redelegation of authority to certain staff in the Office of Housing's Caribbean Office enabling them to carry out duties in connection with the Single Family Property Disposition Program. In the usual course, these duties would be carried out by designated officials in the (Atlanta, GA) HOC. However, local law in Puerto Rico requires HUD staff in the Caribbean Office to accept conveyances of title. Accordingly, the redelegation was issued and is now incorporated into this comprehensive redelegation of authority in Section III.R.

Accordingly, the notice of redelegation of authority for single family housing programs is amended and updated, as follows:

Section I. Single Family Housing Programs—Office of Housing Organization

A. Office of Single Family Housing—Headquarters

All Office of Single Family Housing managers, in Headquarters and the field, report to the Deputy Assistant Secretary for Single Family Housing and Associate Deputy Assistant Secretary for Single Family Housing. In Headquarters, there are three major single family housing offices, each of which are headed by a Director and are comprised of Divisions. These offices are the following:

• *The Office of Single Family Housing Program Development:* This office is comprised of three divisions. The Home Mortgage Insurance Division is generally responsible for developing and implementing policies, procedures, and guidelines covering the pre-application through the final endorsement stage of FHA mortgage insurance cases, including mortgage loan origination and refinancing cases.

The Program Support Division is responsible for: administering HUD's Housing Counseling program; managing FHA's nonprofit mortgagor discount sales and secondary financing programs; maintaining the Single Family Housing Web site; producing single family housing brochures; overseeing the marketing of single family housing programs; and providing a wide variety of technical assistance to the three offices within the Office of Single Family Housing.

The Home Valuation Division is responsible for managing all single family property appraisal and valuation requirements. These functions include oversight and monitoring of appraisers, 203(k) consultants, and FHA-approved inspectors; analyzing single family property valuation issues, including standards and policies associated with new construction, property rehabilitation, home equity conversion mortgages, and modification of the 203(k) and Title I programs.

• *The Office of Single Family Asset Management:* This office is comprised of two divisions. The Single Family Servicing and Loss Mitigation Division is responsible for implementing the single family loan servicing and loss mitigation program, as well as for strategic planning and guidance in relation to HUD's mortgage loan portfolio. This portfolio includes loans that are currently insured by or that have been assigned to the Department. Although a Headquarters Division, its staff, including the Division director, is out-stationed to Oklahoma City and Tulsa, Oklahoma. Also, the loan servicing and loss mitigation function is carried out only by this Headquarters division, and not by any field office.

The Asset Management and Disposition Division develops policies and procedures for, and implements, the Single Family Property Disposition Program.

• *The Office of Lender Activities and Program Compliance:* This office consists of two divisions. The Lender Approval and Recertification Division assists in the development of criteria for approving FHA lenders. Applications from mortgage lenders seeking to become FHA mortgagees are filed with, reviewed, and granted or denied within this Division. The Division is also responsible for lender recertifications.

The second division, the Quality Assurance Division, is responsible for ensuring that FHA-approved lenders comply with requirements that govern lender practices. It monitors the performance of lenders and how well their loans perform on an ongoing basis. If necessary, the Office of Lender Approval and Program Compliance can work with lenders to improve their practices, or, at the other extreme, assist the Office of Housing in terminating a lender's FHA approval status.

B. Single Family Housing—Field Office Structure

In order to maximize efficiencies and empower people and communities, the Office of Single Family Housing undertook a major field reorganization several years ago. Today, the office has the following four HOCs in Atlanta, Georgia; Denver, Colorado; Philadelphia, Pennsylvania; and Santa Ana, California. These HOCs are responsible for the processing of cases within their respective geographic jurisdictions. In addition, Office of Single Family Housing employees, engaged in program support and lender monitoring activities, are out-stationed to locations throughout the United States. Among other things, these employees work within local communities to perform marketing and outreach activities, to ensure that the public is aware of and has access to Office of Housing programs. Program support staff evaluate and provide technical assistance to HUD-approved housing counseling agencies.

A uniform structure applies to all of the HOCs. The highest-ranking official in the HOC is the HOC Director, who is assisted by the HOC Deputy Director. Functions performed by HOC staff are distributed, according to type (e.g., production, quality assurance, etc.), among five Divisions, each of which is headed by a Division Director. The five HOC Divisions are titled:

(1) Processing and Underwriting;
(2) Quality Assurance;
(3) Program Support;
(4) Real Estate Owned; and
(5) Operations and Customer Service.

Division Directors report to the HOC Director and Deputy Director. (As is the case in Headquarters, all staff of report to the Deputy Assistant Secretary for Single Family Housing and the Associate Deputy Assistant Secretary for Single Family Housing.) The chart below identifies each HOC and its geographic jurisdiction.

ATLANTA HOMEOWNERSHIP CENTER			
Atlanta	Indianapolis	Memphis	Miami
Jackson	Chicago	Nashville	Louisville
Jacksonville	Orlando	Birmingham	The Caribbean
Knoxville	Tampa	Columbia	
Greensboro			

DENVER HOMEOWNERSHIP CENTER			
Denver	Omaha	Shreveport	Kansas City
Casper	Albuquerque	Fort Worth	Lubbock
Salt Lake City	Helena	Fargo	Dallas
Des Moines	San Antonio	Sioux Falls	Milwaukee
St. Louis	Tulsa	Little Rock	Minneapolis
Oklahoma City	New Orleans		

PHILADELPHIA HOMEOWNERSHIP CENTER			
Philadelphia	Cincinnati	Grand Rapids	Manchester
Albany	Camden	Boston	Charleston
New York	Buffalo	Bangor	Hartford
Providence	Burlington	Pittsburgh	Baltimore
Columbus	Washington, DC	Richmond	Wilmington
Detroit	Cleveland	Flint	Newark
SANTA ANA HOMEOWNERSHIP CENTER			
Santa Ana	Los Angeles	San Diego	Anchorage
Fresno	Phoenix	San Francisco	Boise
Honolulu	Reno	Tucson	Portland
Las Vegas	Sacramento	Seattle	Spokane

Section II. Single Family Programs—Functions

The Office of Single Family Housing is charged with carrying out duties of the Assistant Secretary and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner (General Deputy Assistant Secretary) as they relate to single family housing programs set forth in the Department of Housing and Urban Development Act. This broad range of programs enables HUD, in concert with program participants in the private and public sectors, to provide safe, decent, and affordable single family housing to millions of American families. Programs include the implementation of certain regulatory programs administered by the Office of Housing. They promote homeownership opportunities, provide for affordable housing financing, and help to educate mostly first-time homeowners on how to maintain a home. [**Note:** Single family housing programs, and functions related thereto, do not include activities performed by the Office of Housing under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), 12 U.S.C. 4501 *et seq.* A separate office within the Office of Housing, the Office of Government Sponsored Enterprise Regulatory Staff, assists the Assistant Secretary in carrying out the provisions of FHEFSSA.]

Under this delegation, the Assistant Secretary redelegates broad program authority to the Deputy Assistant Secretary for Single Family Housing and the Associate Deputy Assistant Secretary for Single Family Housing and commensurate with their respective duties, Directors in Headquarters and in the Field.

Characterizing the redelegated authority in broad or generic terms will enable the above Deputy Assistant Secretary for Single Family Housing and Associate Deputy Assistant Secretary for Single Family Housing, and Directors in Headquarters and the field, to perform all functions necessary to accomplish single family housing program tasks and objectives.

In some past delegation notices, HUD has set forth, in ''laundry list'' fashion the detailed functions carried out by managers under generic function headings. However, publishing detailed lists has proven problematic, as some listed items become obsolete over time, while other functions are omitted through oversight. Conversely, this delegation sets forth functions in generic terms, while the preamble provides insights into the nature of the work performed by managers with delegated authority under each category. The basic single family housing program functions and a brief description of each are as follows:

A. General Authority

This authority allows managers to sign any and all documents necessary to carry out the business within their program and geographical jurisdictions. In addition, it allows managers, when considering a proposal, to waive any directives not mandated by statute or regulation for good cause and with a written justification.

B. Production

This function allows a manager with delegated authority to make all necessary determinations that relate to the insured mortgage process. Essentially, this category of functions begins with a proposal to insure a home mortgage and ends with the Department's endorsement of an insured mortgage. For all insurance programs, it includes, but is not limited to, such activities as approving direct endorsement lenders monitoring contract reviews: maintaining rosters and other lists of appraisers, inspectors, and lenders; performing underwriting reviews for mortgage credit; performing appraisal reviews; performing architectural field reviews; and setting mortgage limits.

C. Servicing and Loss Mitigation

Servicing and Loss Mitigation functions are intended to ensure the servicing of the Secretary-held mortgage portfolio and partial claims and the monitoring of FHA servicers' use of loss mitigation and timely reporting of defaulted, FHA-insured loans. Additional responsibilities include: writing off or compromising principal debt, up to a maximum of $100,000; providing on-site and off-site loss mitigation training to lenders, housing counseling agencies, and other FHA program offices within HUD; administering the Home Equity Conversion Mortgage (HECM) reverse equity mortgage program; operating a nationwide call center to respond to questions concerning loss mitigation and foreclosure relief programs; and supporting the Department's endeavor against predatory lending practices.

D. Quality Assurance

Quality assurance functions are intended to ensure that an FHA lender is in compliance with FHA lending requirements and procedures. Lenders that fail to meet FHA standards are subject to sanctions. Functions include: monitoring lender performance; reviewing default and insurance claim statistics; placing a lender on credit watch; making recommendations to the FHA Mortgagee Review Board for the imposition of sanctions; entering into indemnification agreements; or terminating a lender's FHA status.

E. Lender Approval and Recertification

The approval of new lenders and the recertification of existing lenders are FHA's ''gatekeeping'' functions. Functions include the approval of single family and multifamily lenders and processing the approval and recertification applications from Single Family Title I and Title II lenders, and multifamily lenders for participation in FHA programs. An additional function is the administration of the Institution Master File system, which is used to

track the status of lenders and their various authorities and which also ''feeds'' lender data to over 20 of HUD/FHA's other data systems.

F. Grants

Every year, the Office of Single Family Housing issues a Notice of Funding Availability (NOFA) for the Single Family Housing Counseling Program. This competitive funding program is part of HUD's annual SuperNOFA publication that announces funding programs developed throughout the Department. In any given year, however, Congress may authorize funds for additional grant programs. The Assistant Secretary is the Grant Officer and thus the sole official responsible for making grantee selections. Other grant functions include developing criteria for grant applications, rating and ranking proposals, and selecting government technical representatives to oversee performance under the grant contracts. Once a grant is awarded, functions include monitoring a grantee's compliance with the agreement, modifying a grant, terminating a grant for non-compliance, and closing out a grant in the usual course. The Assistant Secretary will retain and not redelegate the authority of the Grant Officer to make selections of grantees or to approve recipient noncompetitive grants.

G. Program Demonstrations

Periodically, Congress enacts legislation authorizing HUD to conduct a program on a demonstration basis. The purpose of the demonstration is essential to test the viability of a new program or product on a limited basis, e.g., by geography, case volume, or time. Functions related to demonstration programs include developing program criteria, implementing the program, monitoring activities and results, preparing any required reports to the Congress, and closing out the demonstration program.

H. Property Disposition

Although most property disposition functions occur after HUD has acquired title to a property, there are exceptions that involve the pre-acquisition period. For example, in anticipation of acquiring title, HUD may decide to allow a family to remain in the conveyed property (i.e., an occupied conveyance). Pre-acquisition decisions will then concern approving a lease and setting a rent level. Other decisions concern a property's maintenance (or preservation) during the period of conveyance from a lender. HUD reviews claims for insurance benefits, and, once these are paid, the Department obtains title to a property and assumes the responsibilities of an owner. Among other things, HUD maintains the property, pays taxes and utility costs, and prepares it for sale. Contractors perform property maintenance functions, with HUD monitoring their work. Sales are conducted pursuant to a bidding process with functions ranging from advertising the property to execution of the deed upon a sale. HUD regulations governing single family property dispositions are set forth at 24 CFR part 291. Consistent with current practice, the Assistant Secretary will not delegate the authority under 24 CFR 291.210(c), entitled Direct sales to individuals or entities.

I. Debarments and Limited Denials of Participation

A participant or contractor or affiliate, other than a mortgagee, who fails to comply with HUD program regulations, rules, and/or procedures, can be denied the right to participate in a HUD program or programs. Procedures governing the nature and scope of proceedings for the issuance of a debarment or limited denial of participation are set forth in 24 CFR part 24. Only certain officials may issue such limited denials of participation pursuant to the process in the regulations. [**Note:** FHA-approved mortgagees are subject to an independent sanction process set forth in 24 CFR part 25.]

Section III. Single Family Programs—Authority Redelegated

As described in the paragraph that follows this one, The Assistant Secretary and the General Deputy Assistant Secretary retain and redelegate the following power and authority: (1) To the Deputy Assistant Secretary for Single Family Housing and Associate Deputy Assistant Secretary for Single Family Housing and (2) through the above Deputy Assistant Secretary and Associate Deputy Assistant Secretary, to the Headquarters Office Directors and Headquarters Deputy Office Directors listed below, and (3) through the Headquarters Single Family Office Directors and Deputy Office Directors, to the Headquarters and Field Office managers, and certain other officials.

A. Deputy Assistant Secretary and Associate Deputy Assistant Secretary, Office of Single Family Housing

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of all single family Housing programs, including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions, and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other programs;

(3) All loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000;

(4) All quality assurance functions;

(5) All functions necessary to administer grants and cooperative agreements awarded by the Assistant Secretary. However, noncompetitive contract awards proposed by assistance recipients subject to the administrative requirements for grants and cooperative agreements at 24 CFR part 85 may only be approved by the Assistant Secretary;

(6) All functions necessary to carry out a program conducted on a demonstration basis;

(7) All property disposition functions, other than authorizing direct sales under 24 CFR 291.210(c);

(8) Authority to conduct hearings concerning a lender or program participant's participation in HUD programs, and to issue (a) limited denials of participation, and (b) final debarment decisions, where a participant has elected not to contest the notice of proposed debarment of the Assistant Secretary; and

(9) Authority to perform all source selection official duties in connection with Single Family Housing procurement actions.

B. Director and Deputy Director, Office of Single Family Program Housing Development

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other programs;

(3) All functions necessary to carry out a cooperative agreement or competitive or non-competitive grant program, except for making grantee selections and approving recipient noncompetitive contracts; and

(4) All functions necessary to carry out a program conducted on a demonstration basis.

C. Director, Home Mortgage Insurance Division, Office of Single Family Housing Program Development

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other programs; and

(3) All functions necessary to carry out a program conducted on a demonstration basis.

D. Director, Program Support Division, Office of Single Family Housing Program Development

Authority is redelegated, on a nationwide basis, to take all actions and to perform all functions necessary to the conduct of the single family housing programs as follows:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program except for making grantee selections and approving recipient noncompetitive contracts; and

(3) All functions necessary to carry out a program conducted on a demonstration basis.

E. Director, Valuation Policy Division, Office of Single Family Housing Program Development

Authority is redelegated, on a nationwide basis, to take all actions and to perform all functions necessary to the conduct of the single family housing programs, as follows:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other programs; and

(3) All functions necessary to carry out a program conducted on a demonstration basis.

F. Director and Deputy Director, Office of Single Family Asset Management

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) Loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000;

(3) All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c); and

(4) All functions necessary to carry out a program conducted on a demonstration basis.

G. Director, Single Family Servicing and Loss Mitigation Division, Office of Single Family Asset Management

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulations; and

(2) All loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000.

H. Director, Asset Management and Property Disposition Division, Office of Single Family Asset Management

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c); and

(3) All functions necessary to carry out a program conducted on a demonstration basis.

I. Director and Deputy Director, Office of Lender Activities and Program Compliance

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All quality assurance functions, including lender approval, re-certification, and program compliance functions;

(3) Authority to conduct hearings concerning a lender or program participants participation in HUD programs, and to issue one or more limited denials of participation; and

(4) All functions necessary to carry out a program conducted on a demonstration basis.

J. Director, Lender Approval and Re-certification Division, Office of Lender Activities and Program Compliance

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation; and

(2) All functions related to approving and re-certifying FHA lenders.

K. Director, Quality Assurance Division, Office of Lender Activities and Program Compliance

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) Monitor lender performance and default and claim rates and to enter into indemnification agreements; and

(3) All quality assurance functions related to program compliance by approved FHA lenders.

L. Homeownership Center-Director and Deputy Director

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions, and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other programs;

(3) Monitoring of lender performance and default and claim rates and the entering into of indemnification agreements;

(4) All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program, except for making grantee selections and approving recipient noncompetitive contracts;

(5) All functions necessary to carry out a program conducted on a demonstration basis;

(6) All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c);

(7) Authority to issue limited denials of participation;

(8) Authority pursuant to 24 CFR 200.204(a)(2)(iii) to administer the appeals process in connection with the removal of an appraiser from the appraiser roster and to issue a final decision concerning an appraisers removal from the roster; and

(9) Authority to perform source selection official duties in connection with field-office based single family housing procurement actions, provided that the (a) contract amount is less than $10 million, and (b) authority is exercised only by the HOC Director.

M. Homeownership Center-Processing and Underwriting Division Director

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives;

(2) All production functions related to mortgage insurance, grant, or other programs;

(3) All functions necessary to carry out a program conducted on a demonstration basis; and

(4) Authority pursuant to 24 CFR 200.204(a)(2)(iii) to issue the written notice of proposed roster removal to an appraiser.

N. Homeownership Center-Quality Assurance Division Director:

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives; and

(2) Monitor lender performance and default and claim rates and to enter into indemnification agreements.

O. Homeownership Center-Program Support Division Director

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents to perform enumerated functions but not to issue waivers of directives;

(2) All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program, except for making grantee selections and approving recipient noncompetitive contracts; and

(3) All functions necessary to carry out a program conducted on a demonstration basis.

P. Homeownership Center-Real Estate Owned Division Director

Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives;

(2) All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c); and

(3) All functions necessary to carry out a demonstration conducted on a demonstration basis.

Q. Particular Management and Marketing (M&M) Contractor Officials

Authority to execute all documents necessary in connection with the management and sale of residential real property acquired by HUD under its insured mortgage and asset management and disposition programs, excluding indemnification agreements, but including the authority to acknowledge, seal, and deliver any agreements of sale, special warranty deeds, form HUD–1 Settlement Statements, and any other instrument that may be necessary in connection with property management and sales on behalf of the Department, is redelegated to certain principals and/or officers of HUD's M&Ms whose identity will be maintained at its Web site located at *http://www.hud.gov/offices/hsg/sfh//reo/reo_home.cfm.*

R. Supervisory Housing Program Specialist, Office of Single Family Housing's Caribbean Office

(1) The general power to sign any documents necessary to perform the property disposition function identified immediately below and to waive any directive that is not mandated by statute or regulation; and

(2) The authority to accept conveyances of title to the Secretary to one-to-four unit properties.

Section IV. Authority Excepted

The authority redelegated in Section III.A through R does not include authority to issue or waive regulations or to take any action authorized under FHEFSSA or the Department's regulations implementing FHEFSSA.

Section V. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary-Deputy Federal Housing Commissioner may not be further redelegated by the officials identified in Section III.A through R.

Section VI. Revocation of Delegations

All prior redelegations issued by the Assistant Secretary for Housing to staff in the Office of Single Family Housing are hereby superseded and/or revoked. The Assistant Secretary for Housing-Federal Housing Commissioner or the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner may, at any time, revoke any of the authority redelegated in this notice. Revocation shall be effective upon the date of removal. With respect to the officials identified in Section Q, revocation shall be effective upon removal of the affected principal or officer's name from the Web site referenced in Section Q. Notice of any revocation will be published in the **Federal Register.**

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 15, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–16861 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–07]

Delegations of Authority for the Office of Housing—Federal Housing Administration (FHA); Redelegations of Authority Regarding Multifamily Housing Programs and Health Care Programs

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority for multifamily housing and health care programs.

SUMMARY: On August 11, 2003, the Assistant Secretary for Housing-Federal Housing Commissioner issued comprehensive redelegations of authority for the Office of Multifamily Housing Programs and the Office of Insured Health Care Facilities (OIHCF). The notice of redelegations of authority was published on August 20, 2003. Today's notice of redelegations of authority updates and amends the notice that was published on August 20, 2003. The authority redelegated is reprinted in its entirety but reflects changes that have been made to the redelegations of authority regarding multifamily housing and health care programs since August 20, 2003.

DATES: *Effective Date:* September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Janet Golrick, Assistant Deputy Assistant Secretary for the Office of Multifamily Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6112, Washington, DC 20410–8000, telephone (202) 708–2495. (This is not a toll-free number.) Persons with hearing- or speech-impairments may access this number through TTY number by calling the toll-free Federal Relay Service number at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION: Amendments to the comprehensive redelegation of authority, published on August 20, 2003, were executed at different times over the course of approximately two years in response to emerging needs of the Office of Multifamily Housing Programs and OIHCF.

On March 17, 2004, the Assistant Secretary for Housing-Federal Housing Commissioner (Assistant Secretary) issued a redelegation of authority (that was not published), authorizing the Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for Multifamily Housing to carry out all functions of a source selection official in connection with multifamily procurement actions. In addition, each Hub Director was redelegated source selection official authority in connection with field-office based procurements, subject to the limitation that the individual contract amount is less than $10 million

On March 3, 2005, the Assistant Secretary issued a redelegation of authority that made several additional amendments to the redelegation published on August 20, 2003. The nature of each amendment is as follows:

The introductory paragraph, immediately under the heading Section III. Multifamily Housing Programs and Healthcare Programs—Authority Redelegated, was amended to reflect the recently created position of Assistant Deputy Assistant Secretary for the Office of Multifamily Housing Programs. A new section III.AA identified this new position and sets forth the functions to be carried out by the incumbent.

An amendment to Section III.F. function (2), indicated that Hub Operations Officers and Program Center Directors can issue a firm commitment for mortgage insurance if the principal amount of the mortgage did not exceed $15 million. The Hub Director can issue a firm commitment for mortgage insurance without any limitation related to the principal amount of the mortgage.

Amendments to Section III.F. function (3) indicated, initially, that in relation to field office personnel, only the Hub Director could issue certain notices that advise program participants that they are in violation of a regulatory agreement or housing assistance contract. An additional amendment set forth a number of functions that would continue to be carried out by authorized officials in Headquarters but no longer in the field.

Finally, in view of workload considerations and to make business operations more efficient, the Assistant Secretary amended Section V. Further Redelegations.

With regard to OIHCF, on September 30, 2005, the Assistant Secretary entered into a 5-year interagency agreement (IAA) with the Department of Health and Human Services (HHS) under which HHS acts as an agent of HUD in administering aspects of the health-care facilities insurance program. The IAA is referenced in Section I.C. of this notice.

Section I. Multifamily Housing Programs: Office of Housing Organization

A. Office of Multifamily Housing—Headquarters

All Office of Multifamily Housing managers in Headquarters and in the Field report to the Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for Multifamily Housing. In Headquarters, there are five major Multifamily Housing offices, each of which is headed by a Director. These offices and a general description of each appear below:

Office of Multifamily Housing Development

This office develops and implements policies and guidelines for the loan origination aspects of FHA multifamily housing and health care mortgage insurance programs, excluding Section 242 hospitals, from pre-application to final endorsement of the mortgage note. The office is also responsible for Multifamily Accelerated Processing (MAP) and Section 542 Risk-Sharing policies and procedures, including lender approval and lender monitoring. Office of Housing staff provide technical guidance to the HUD/FHA multifamily housing field staff, the industry, and other Headquarters offices.

Office of Asset Management

The Office of Asset Management (Office of AM) is responsible for strategic planning, guidance, and oversight of HUD's multifamily housing portfolio of project assets after development and upon occupancy (multifamily housing properties consist primarily of rental housing properties with five or more dwelling units, such as apartments or town houses, also include nursing homes, elderly housing, housing for persons with disabilities, mobile home parks, retirement service centers and, very occasionally, vacant land). The Office of AM develops policy for, and oversees, field office asset management operations. The Office of AM is responsible for oversight of regulated property ownership and management, routine mortgage servicing, default servicing, acquisition and/or disposition of loans and properties, and management of properties where the Secretary is owner or mortgagee-in-possession. The Office of AM also has oversight for subsidy payments for the Sections 202/811 elderly and disabled programs. The Office of AM serves as Multifamily Housing's liaison with the Real Estate Assessment Center (REAC) and the

Departmental Enforcement Center (DEC). In addition, the Office of AM oversees field office and lender-servicing activities for HUD-involved properties. Through two field Property Disposition Centers, the Office of AM oversees HUD management, ownership, and the sale of properties, which HUD owns by virtue of default and foreclosure, or for which HUD is mortgagee-in-possession. In support of asset management, the Office of AM defines business requirements for automated systems development and modification.

Office of Housing Assistance and Grant Administration

The Office of Housing Assistance and Grant Administration is responsible for directing and overseeing housing assistance and competitive grant programs administered by the Office of Multifamily Housing Programs, and places its primary focus on production and development functions. Its programs include project-based Section 8 housing assistance, the Section 202/811 Capital Advance Program, the Emergency Capital Repair Grants program, Service Coordinators, Assisted Living Conversion, and Congregate Housing Services Programs.

Office of Housing Assistance Contract Administration Oversight

The Office of Housing Assistance Contract Administration Oversight is responsible for policies, procedures, guidelines, performance assessment, and technical and general compliance under the terms of the respective Annual Contributions Contracts for Section 8 Contract Administrators (CA). The Section 8 contract administration oversight by this office provides that properties continue to meet the Department's standard of providing decent, safe, and sanitary housing to low-income families. Additionally, the Office of Housing Assistance Contract Administration Oversight is responsible for assuring that the Department meets its financial obligations to owners as specified in the various subsidy contracts by ensuring availability of subsidy payments. The office oversees ongoing funding of project-based assistance contracts, including contracts under the Section 8, Rent Supplement, and Rental Assistance Payments programs.

Office of Program Systems Management

The Office of Program Systems Management is responsible for the automated systems that support multifamily housing programs. This office works with the other four Multifamily Housing offices to develop and enhance the systems used to support their respective programs.

B. Office of Multifamily Housing—Field Office Structure

The field office organization consists of 51 offices, including Hubs and program centers. In all, there are 18 Hubs, each of which also has a Program Center sometimes (referred to as Projects Management Staff) co-located with the Hub. Each Program Center administers programs for the immediate geographical area of the Hub, whereas the Hub oversees operations for the broader geographic area. There are 33 Program Centers, each of which reports to a Hub and is located within the Hub's jurisdiction.

The highest-ranking official in a Hub is the Hub Director. The immediate deputy of the Hub Director is the Director of the Operations Staff (referred to in this notice as the Operations Officer). The Director of the Projects Management Staff (referred to in this notice as the Director of Project Management) reports to the Hub Director and oversees the work of the co-located Program Center. The head of a Program Center who is located outside the Hub is the Program Center Director. The occupant of this position also reports to the Hub Director. (Note: In this notice, reference to ''Program Center Directors'' refers to both the aforementioned Director of Projects Management and the Directors of Program Centers located outside the Hub location).

The chart below identifies each Hub, the Program Centers that report to it, and the geographic area that it serves.

MULTIFAMILY HOUSING HUB STRUCTURE

Hub	Program center	Geographic area serviced
Atlanta	Caribbean, Knoxville, Louisville, Nashville (Also, a Multifamily Property Disposition Center is located in Atlanta).	Georgia, Kentucky, Puerto Rico, Tennessee, Virgin Islands.
Baltimore	Richmond, Washington, DC	Maryland, Virginia, Washington, DC.
Boston	Hartford, Manchester, Providence	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
Buffalo		New York State, except for New York City Metropolitan Area.
Chicago	Indianapolis	Illinois, Indiana.
Columbus	Cleveland	Ohio.
Denver		Colorado, Montana, North Dakota, south Dakota, Utah, Wyoming.
Detroit		Michigan.
Fort Worth	Albuquerque, Houston, Little Rock, New Orleans, San Antonio (Also, a Multifamily Property Disposition Center is located in Fort Worth).	Arkansas, Louisiana, New Mexico, Texas.
Greensboro	Columbia	North Carolina, South Carolina.
Jacksonville	Birmingham, Miami, Jackson	Florida, Alabama, Mississippi.
Kansas City	Des Moines, Oklahoma City, Omaha, St. Louis, Iowa, Kansas, Missouri, Nebraska, Oklahoma..	
Los Angeles		Southern California.
Minneapolis	Milwaukee	Minnesota, Wisconsin.
New York City		New York City Metro Area.
Philadelphia	Charleston, Newark, Pittsburgh	Delaware, New Jersey, Pennsylvania, West Virginia.
San Francisco	Honolulu, Phoenix, Las Vegas	Arizona, Northern California, Hawaii, Nevada.
Seattle	Anchorage, Portland	Alaska, Idaho, Oregon, Washington.

In summary, certain Multifamily Housing Office managers in Program Centers, Hubs, and Headquarters, acting within the scope of their redelegated authorities and applicable law, have independent authority, through the delegation process, to make binding decisions on behalf of the Department. Program Center Directors report to Hub Directors who, in turn, report to the Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for Multifamily Housing Programs.

C. Office of Insured Health Care Facilities (OIHCF)

OIHCF reviews and approves mortgage insurance proposals for hospitals and handles asset management and property disposition matters related to HUD's insured hospital portfolio. OIHCF also administers all matters under Title XI of the National Housing Act (mortgage insurance for group practice facilities). Prior to the creation of OIHCF, hospital mortgage insurance applications were processed within the Office of Multifamily Housing. However, because of underwriting and oversight issues unique to hospital care facilities, HUD determined to create this separate office with particular expertise in the health care area. Unlike the usual case where applications for mortgage insurance are submitted to the local Program Center, insurance proposals for hospitals are submitted to OIHCF at HUD Headquarters. Most OIHCF staff is in Headquarters, while some are out-stationed to New York City. The Director and the Deputy Director of OIHCF report directly to the Assistant Secretary and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner (General Deputy Assistant Secretary). In making its determinations, OIHCF also oversees work performed by personnel in the Department of Health and Human Services (HHS), pursuant to an (Interagency Agreement that most recently was executed between the two departments on September 30, 2005, and contains a 5-year term. OIHCF also makes limited use of resources in the Office of Multifamily Housing's field structure. In order to facilitate transactions in hospital insurance cases, particular authority is being delegated to Hub Directors in Multifamily Housing field offices. However, this authority may be exercised only pursuant to the prior direction or concurrence of the OIHCF Director.

Section II. Multifamily Housing Programs—Functions

The Office of Multifamily Housing is charged with carrying out duties of the Assistant Secretary and General Deputy Assistant Secretary for Housing, as they relate to multifamily programs set forth in HUD's governing legislation. This broad range of programs enables HUD, in concert with its partners from the private and public sectors, to provide safe, decent, and affordable multifamily housing to millions of American families. The programs include mortgage insurance, capital advances, grant programs, and some programs that assist communities in reducing crime. Some programs make access to assisted living facilities more affordable. [Note: Multifamily Housing programs and functions related thereto do not include activities performed by the Office of Housing under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) (12 U.S.C. 4501 et seq). A separate office within Housing, the Office of Government Sponsored Enterprises Oversight, assists the Assistant Secretary in carrying out the provisions of the FHEFSSA.]

Under this delegation, the Assistant Secretary redelegates broad program authority to the Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for Multifamily Housing, for particular Multifamily Housing Directors in Headquarters and the field, and the Director of OIHCF.

Characterizing the authority that is being redelegated by the Assistant Secretary in broad or general terms will enable the Deputy Assistant Secretary for Multifamily Housing and the Associate Deputy Assistant Secretary for Multifamily Housing and particular Multifamily Housing Directors to perform all functions necessary to accomplish multifamily housing program tasks and objectives.

In some past delegation notices, HUD has set forth, in ''laundry list'' fashion, the functions that are carried out by managers under generic function headings. However, publishing detailed lists has proven problematic, as some listed items become obsolete over time, while others are omitted through oversight. Conversely, this delegation sets forth functions in general terms, while the preamble provides insights into the nature of the work performed by managers with delegated authority under each category. The basic multifamily housing functions and a brief description of each are as follows:

A. General Authority

This authority allows Office of Housing officials, in the Office of Multifamily Housing and in OIHCF, to sign any and all documents necessary to carry out business within their program and geographic jurisdictions. In addition, this authority allows such officials, when considering a proposal, to waive any directives, not mandated by statute or regulation or reserved to Headquarters, for good cause and with written justification.

B. Production

This function allows a manager with delegated authority to make all necessary determinations that relate to the FHA-insured mortgage underwriting process and the risk-sharing programs. Essentially, this category of functions begins with a pre-application or application for mortgage insurance and ends with the Department's endorsement of an insured mortgage and related documentation. For all mortgage insurance programs, it includes, but is not limited to, such activities as determining the acceptability of project sites; issuing conditional or firm commitments for FHA insurance; issuing initial or final endorsements for FHA insurance; executing regulatory agreements; requiring corrective actions and escrow accounts as needed; and wherever applicable, directing the actions of HUD clients in connection with a project's development (e.g., authorizing a housing finance agency to process-risk sharing loans or to conduct a subsidy layering review). Similar production functions are performed in connection with capital advances for elderly persons (the Section 202 program) and persons with disabilities (Section 811). For example, under those programs, applications are reviewed and rated funding awards are made (and regulatory agreements executed).

C. Asset Management

Functions carried out under this category involve HUD's continuing relationship with a multifamily project after it has been added to the HUD portfolio through either FHA mortgage insurance, co-insurance, or risk-sharing programs; direct loan; capital advance or grant programs; other subsidy programs; and combinations thereof. Under this category, ongoing decision-making relates to an insured or subsidized project's occupancy, operations, and physical and financial condition from the time of occupancy through financial disposition including, but not limited to, prepayment,

repayment of the loan or end of the subsidy contract, foreclosure, and/or termination of the subsidy contract. In addition, functions involve the renewal of Section 8 contracts and other project-based assistance, and imposing sanctions upon project owners that, for example, violate the terms of their regulatory agreement and/or section 8 housing assistance contracts.

D. Competitive Capital Advance Programs

Competitive programs within the Office of Multifamily Housing typically include those for the Section 202 supportive housing for the elderly, Section 811 supportive housing for persons with disabilities, service coordinators, and the assisted living conversion programs. In any given year, Congress may authorize additional or alternative programs. Office functions include developing the criteria for applications, rating and ranking applications, and executing capital advance and grant agreements. Once a grant is awarded, functions include monitoring compliance with the grant agreement, terminating a grant for non-compliance, modifying a grant, and closing out a grant. Once a capital advance is awarded under the Section 202 or Section 811 programs, functions include processing a firm commitment application, initially closing the project, monitoring compliance with the construction contract, and finally closing the project as soon as costs have been certified.

E. Program Demonstrations

Periodically, Congress will enact legislation that authorizes HUD to conduct a multifamily housing program on a demonstration basis. The purpose of a demonstration is essentially to test the viability of a new program on a limited basis, e.g., by geography, case volume, or time. Functions related to demonstration programs include developing program criteria, implementing the program, monitoring activities and results, preparing any required reports to Congress, and closing out the program.

F. Property Disposition

Property disposition functions begin after HUD has made an initial decision to foreclose on a property. These functions include notifying an owner, and hearing and deciding an owner's appeal to the foreclosure determination; deciding the terms of and directing a foreclosure sale; accepting a deed-in-lieu of foreclosure, authorizing any work and related terms required by a project in advance of a sale; advertising a project for sale; approving disposition plans, sales documents, and purchasers; executing rental assistance contracts; and relocation of residents as may be necessary.

G. Coinsurance

In 1990, HUD stopped accepting new applications for multifamily housing coinsurance. However, HUD still carries out multifamily housing coinsurance program functions in relation to the existing inventory, which include any and all actions necessary to carry out the program authorized under 12 U.S.C. 1715z–9. Functions also include authorizing second mortgage documents in partial payment-of-claims cases, as well as approving requests for the conversion of coinsurance to full mortgage insurance.

H. Portfolio Reengineering

The Portfolio Reengineering Demonstration Project was originally authorized in 1996 and most recently in 1998 under Title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65). Although all cases under the program have been closed, there are certain actions remaining, such as final disbursements to joint venture partners, which will enable the program to be terminated.

I. Hospital Mortgage Insurance

Functions for the hospital mortgage insurance program cover the range of activities from the pre-commitment stage through property disposition. The functions include the same kinds of activities described above for the multifamily insurance program and fall within the generic categories of production, asset management, and property disposition.

J. Contract Administration Oversight/Funding

Functions in this area of contract administration oversight involve activities related to the award of the Contract Administration Contracts (Annual Contribution Contracts), assessment and assignment of Section 8 contracts to Performance-Based Contract Administrators (PBCAs), evaluation of PBCA performance, provision of technical assistance to PBCAs, and prescription of any remedial actions needed to improve PBCA performance. Key functions also involve developing policies and procedures for field offices and coordinating efforts between the PBCAs and the local Multifamily Housing field office staff; monitoring, evaluating, and providing technical guidance relative to field activities; assuring that PBCAs provide data needed to evaluate their performance and the status of contracts they administer; and coordinating audit activities associated with Section 8 Contract Administration.

Funding activities involve all budget and funding responsibilities associated with the Rental Assistance Programs (RAP) (i.e., Section 8 but not Sections 202/811, RAP, Rent Supplement, Project-Based Section 8, and Service Coordinators), including both HUD and third-party administered contracts. Activities also include creating and approving administrative commitments for active contracts, determinations of funding levels, reservations of the subsidy based on funding availability, monitoring allotments as compared to annual appropriations, funding assignments against allotments, reservations compared to fund assignments, and actual reservations versus estimated activity. Additional functions include monitoring the timely payment of Section 8 housing assistance to administrators and project owners in cooperation with the Section 8 Financial Management Center (FMC) and the accounting staff in the Office of the Chief Financial Officer. The work with the FMC primarily focuses on the impact of funding and payment when initiating conversions from HUD Central Accounting and Program System Maintenance (HUDCAPS) to Line of Credit Control System (LOCCS). The funding area also works with the Department's budget and accounting organizations to generate budget authority estimates for the above-referenced subsidy programs, develop procedures for funding and payment processes, and integrate systems to support the data. Another function is to serve as a liaison and coordination with counterpart staff in the field offices to provide training and guidance, and to assure that funds are obligated and contracted.

Section III. Multifamily Housing and Health Care Programs—Authority Redelegated

The Assistant Secretary and the General Deputy Assistant Secretary for Housing retain and redelegate the power and authority, as provided in this Section III (1) to the Deputy Assistant Secretary and the Associate Deputy Assistant Secretary of the Office of Multifamily Housing Programs; and (2) through the above Deputy Assistant Secretary and Associate Deputy Assistant Secretary, to the Assistant Deputy Assistant Secretary of the Office of Multifamily Housing; and (3) through

the Assistant Deputy Assistant Secretary to the Headquarters Multifamily Directors listed below; and (4) through the Headquarters Multifamily Directors, to the Headquarters and Field Office managers listed below; and (5) to the Director of the Office of Insured Health Care Facilities, the following power and authority

A. Deputy Assistant Secretary and Associate Deputy Assistant Secretary of the Office of Multifamily Housing Programs

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs, other than the mortgage insurance program for hospitals, including, but not limited to, the exercise of the following functions:

(1) The general power to modify and sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, capital advance, risk-sharing, or other programs;

(3) All asset management functions related to mortgage insurance, grant, or other programs;

(4) All functions necessary to carry out a competitive capital advance program

(5) All functions necessary to carry out a program conducted on a demonstration basis;

(6) All property disposition functions;

(7) All functions necessary to the conduct of the Multifamily coinsurance program;

(8) All functions necessary to the conduct of the portfolio reengineering program, re-authorized under Title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998 (Pub. L. 106–65);

(9) All functions necessary to the conduct of Section 8 contract administration oversight/funding; and

(10) All source selection official functions.

A.A. Assistant Deputy Assistant Secretary of the Office of Multifamily Housing

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs, other than the mortgage insurance program for hospitals, in relation to the following functions:

(1) The general power to modify and sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, capital advance, risk-sharing, or other programs;

(3) All asset management functions related to mortgage insurance, grant, or other programs;

(4) All functions necessary to carry out a competitive capital advance program

(5) All property disposition functions; and

(6) (All functions necessary to the conduct of Section 8 contract administration oversight/funding.

B. Director, Office of Multifamily Housing Development

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs other than the mortgage insurance program for hospitals, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance or risk-sharing programs;

(3) All functions necessary to carry out a program conducted on a demonstration basis.

C. Director, Office of Asset Management

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs, other than the mortgage insurance program for hospitals, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All asset management functions related to mortgage insurance, loans, capital advances, or grants or other programs, except functions related to the renewal of Section 8 contracts and other project-based assistance;

(3) All functions necessary to carry out a competitive capital advance programs

(4) All functions necessary to carry out a program conducted on a demonstration basis;

(5) All property disposition functions;

(6) All functions necessary to conduct the multifamily coinsurance program; and

(7) All functions necessary to conduct the portfolio reengineering program, re-authorized under Title V of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998.

D. Director, Office of Housing Assistance and Grant Administration

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All functions necessary to carry out competitive capital advance programs; and

(3) Only asset management functions related to the renewal of Section 8 contracts and other project-based assistance.

E. Director, Office of Housing Assistance Contract Administration Oversight

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct the business of Section 8 contract administration and funding rental assistance programs as designated in Section II, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and waive any directive that is not mandated by a statute or regulation; and

(2) All functions related to Section 8 Contract Administration and funding.

F. All Hub Directors, Operations Officers, and Program Center Directors

The authority redelegated authorizes these officials to take all actions necessary to the conduct of all multifamily housing programs, not including the property disposition program, coinsurance program, portfolio reengineering program and, except as noted in the specific delegations below, the hospital and Title XI mortgage insurance programs. The authority is further limited in that it may only be exercised within each official's authorized geographic jurisdiction. Accordingly, the Hub Directors and Operations Officers may exercise the functions enumerated herein with the full geographic jurisdiction of their respective Hubs, which include all Program Center areas under their respective jurisdictions. The Hub Director for Project Management may only exercise the authority within the immediate ''program center'' jurisdiction of the Hub. The Program Center Director may only exercise authority within the geographic jurisdiction of the Program Center. The

authority redelegated permits the exercise of the following functions:

(1) The general power to modify and sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other multifamily housing insurance programs, and to endorse notes for mortgage insurance for loans issued under the hospital and Title XI mortgage insurance programs, except that Operations Officers and Program Center Directors cannot issue a firm commitment for mortgage insurance where the principal amount of the mortgage is in excess of $15 million;

(3) All asset management functions related to mortgage insurance, grant, or other programs, except as follows:

(a) Operations Officers and Program Center Directors cannot issue (i) a notice of violation under the terms of a regulatory agreement or (ii) a notice of default under the terms of a housing assistance contract.

(b) Hub Directors, Operations Officers, and Program Center Directors cannot perform the following functions:

(i) Authorize the acceleration of the principal debt of a mortgage;

(ii) Terminate a rent supplement contract or rental assistance contract;

(iii) Declare a default under an interest reduction payment contract;

(iv) Authorize a partial payment of claim;

(v) Authorize a mortgage modification;

(vi) Authorize the override of a mortgage lockout provision;

(vii) Authorize a prepayment of a HUD-insured or HUD-held mortgage, or voluntary termination of mortgage insurance, unless specifically authorized to do so by an express redelegation of authority from the Assistant Secretary for Housing or the General Deputy Assistant Secretary for Housing, setting forth any affected programs and terms and conditions applicable thereto.

(4) All functions necessary to carry out competitive capital advance programs; and

(5) All functions necessary to carry out a program conducted on a demonstration basis.

(6) Hub Directors, but not Operations Officers and Program Center Directors, are authorized to carry out all source selection official functions for field-office based procurements, provided that the contract amount is less than $10 million.

G. Directors for Property Disposition Centers in the Atlanta, Georgia, and Fort Worth, Texas, Hubs Only

Authority is redelegated, on a nationwide basis, to take all actions and perform all functions, including signing any documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to conduct the multifamily property disposition program.

H. Hub Director, Operations Officer, and Program Center Director for the Greensboro, North Carolina, Hub Only

Authority is redelegated, on a nationwide basis, to take all actions and to perform all functions, including signing any documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to the conduct of the multifamily coinsurance program.

I. Hub Directors, Operations Officers, and Directors for Project Management in Buffalo, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Jacksonville, Florida; Columbus, Ohio; Fort Worth, Texas; Kansas City, Kansas; Denver, Colorado; San Francisco, California; and Seattle, Washington; and the Program Center Directors in Pittsburgh, Pennyslvania; Cleveland, Ohio; Houston, Texas; and Oklahoma City, Oklahoma, Only

Authority is redelegated, on a nationwide basis, to take all actions and perform all functions, including signing documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to conduct of the portfolio reengineering program authorized under Title V of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 106–65).

J. Director, Office of Insured Health Care Facilities

Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of the mortgage insurance program for hospitals including the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions, except that the authority to authorize commitments for mortgage insurance is subject to the prior authorization of the Assistant Secretary;

(3) All asset management functions; and

(4) All property disposition functions.

Section IV. Authority Excepted

The authority redelegated in Sections III.A. through J does not include authority to issue or waive regulations, or to implement the authority contained in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq*).

Section V. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary—Deputy Federal Housing Commissioner may not be further redelegated by the officials identified in Sections V.A. through V.J., except that a Hub Director may redelegate to, or withdraw from, any Supervisory Project Manager(s) or Senior Project Managers within his or her geographic jurisdiction, any of the authority delegated those managers under this notice, except the authority to issue waivers, or FHA conditional or firm mortgage insurance commitments, and to endorse FHA notes for insurance. Any such delegation, or withdrawal thereof, need not be published in the **Federal Register**, but shall be in writing and maintained for public inspection in the Hub, affected Program Center(s), and the Washington, DC, Headquarters Office of Multifamily Housing. If work is transferred from one Hub to another, the delegation must also be approved in writing by the Deputy Assistant Secretary or Associate Deputy Assistant Secretary for Multifamily Housing.

Section VI. Revocation of Delegations

All prior redelegations of authority from the Assistant Secretary to staff in the Office of Multifamily Housing and in the OIHCF are hereby revoked and/or superseded. The Assistant Secretary for Housing—Federal Housing Commissioner or the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner may, at any time, revoke any of the authority redelegated in this notice. Notice of any revocation will be published in the **Federal Register**.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 15, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–16863 Filed 10–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5853–EU]

Proposed Information Collection—Alternative Land-Use Planning Scenarios for the Upper Las Vegas Wash Conservation Transfer Area

AGENCY: Bureau of Land Management.

ACTION: Notice of request for comments.

SUMMARY: The Bureau of Land Management (BLM) is partnering with Utah State University to undertake a survey that will provide the BLM with social science input to support planing of the Upper Las Vegas Wash Conservation Transfer Area (CTA). The BLM anticipates that this information will assist in the decision-making process to (1) protect the fossil and plant resources; (2) allow for ecological function of the CTA; and (3) render a decision on the boundary configuration and allowable uses of the CTA that are defensible to the public, agencies, local governments, and the courts.

DATES: You have 60 days after the date of this **Federal Register** Notice to submit your comments to the address listed below.

ADDRESSES: You may mail or deliver comments to: Bureau of Land Management, Las Vegas Field Office, Attn: CTA Land-Use Planning Survey, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130.

You may send comments via Internet to: *nv_lvfo_planning@blm.gov*. Please include your name and address with comments, and title the Subject Attn: CTA Land-Use Planning Survey.

FOR FURTHER INFORMATION CONTACT: You may contact Gayle Marrs-Smith, CTA Project Manager at the address above, by telephone at (702) 515–5156, or by e-mail at *Gayle_Marrs-Smith@nv.blm.gov*.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM must provide a 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The BLM strives to include best science in rendering management decisions. The CTA is being proposed for protection. A wide variety of interested publics, local governments, developers, and utilities would be affected by BLM's decision on the boundary configuration and allowable uses within the conservation area. Information on existing urban development adjacent to the CTA and its socio-demographic composition is necessary to model future development and its potential impacts to the CTA as BLM prepares the land-use alternatives that will be analyzed as required under the National Environmental Policy Act (Pub. L. 91–190, 42 U.S.C. 4321–4347, January 1, 1970).

Title: Evaluating Alternative Land-use Planning Scenarios Survey.

Bureau Form Number: None.

OMB Control Number: TBD.

Type of Request: New Collection.

Description of Need: This proposal seeks approval to collect information from residents of selected neighborhoods in both Las Vegas and North Las Vegas via questionnaire in order to gain a better understanding of how socio-economic characteristics of nearby residential populations might affect the disturbance impacts in the CTA. These questionnaires will be used to answer questions on: Type and frequency of use within the CTA, familiarity with the CTA, levels of attachment to the CTA, attitudes and preferences regarding use and management of the CTA, behavioral intentions regarding enforcement of sanctions to protect the wash environment, and individual and household demographic information.

Automated data collection: At this time, we will not be gathering information in an automated way.

Description of Respondents: This proposal seeks approval to collect information from adults living in randomly selected households located within one half mile corridors centered along eight linear transects. These transects have been designated for use in measuring ecological and disturbance conditions within the CTA environment and extended south of the CTA into nearby areas of residential development.

Estimated average number of respondents: 1000.

Estimated average number of responses: 600.

Estimated average burden hours per response: 30 minutes.

Estimated annual reporting burden: 300 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will be a matter of public record.

Dated: September 29, 2006.

Juan Palma,

Field Manager.

[FR Doc. 06–8632 Filed 10–11–06; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–1020–PG]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held November 8 & 9, 2006, at the Bureau of Land Management's Lewistown Field Office, 920 NE. Main Street, in Lewistown, Montana. The November 8 session will begin at 10 a.m. with a 30-minute public comment period. This meeting is scheduled to adjourn at 6 p.m. The November 9 meeting will begin at 8 a.m. with a 30-minute public comment period. This meeting is scheduled to adjourn at 3 p.m.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. At this meeting the council will discuss/act upon:

The minutes of their preceding meeting;

A review of the RAC charter;

An orientation session for new and current members;

An update concerning the Missouri River Breaks National Monument RMP;

An update concerning the Judith Moccasin travel plan subgroup;

A report concerning recreation resource advisory committees;

A review of Undaunted Stewardship programs;

A review of livestock grazing regulations;

A presentation concerning the Kipp Business Plan;

Information concerning Revised Statute 2477;

An oil and gas activity briefing;

An update about the Valley Wind Farm;

A report concerning the initial Malta RMP scoping comments; and administrative details.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: June Bailey, Lewistown Field Manager, Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457, 406/538–1900.

Dated: October 5, 2006.

Michael P. Stewart,

Associate Lewistown Field Manager.

[FR Doc. E6–16877 Filed 10–11–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–079–07–1010–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The next regular meeting of the Western Montana RAC will be held November 29, 2006 at the Butte Field Office, 106 N. Parkmont, Butte, Montana beginning at 9 a.m. The public comment period will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 3 p.m.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the November 29 meeting, topics we plan to discuss include: Recreation RACs and the possibility of forming a fee subgroup, a briefing on the North Hills use conflict issue and possibility of forming an issue recommendation subgroup, an update on the status of the Butte RMP/EIS and meeting dates for 2007.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Dated: October 5, 2006.

Richard M. Hotaling,

Field Manager.

[FR Doc. E6–16884 Filed 10–11–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–1310–FI; MIES 49059]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, the Bureau of Land Management (BLM) received a petition for reinstatement of the oil and gas lease, MIES 49059 located in Oscoda County, Michigan. The petition was filed on time and was accompanied by all rentals due since the date the lease terminated under law.

FOR FURTHER INFORMATION CONTACT: Ann Dickerson, Land Law Examiner, at 703–440–1512, or Bureau of Land Management–Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required administrative fee and publication fee to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the BLM is proposing to reinstate the lease listed above, effective December 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued any valid leases affecting the lands.

Dated: October 5, 2006.

Michael D. Nedd,

State Director, Eastern States.

[FR Doc. E6–16889 Filed 10–11–06; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–07–1420-BJ–TRST]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5121 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Rocky Mountain Region, Billings, Montana, and was necessary to determine Trust and Tribal lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 4 S., R. 32 E.

The plat, in 1 sheet, representing the dependent resurvey of a portion of the subdivisional lines and the adjusted original meanders of the former left bank of the Big Horn River, downstream, through section 10, the subdivision of section 10 and the survey of the meanders of the former left bank of a relicted channel of the Big Horn River, downstream, through section 10, the meanders of a portion of the present left bank of the Big Horn River, downstream, through section 10, the medial line of a relicted channel of the Big Horn River in section 10, and

certain partition lines of a relicted channel of the Big Horn River in section 10, Township 4 South, Range 32 East, Principal Meridian, Montana, was accepted September 27, 2006.

We will place a copy of the plat, in 1 sheet, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in 1 sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in 1 sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: October 3, 2006.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E6–16885 Filed 10–11–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–07–1420-BJ–TRST]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Toth, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5121 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Fort Peck Agency, Rocky Mountain Region, Poplar, Montana, and was necessary to determine Trust and Tribal lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 30 N., R. 41 E.

The plat, in 2 sheets, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, the subdivision of sections 21 and 33, the adjusted original meanders of the former left bank of Porcupine Creek, upstream through sections 21 and 33, and the subdivision of sections 21 and 33 and the survey of a portion of the meanders of the former left bank of an abandoned channel of Porcupine Creek, upstream through section 33, the survey of a portion of the meanders of the present left bank of Porcupine Creek, upstream through sections 21 and 33, the medial line of an abandoned channel of Porcupine Creek in section 33, certain partition lines and a division of accretion line in Township 30 North, Range 41 East, Principal Meridian, Montana, was accepted September 28, 2006.

We will place a copy of the plat, in 2 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on this plat, in 2 sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat, in 2 sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: October 3, 2006.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E6–16886 Filed 10–11–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–310–1430–ET; CACA–47810]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw on behalf of the Bureau of Reclamation, approximately 17.55 acres of public land, for a period of 20 years, to protect the Bureau of Reclamation's Colorado River Front Work and Levee Project in San Bernardino County, California. This notice segregates the land for up to 2 years from the public land laws and the United States mining laws.

DATES: Comments should be received on or before January 10, 2007.

ADDRESSES: Comments and meeting requests should be sent to the Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 61470, Boulder City, Nevada 89006–1470.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Sundberg, Bureau of Reclamation, Lower Colorado Regional Office, (702) 293–8176.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation has filed an application to withdraw, for a period of 20 years, the following-described public land from the public land laws and the United States mining laws, subject to valid existing rights:

San Bernardino Meridian, California

T. 8 N., R. 23 E.,
sec.10, lot 6.

The area described contains 17.55 acres in San Bernardino County.

The petition/application has been approved by the Assistant Secretary of the Interior. Therefore, it constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The use of a right-of-way, interagency agreement, or cooperative agreement would not adequately constrain non-discretionary uses and would not provide adequate protection of the Federal investment in the improvements located on the land.

There are no suitable alternative sites with equal or greater benefit to the government.

No additional water rights would be needed to fulfill the purpose of the requested withdrawal.

The preliminary mineral potential evaluation found the above-described lands to have a low potential for locatable minerals.

The purpose of the proposed withdrawal would be to protect the Bureau of Reclamation Colorado River Front Work and Levee System Project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Bureau of Reclamation Regional Office at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the Bureau of Reclamation, Lower Colorado Regional Office, 500 1st Street, Boulder City, Nevada 89006, during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you

must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Regional Director, Bureau of Reclamation, Lower Colorado Regional Office.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-ways, and disposal of vegetative resources other than under the mining laws.

The withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

(Authority: 43 CFR 2310.3–1)

Dated: October 2, 2006.

Michael A. Taylor,

Deputy State Director, Resources.

[FR Doc. E6–16842 Filed 10–11–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Information Collection—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1955 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a revision of a currently approved information collection (OMB# 1024–0232).

DATES: Public Comments on the proposed ICR will be accepted on or before December 11, 2006.

ADDRESSES: Send comments to Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska, 68102. All responses to this notice will be summarized and included in the requests for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of the proposed ICR can be obtained from Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102.

FOR FURTHER INFORMATION CONTACT: Diane Miller, 402–661–1588 or James Hill 402–661–1590.

SUPPLEMENTARY INFORMATION:

Title: NPS National Underground Railroad Network to Freedom Application.

Bureau Form Number: n/a.

OMB Number: 1024–0232.

Expiration Date: 12/31/2006.

Type of request: Revision of a currently approved information collection.

Description of need: The NPS has identified guidelines and criteria for associated elements to qualify for the Network. The application form documents spies, programs, and facilities and demonstrates that they meet the criteria established for inclusion. The documentation will be incorporated into a database that will be available to the general public for information purposes. Public Law 105–2103 authorizes the NPS to develop and administer the National Underground Railroad Network for Freedom Application, a nationwide collection of governmental and non-governmental sites, facilities, and programs associated with the historic Underground Railroad movement. The NPS has developed the application process through which associated elements can be included in the Network. The information collected will (a) verify associations to the Underground Railroad, (b) measure minimum levels of standards for inclusion in the Network, and (c) identify general needs for technical assistance. The NPS specifically requests comments on: (1) The need for information including whether the information has practical utility; (2) the accuracy of the reporting burden hours estimates, (3) was to enhance the quality, and clarity of the information to be collected; and (40 ways to minimize the burden of information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Automated data collection: Respondents must verify associations and characteristics through descriptive texts that are the result of historical research. Evaluations are based on subjective analysis of the information provided, which often includes copies of rare documents and photographs. Much of the information is submitted in electronic format, but at the present time, there is no automated way to gather all of the required information.

Description of respondents: The affected public are State, tribal, and local governments, Federal agencies, businesses, non-profit organizations, and individuals throughout the United States. Nominations to the Network are voluntary.

Estimated average number of respondents: 70.

Estimated average number of responses: 70.

Estimated average burden hours per response: 15.

Estimated frequency of response: Once per respondent.

Estimated annual reporting burden: 1,050 hours.

Dated: September 17, 2006.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 06–8629 Filed 10–11–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement and General Management Plan, Ebey's Landing National Historical Reserve, Island County, WA; Notice of Availability

Summary: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service has prepared and announces the availability of a Final Environmental Impact Statement (FEIS) for the proposed general management plan (GMP) for Ebey's Landing National Historical Reserve located in Island County, Washington. In addition to a ''no-action'' alternative which would maintain current management, the FEIS describes and analyzes two ''action'' alternatives which respond to concerns and issues the public identified during the scoping process, as well as various conservation planning requirements. The alternatives present varying

management strategies that address visitor use and preservation of cultural and natural resources that protect and interpret the rural community on Whidbey Island from 19th century exploration and settlement in Puget Sound to the present time. Development concept plans for three sites are described. The potential environmental consequences of all the alternatives, and mitigation strategies, are identified and analyzed; a determination as to the ''environmentally preferred'' alternative is also provided.

Background: A Notice of Intent announcing preparation of the Draft EIS and general management plan was published in the **Federal Register** on May 22, 2000. Public engagement and information measures have included public meetings, presentations and meetings with organizations located within Ebey's Landing National Historical Reserve (Reserve) and additional organizations, newsletter mailings, local press releases, website postings, and postcards. Preceding the formal GMP planning process, the National Park Service (NPS) organized an interdisciplinary planning team to initiate a new general management plan for the Reserve. The team included both the Reserve's Trust Board (which included members from the NPS, Washington State, Island County and Town of Coupeville) and staff, and staff from the NPS Pacific West Regional Office in Seattle, Washington. The purpose of these initial meetings was to help characterize the scale and extent of the planning process.

The official public scoping process began in June 2000 when NPS staff produced and mailed a newsletter to approximately 650 people on the Reserve's mailing list. In addition, over 2800 newsletters were distributed at local public places such as libraries, civic buildings, businesses, and local parks. The planning team held a series of public scoping meetings in Seattle (June 20) and Coupeville (June 21). In total, 141 verbal comments were recorded from three meetings. Individual scoping meetings were also held between August 2000 and January 2001 to meet with organizations located within the Reserve to discuss issues of mutual interest. Other meetings with additional organizations were scheduled. Scoping letters and comments were received until August 15, 2000 (a total of 36 letters were received during the public scoping period).

On August 18, 2005, the NPS mailed 230 copies of the draft GMP/EIS to agencies, governmental representatives, organizations, and interested individuals. Copies of the draft GMP/EIS were placed in the Coupeville public library for public review. The Reserve's Notice of Availability was published in the **Federal Register** on September 2, 2005 to announce release of the Draft GMP/EIS for public review. The EPA's notice of filing of the draft EIS (August 26, 2005) and a revised Notice of Availability (September 13, 2005) provided opportunity for public comment through December 1, 2005. All comments received until December 15 are included in the official record.

The NPS and Reserve staff placed advertisements announcing locations, times, and dates for public meetings in the Puget Consumer Cooperative Sound Consumer, in Seattle, Washington, the Whidbey News-Times in Oak Harbor, and the Coupeville Examiner in Coupeville, Washington. Press releases were sent to the following local and regional newspapers to publicize release of the draft GMP/EIS and dates, times, and locations of public meetings: Coupeville Examiner, Whidbey News-Times, Skagit Valley Herald, Everett-Herald, Anacortes American, Journal of the San Juan Islands, South Whidbey Record, Bellingham Herald, Market Place, Peninsula Daily News, and Sequim Gazette.

A total of 2,000 newsletters were printed containing a summary of the draft GMP, also announcing the public meetings. Each newsletter included a postage-paid return form for public comments. Newsletters were available at the following locations: Island County Planning Office, the Town of Coupeville Planning Office, the Coupeville Public Library, Island Country Historical Museum in Coupeville, and Fort Ebey and Fort Casey state parks, the Coupeville Post Office, Coupeville Wharf, Coupeville Arts Center, the Oak Harbor and Coupeville Chamber of Commerce offices, local restaurants and other Coupeville businesses. Additional copies were also available at the Reserve's Trust Board office. All material was also made available online at *http://parkplanning.nps.gov/ebla.* The public was also able to provide comments electronically through this Web site.

The NPS and the Reserve's Trust Board hosted three public open houses, one in Seattle (September 12, 2005) and two in Coupeville (both on September 15, 2005). The purpose of the meetings was to provide an opportunity for the public to meet with Reserve Trust Board members and staff, and NPS staff to discuss the draft GMP/EIS and provide comments. A total of 74 people attended the sessions and 179 comments were recorded. In addition to these oral comments, at the close of the draft GMP/EIS public comment period a total of 51 pieces of written correspondence had been received from individuals, agencies and organizations. Minor changes to the Preferred Alternative were made as a result of public comment; however, there were no substantive modifications. Responses to comments are provided in the FEIS. Throughout the planning process, the public's comments and recommendations have provided the foundation for the proposed GMP, represented in the Reserve's purpose and significance, interpretive themes, and proposed actions.

Proposed Plan and Alternatives: Alternative A constitutes the No Action alternative and assumes that existing programs, facilities, staffing, and funding, would generally continue at their current levels. The NPS would dispose of NPS-owned and managed farms within the Reserve to the private sector after placing conservation easements on them.

Alternative B is the Preferred Alternative. The Reserve's Trust Board, and the NPS, in cooperation with partners, would enhance existing programs and resources management, as well as administrative, maintenance, and visitor services within the Reserve. To maintain and protect the rural landscape, the NPS would continue to purchase conservation easements on priority properties based upon a new land protection plan. The NPS would exchange two NPS-owned farms, Farms I and II, to private owners for additional protection on other properties within the Reserve. As part of the exchange of Farm II, the new farm owner would be required to construct a new maintenance building on the West Ridge property, which would remain in NPS ownership. The Sheep Barn at West Ridge would be rehabilitated for dry storage using preservation funds. Additional historic buildings would also be rehabilitated to the Secretary of the Interior's Standards. In addition, a minor boundary adjustment would be recommended. To orient and inform the visitor about the Reserve, three gateway kiosks would be developed along State Route 20 and a visitor center/contact station would be sited in an historic building in Coupeville or within the historic district.

As noted above, several minor modifications were made to the preferred alternative based upon public comments. A recommendation that Island County adopt a regulatory overlay zone for historic preservation over the unincorporated portion of the Reserve has been removed; the proposed

GMP has also been updated to include historic preservation and land use measures undertaken by Island County since project planning was initiated. A second change involved recognizing the efforts by others and not the NPS to establish a marine science center within the Reserve and encouraging those on-going efforts. Also, since release of the draft GMP/EIS, Bell Farm has been removed from the proposed boundary in both Alternatives B and C at the owner's request.

Alternative C changes the management structure of the Reserve from a Trust Board of volunteers to a paid Commission structure. Many actions are similar to Alternative B but with some distinctions. Approximately five acres of NPS-owned land at Farm II would be retained for administrative and maintenance use before exchanging the remaining farmland to a private farm owner for additional protection on other properties within the Reserve. One of the three gateways would be in a historic building in the north of the Reserve. The Reserve would also partner for a visitor contact facility at a proposed marine science center.

Copies: The Final EIS/GMP is now available. Interested persons and organizations wishing to review the Final EIS/GMP may obtain the document by contacting Rob Harbor, Reserve Manager, Ebey's Landing National Historical Reserve, P.O. Box 774, Coupeville, WA 98239, or via telephone at (360) 678–6084. This document may also be reviewed at the Coupeville Library, or a copy can be obtained electronically at *http://parkplanning.nps.gov/ebla*. Please note that names and addresses of all respondents will become part of the public record. It is the practice of the NPS to make all 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 rational 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 business, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Decision Process: Following release of the Final GMP/EIS, a Record of Decision will be prepared and approved not sooner than 30 days after the EPA has published its notice of filing of the document in the **Federal Register**. A notice regarding the approved GMP will be similarly published. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region. Subsequently, official responsibilities for implementing the approved GMP reside with the Trust Board, Ebey's Landing National Historical Reserve and the Reserve Manager.

Dated: August 14, 2006.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 06–8626 Filed 10–11–06; 8:45 am]

BILLING CODE 4312–GW–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee will meet on November 3–4, 2006, at the Westin Tabor Center, 1672 Lawrence Street, Denver, CO 80202, telephone (303) 572–9100. Meeting sessions will begin at 8:30 a.m. and end at 5 p.m. each day.

The agenda for the meeting includes an overview of activities of the National NAGPRA Program during fiscal year 2006; assisting in the resolution of a dispute between the White Mountain Apache Tribe and the Field Museum; discussion of the use of ''compromise of claim'' language in **Federal Register** notices and repatriation agreements; several requests for recommendations regarding the disposition of culturally unidentifiable human remains; discussion of the recent decision in the case of Fallon Paiute-Shoshone Tribe v. U.S. Bureau of Land Management; and presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public.

To schedule a presentation to the Review Committee during the meeting, submit a written request with an abstract of the presentation and contact information for the presenters. Persons also may submit written statements for consideration by the Review Committee during the meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee by U.S. Mail to the National Park Service, 1849 C Street NW (2253), Washington, DC 20240; or by commercial delivery to the National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 371–5197.

Transcripts of Review Committee meetings are available approximately eight weeks after each meeting at the National NAGPRA Program office, 1201 Eye Street NW, 8th floor, Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to Tim__McKeown@nps.gov. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Web site, http://www.cr.nps.gov/nagpra; for the Review Committee's meeting procedures, select ''Review Committee,'' then select ''Procedures.''

The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq.* Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed

during meetings that are open to the public.

Dated: September 25, 2006

C. Timothy McKeown,

Designated Federal Officer,Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E6–16922 Filed 10–11–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of Energy, Richland Operations Office, Richland, WA and Thomas Burke Memorial Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control of the U.S. Department of Energy, Richland Operations Office, Richland, WA, and in the physical custody of the Thomas Burke Memorial Museum (Burke Museum), University of Washington, Seattle, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

At an unknown date, cultural items were removed from two graves on Pope Avenue in Hanford, Benton County, WA, by Samuel D. Paddock. Prior to 1960, the cultural items were received by the Burke Museum and formally accessioned in 1986 (Burke Accn. # 1986–80). The human remains were not transferred to the Burke Museum. The 284 unassociated funerary objects are 1 shell bead, 281 glass beads, 1 brass button, and 1 copper fragment.

Museum documentation indicates that the cultural items were recovered from graves, and the types of items are consistent with other funerary objects found in the Columbia River area during occupation by the Yakama, Walla Walla, and Wanapum groups. Ethnographic documentation indicates that the present-day location of Hanford, WA, is located within an overlapping aboriginal territory of descendants of the Yakama, Walla Walla, and Wanapum groups, which are represented today by the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and the Wanapum Band, a non-federally recognized Indian group.

The Yakama Treaty, signed on June 9, 1855, included the Hanford area in the aboriginal territory of the present-day Confederated Tribes and Bands of the Yakama Nation, Washington. The Walla Walla people have also occupied this area since before historic times. As per the Treaty of Walla Walla, signed on June 9, 1855, the Walla Walla people are represented by the present-day Confederated Tribes of the Umatilla Reservation, Oregon. The Wanapum Band occupied the Hanover area, which is now designated the U.S. Department of Energy Hanford Site, as recently as World War II, when they moved to the Priest Rapids area.

Officials of the Department of Energy and the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 284 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Department of Energy and Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington, and Confederated Tribes of the Umatilla Reservation, Oregon. Furthermore, officials of the Department of Energy and the Burke Museum have determined that there is a cultural relationship between the unassociated funerary objects and the Wanapum Band, a non-federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the 284 unassociated funerary objects should contact Annabelle Rodriguez, U.S. Department of Energy, Cultural/Historic Resources Program, Richland Operations Office, 825 Jadwin Avenue, MSIN A5–15, Richland, WA 99352, telephone (509) 372–0277, before November 13, 2006. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon, and Confederated Tribes and Bands of the Yakama Nation, Washington, for themselves and on behalf of the Wanapum Band, a non-federally recognized Indian group, may proceed after that date if no additional claimants come forward. The Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Wanapum Band, a non-federally recognized Indian group, are claiming jointly all cultural items from the Hanford area.

The Department of Energy is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Wanapum Band, a non-federally recognized Indian group, that this notice has been published.

Dated: September 25, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–16924 Filed 10–11–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Energy, Richland Operations Office, Richland, WA and Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Energy, Richland Operations Office, Richland, WA, and in the physical custody of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains and associated funerary objects were removed from Benton County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The

National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Department of Energy and the Burke Museum professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and the Wanapum Band, a non-federally recognized Indian group.

In 1981, human remains representing a minimum of one individual were removed from an area within the Hanford site, Benton County, WA, by John A. Hedron. In 1985, the museum received the human remains and cultural items from Dr. Robert Rushmer on behalf of Mr. Hedron, and they were accessioned by the museum that same year (Burke Accn. # 1985–106). No known individual was identified. The seven associated funerary objects are 1 piece of copper ore, 1 chopper, 1 flaked stone tool, 1 core, 1 flake, and 2 mussel shell fragments.

Museum documentation indicates that the associated funerary objects were recovered with fragmentary human remains, and the types of cultural items are consistent with other Native American funerary objects found in the Columbia River area. The human remains consist of nine fragments. The human remains were determined to be Native American based on the associated artifacts and geographic location. Ethnographic documentation indicates that the present day location of Hanford, WA, is located within an overlapping aboriginal territory of descendants of the Yakama, Walla Walla, and Wanapum groups, which are represented today by the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and the Wanapum Band, a non-federally recognized Indian group.

The Yakama Treaty, signed on June 9, 1855, included the Hanford area in the aboriginal territory of the present-day Confederated Tribes and Bands of the Yakama Nation, Washington. The Walla Walla people have also occupied this area since before historic times. As per the Treaty of Walla Walla, signed on June 9, 1855, the Walla Walla people are represented by the present-day Confederated Tribes of the Umatilla Reservation, Oregon. The Wanapum Band occupied the Hanford area, which is now designated the U.S. Department of Energy Hanford Site, as recently as World War II, when they moved to the Priest Rapids area.

Officials of the Department of Energy and the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Department of Energy and the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the seven objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Department of Energy and the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington, and Confederated Tribes of the Umatilla Reservation, Oregon. Furthermore, officials of the Department of Energy and the Burke Museum have determined that there is a cultural relationship between the human remains and associated funerary objects and the Wanapum Band, a non-federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Annabelle Rodriguez, U.S. Department of Energy, Cultural/Historic Resources Program, Richland Operations Office, 825 Jadwin Avenue, MSIN A5–15 Richland, WA 99352, (509) 372–0277, before November 13, 2006. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon, and Confederated Tribes and Bands of the Yakama Nation, Washington, for themselves and on behalf of the Wanapum Band, a non-federally recognized Indian group, may proceed after that date if no additional claimants come forward. The Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, a non-federally recognized Indian group, are claiming jointly all cultural items from the Hanford area.

The Department of Energy is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and Wanapum Band, a non-federally recognized Indian group, that this notice has been published.

Dated: September 25, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–16923 Filed 10–11–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Saint Martin's Waynick Museum, Lacey, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (5), of the completion of an inventory of human remains in the possession of the Saint Martin's Waynick Museum (Waynick Museum), Lacey, WA. The human remains were removed from Vashon Island, King County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice replaces the Notice of Inventory Completion published in the **Federal Register** on February 22, 2006 (FR Doc. E6–2448, page 9154) in order to correct the number of human remains and collection history from a minimum of two individuals removed from one site to a minimum of six individuals removed from six sites.

A detailed assessment of the human remains was made by Waynick Museum professional staff in consultation with representatives of the Puyallup Tribe of the Puyallup Reservation, Washington.

In 2003, the Waynick Museum found bones in the museum collection. In April 2004, the Puyallup Tribe of the Puyallup Reservation, Washington notified the Waynick Museum of their belief that human remains were in the possession of the Waynick Museum. In May 2004, the bones were determined to be Native American human remains representing two individuals that were culturally affiliated with the Puyallup Tribe of the Puyallup Reservation, Washington. A Notice of Inventory Completion was published in the **Federal Register** on February 22, 2006.

Additional human remains were subsequently found in a storage room in the monastery. Dr. Stephen Fulton, Associate Professor of Biology at Saint Martin's University, assisted in determining the minimum number of individuals.

In 1938, human remains representing a minimum of one individual were removed from a cist burial mound on Vashon-Maury Island, King County, WA, by Lynne ''Black Eagle'' Waynick. Mr. Waynick documented the removal of the cist burial and recorded it in his report, ''[a]mong the Clam Shell Mounds and Ancient Camp Sites of Vashon Island.'' In the early 1960s, the human remains were donated to Saint Martin's Abbey in Lacey, WA, as part of the original collection for the museum named after Mr. Waynick, known as Saint Martin's Waynick Museum. In 1996, the cranium of the individual was stored in a different building and was not reunited with the rest of the human remains until 2005. The human remains were incorrectly identified as two individuals in the February 22, 2006 Notice of Inventory Completion. No known individual was identified. No associated funerary objects are present.

At an unknown date between 1920 and 1970, human remains representing a minimum of one individual were removed from a shell burial near Burton on Vashon Island, King County, WA, most likely by Lynne ''Black Eagle'' Waynick. An index card found with the human remains states: ''...skull found in a shell burial near Burton Wash.'' The human remains are believed to have been donated as part of the original collection of the Waynick Museum in the 1960s. In 1996, the human remains were stored in a different building and were not identified until 2005. Based on storage, museum documentation, excavator and museum history, the human remains are believed to be a Native American individual removed from Vashon Island. No known individual was identified. No associated funerary objects are present.

At an unknown date between 1920 and 1970, human remains representing a minimum of two individuals were probably removed from Vashon Island, King County, WA. Mr. Lynn ''Black Eagle'' Waynick may have been the excavator. The human remains were probably part of the original collection of the Waynick Museum and would have been in the possession of the museum since that time. Mr. Waynick was a resident of Vashon Island for many years and documented the excavation of another Native American individual from Vashon Island. The human remains were stored in a cardboard box in the Saint Martin's Abbey monastery building itself, but outside of the space designated for the museum's storage. Museum documentation did not provide the location of the human remains and they were found in collections in 2005. Based on storage, excavator and museum history, the human remains are probably Native American and removed from Vashon Island. No known individuals were identified. No associated funerary objects are present.

At an unknown date between 1920 and 1970, human remains representing a minimum of two individuals were removed from most likely Vashon Island, King County, WA, probably by Lynn ''Black Eagle'' Waynick. The human remains were probably part of the original collection of the Waynick Museum and would have been in the possession of the museum since that time. Mr. Waynick was a resident of Vashon Island for many years and documented the excavation of another Native American individual from Vashon Island. The human remains were found in collections in 2003 and identified as human remains in 2004. The human remains were stored in a cardboard box commingled with other bones in Waynick Museum storage with no accession number or accompanying information; however, they were found in a box containing other Native American human remains, including the individual documented as being removed from the cist burial. Based on storage, excavator and museum history, the human remains are probably Native American and removed from Vashon Island. No known individuals were identified. No associated funerary objects are present.

Archeological and historical documentation identifies Vashon Island as a site of several Puyallup villages at or before the signing of the Medicine Creek Treaty of 1854. The Vashon-Maury Island is located in the historically documented traditional territory of the Puyallup tribe. Based on museum documentation, geographic location, storage, excavator and museum history, all individuals described in this Notice of Inventory Completion are believed to be Native American and culturally affiliated to the Puyallup. Descendants of the Puyallup are members of the Puyallup Tribe of the Puyallup Reservation, Washington.

Officials of Saint Martin's Waynick Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of six individuals of Native American ancestry. Officials of Saint Martin's Waynick Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Puyallup Tribe of the Puyallup Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Brother Luke Devine, Saint Martin's Waynick Museum, 5300 Pacific Ave. SE, Lacey, WA 98503, (360) 438- 4458, before November 13, 2006. Repatriation of the human remains to the Puyallup Tribe of the Puyallup Reservation, Washington may proceed after that date if no additional claimants come forward.

Saint Martin's Waynick Museum is responsible for notifying the Puyallup Tribe of the Puyallup Reservation, Washington that this notice has been published.

Dated: August 31, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–16920 Filed 10–11–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Delaware Hazardous Substances Cleanup Act

Notice is hereby given that on September 29, 2006, a proposed Consent Decree in *United States and the State of Delaware* v. *E.I. Du Pont De Nemours & Company, Inc., and CIBA Speciality Chemicals Corporation*, Civil Action No. 06–612 was lodged with the United States District Court for the District of Delaware.

In this action the United States and the State of Delaware sought claims for natural resource damages brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9601 *et seq.* and the Delaware Hazardous Substance Cleanup Act (''HSCA''), 7 *Del. C.* Chapter 91 with respect to the release of hazardous substances from DuPont-Newport chemical facility, located in Newport, Delaware. Under the proposed Consent Decree, the defendants will fund restoration projects on the ''Pike Property'' as set forth in the Damage Assessment and Restoration Plan (''DARP'', attached to the Consent

Decree), and the State of Delaware will hold an environmental covenant for the Pike Property to protect it in perpetuity. Defendants will reimburse each Trustee for its Damage Assessment Costs, and make a payment to Delaware for groundwater injuries. Defendants will pay $2,237,205 for the above-mentioned projects and costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Delaware* v. *E.I. Du Pont De Nemours & Company, Inc., and CIBA Speciality Chemicals Corporation*, D.J. Ref. 90–11–2–883/2.

The Consent Decree may be examined at the Office of the United States Attorney, for the District of Delaware, 1007 Orange Street, Suite 700, Wilmington, Delaware. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

A copy of the Consent Decree may also be obtained at the offices of the Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, Delaware 19720, Main phone number: 302–395–2600, Site Name: DuPont Newport NRDA DE–X009. Contacts: Jane Biggs Sanger, Elizabeth LaSorte, or Robert Newsome. An electronic version of the Consent Decree and the DARP can be viewed at *http://apps.dnrec.state.de.us/intraviewer/session/frmmain.cfm.*

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–8631 Filed 10–11–06; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: (06–076).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to 35 U.S.C. 209, applicants for a license under a patent or patent application must submit information in support of their request for a license. NASA uses the submitted information to grant the license.

II. Method of Collection

The current paper-based system is used to collect the information. It is deemed not cost effect to collect the information using a Web site form since the applications submitted vary significantly in format and volume.

III. Data

Title: Application for Patent License.

OMB Number: 2700–0039.

Type of review: Extension of currently approved collection.

Affected Public: Business or other for-profit, and individuals or households.

Number of Respondents: 60.

Responses per Respondent: 1.

Annual Responses: 60.

Hours per Request: 10 hours.

Annual Burden Hours: 600.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–16854 Filed 10–11–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

Notice: (06–077).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA grants patent licenses for the commercial application of NASA-owned inventions. Each licensee is required to report annually on it activities in commercializing its licensed inventions(s) and on any royalties due. NASA attorneys use this information to determine of a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

II. Method of Collection

The current paper-based system is used to collect the information. It is deemed not cost effect to collect the information using a Web site form since the reports submitted vary significantly in format and volume.

III. Data

Title: Patent License Report.

OMB Number: 2700–0010.

Type of review: Extension of currently approved collection.

Affected Public: Business or other for-profit; individuals or households.

Number of Respondents: 90.

Responses per Respondent: 1.

Annual Responses: 90.

Hours per Request: 0.5 hour.

Annual Burden Hours: 45.

Frequency of Report: Annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6–16855 Filed 10–11–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–011]

Southern Nuclear Operating Company; Notice of Hearing and Opportunity to Petition for Leave to Intervene on An Early Site Permit for the Vogtle ESP Site

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10 of the Code of Federal Regulations, Part 50, Domestic Licensing of Production and Utilization Facilities, Part 52, Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants, and Part 2, Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, notice is hereby given that a hearing will be held, at a time and place to be set in the future by the United States Nuclear Regulatory Commission (NRC, the Commission) or designated Atomic Safety and Licensing Board (Board). The hearing will consider the application dated August 14, 2006, filed by Southern Nuclear Operating Company (SNC), pursuant to Subpart A of 10 CFR part 52 for an early site permit (ESP). The application which was supplemented by letters dated August 17, September 6 (two letters), and September 13, 2006 requests approval of a site located in eastern Georgia (near Waynesboro, Georgia) identified as the Vogtle ESP site, for one or more new nuclear reactors that would, if authorized for construction and operation in a separate licensing proceeding under subpart C of 10 CFR part 52 or under 10 CFR part 50, have a capacity of no more than 6800 Megawatts (thermal) additional for the site. The application was accepted for docketing on September 19, 2006. The docket number established for this application is 52–011.

The hearing will be conducted by a Board which will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or by the Commission. Notice as to the membership of the Board will be published in the **Federal Register** at a later date.

The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report (SER) and an environmental impact statement (EIS). In addition, the Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.23, and the ACRS will report on those portions of the application that concern safety. Upon receipt of the ACRS report and completion of the Nuclear Regulatory Commission (NRC) staff's SER and EIS, the Director, Office of Nuclear Reactor Regulation, NRC, will propose findings on the following issues:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

(1) Whether the issuance of an ESP will be inimical to the common defense and security or to the health and safety of the public (Safety Issue 1); and (2) whether, taking into consideration the site criteria contained in 10 CFR part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site, can be constructed and operated without undue risk to the health and safety of the public (Safety Issue 2).

Issue Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended

Whether, in accordance with the requirements of subpart A of 10 CFR part 51, the ESP should be issued as proposed.

The Board will conduct the hearing in accordance with 10 CFR part 2. If the hearing is contested as defined by 10 CFR 2.4, the Board will consider Safety Issues 1 and 2 and the issue pursuant to NEPA set forth above.

If the hearing is not a contested proceeding as defined in 10 CFR 2.4, the Board will determine without conducting a de novo review: Whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate to support a negative finding on Safety Issue 1 above, and an affirmative finding on Safety Issue 2 above, as proposed to be made by the Director, Office of Nuclear Reactor Regulation; and whether the review conducted by the Commission pursuant to NEPA has been adequate.

Regardless of whether the proceeding is contested or uncontested, the Board will: (1) Determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA and subpart A of 10 CFR part 51 have been complied with in the proceeding; (2) independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values.

In accordance with 10 CFR 2.309, any person whose interest may be affected

by this proceeding and who desires to participate as a party must file a written petition for leave to intervene and must specify the contentions which the person seeks to have litigated in the hearing. 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 must specifically state: (1) The name, address and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial or other interest in the proceeding; and (4) the possible effect of any decision or order that may be issued in the proceeding on the petitioner's interest.

Each contention must contain a specific statement of the issue of law or fact to be raised or controverted. A petitioner must also provide the following information with respect to each contention: (1) A brief explanation of the basis for the contention; (2) a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and (3) sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. For each contention, the petition must demonstrate that the issue raised in the contention is within the scope of this proceeding and that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in this proceeding. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

All such petitions must be filed no later than 60 days from the date of publication of this notice in the **Federal Register**. Non-timely filings will not be entertained absent a determination by the Commission, or the Atomic Safety and Licensing Board designated to rule on the petition, that the petition should be granted based upon a balancing of the factors specified in 10 CFR 2.309(c)(i)–(viii).

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 attorneys for the licensee: Bentina C. Terry, Southern Nuclear Operating Company, Inc., Bin B–022, P.O. Box 1295, Birmingham, Alabama 35201–1295, and Stanford M. Blanton, Esq., Balch and Bingham, P.O. Box 306, Birmingham, Alabama 35201. All petitions must be accompanied by proof of service upon all parties to the proceeding or their attorneys of record.

A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but may not otherwise participate in the proceeding.

A copy of the SNC 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. Publicly available records are accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML062290248. The accession numbers for the supplements to the application are ML062340398, ML062510149, ML062510145, and ML062580074. 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.*

The application is also available to local residents at the Burke County Library in Waynesboro, Georgia, and is available on the NRC Web page at *http://www.nrc.gov/reactors/new-licensing/esp.html.*

Dated at Rockville, Maryland this 5th day of October, 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–16868 Filed 10–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Nuclear Waste; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act (FACA) by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW meetings are conducted in accordance with FACA. The ACNW advises the NRC on technical issues related to nuclear materials and waste management. The bases of ACNW reviews include 10 CFR parts 20, 60, 61, 63, 70, 71, and 72 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act as amended, the Low-Level Radioactive Waste Policy Act as amended, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those

conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW.* There may be a need to make adjustments to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to make such adjustments to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend a meeting may contact the Designated Federal Official (DFO) specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons who plan to submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting but wish to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice, care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be in the possession of the DFO prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made five days before the meeting, identifying the topic(s) to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras may be limited to selected portions of the meeting as determined by the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be present in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. A copy of the certified minutes of the meeting will be available at the same location up to three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACNW meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACNW schedules and agendas).

(f) Video teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACNW Working Group Meetings

From time to time the ACNW may sponsor an in-depth meeting on a specific technical issue to understand staff expectations and review work in progress. Such meetings are called Working Group meetings. These Working Group meetings will also be conducted in accordance with the procedures noted above for the ACNW meeting, as appropriate. When Working Group meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

ACNW Ad Hoc Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACNW, however, chose to conduct its Subcommittee meetings in accordance with the procedures noted above for ACNW full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACNW. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions are To be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific

agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: October 5, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–16870 Filed 10–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Reports: Implementation of Section 208 of the Energy Reorganization Act of 1974; Revised Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Revised Policy Statement on Abnormal Occurrence Criteria.

SUMMARY: This policy statement presents the revised abnormal occurrence (AO) criteria the Commission uses for selecting AO's for the annual report to Congress as required by Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438). Section 208 of the act defines an AO as an unscheduled incident or event which the U.S. Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The AO criteria have been amended to ensure that the criteria are consistent with the NRC's Strategic Plan for Fiscal Year (FY) 2004–2009 and the NRC rulemaking on Title 10, Part 35, of the Code of Federal Regulations (10 CFR Part 35), ''Medical Use of Byproduct Material.'' Additionally, risk-informed criteria based on the NRC Accident Sequence Precursor (ASP) Program and Reactor Oversight Process (ROP) have been added for selecting abnormal occurrences at commercial nuclear power plants for the report to Congress. The ASP program assesses the risk significance of issues and events. The ROP is a risk-informed, tiered approach to ensuring the safety of nuclear power plants. The ROP is a process for collecting information about licensee performance, assessing the safety significance of the information, taking appropriate actions, and ensuring that licensees correct deficiencies. Some sections of the AO criteria have been restructured. The restructuring accommodates the changes in the criteria and minimizes duplication.

DATES: *Effective Date:* All revisions included in this publication are complete and accurate as of September 21, 2006.

FOR FURTHER INFORMATION CONTACT: Sheryl A. Burrows, telephone: (301) 415–6086; e-mail: *SAB2@nrc.gov*; USNRC, Office of Nuclear Regulatory Research, Mail Stop T9-F31, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) defines an abnormal occurrence (AO) as an unscheduled incident or event which the U.S. Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66) requires that AOs be reported to Congress annually. Section 208 requires that the discussion of each event include the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. The Commission must also widely disseminate the AO report to the public within 15 days of sending it to Congress.

Abnormal Occurrence Reporting

The AO policy statement has been developed to comply with Section 208 of the Energy Reorganization Act of 1974, as amended. The intent of the act is to keep Congress and the public informed of unscheduled incidents or events which the Commission considers significant from the standpoint of public health and safety. The policy reflects a range of health and safety concerns and applies to incidents and events involving a single individual, as well as those having overall impact on the general public. The AO criteria results in reports to Congress only for those events considered significant from the standpoint of public health and safety.

Licensee Reports

This general policy statement will not change the reporting requirements for NRC licensees in Commission regulations, license conditions, or technical specifications (TS). NRC licensees will continue to submit required reports on a wide range of events, including instrument malfunctions and deviations from normal operating procedures that are not significant from the standpoint of the public health and safety but provide data useful to the Commission in monitoring operating trends at licensed facilities and in comparing the actual performance of the facilities with their design and/or licensing basis.

Applicability

Implementation of Section 208 of the Energy Reorganization Act of 1974, as amended, ''Abnormal Occurrence Reports'', involves the conduct of Commission business and does not impose requirements on licensees or certified facilities. The reports cover certain unscheduled incidents or events related to the manufacture, construction, or operation of a facility or conduct of an activity subject to the requirements of Parts 20, 30 through 36, 39, 40, 50, 61, 70, 71, 72 or 76 of Chapter I of Title 10 of the Code of Federal Regulations (10 CFR).

Agreement States provide information to the NRC on incidents and events involving applicable nuclear materials in their States. Events reported by Agreements States that reach the threshold for reporting as AOs are also published in the ''Report to Congress on Abnormal Occurrences.''

Abnormal Occurrence General Statement of Policy

The Commission will apply the following policy in determining whether an incident or event at a facility or involving an activity that is licensed or otherwise regulated by the Commission is an AO.

An incident or event is considered an AO if it involves a major reduction in the protection of public health or safety. The incident or event has a moderate or severe impact on public health or safety and could include, but need not be limited to, the following:

(1) Moderate exposure to, or release of, radioactive material licensed or otherwise regulated by the Commission,

(2) Major degradation of essential safety-related equipment, or

(3) Major deficiencies in the design, construction, or use of management controls for facilities or radioactive material.

The criteria for determining whether to consider an incident or event for reporting as an AO are set forth in Appendix A of this policy statement.

Commission Dissemination of AO Information

The Commission widely disseminates the AO reports to the public. The Commission submits an annual report to Congress on AOs at or associated with any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended. This report gives the date, place, nature, and probable consequences of each AO, the cause or causes of each AO, and any actions taken to prevent recurrence.

APPENDIX A: Abnormal Occurrence Criteria

The following criteria are used to determine whether to consider events for reporting as AOs:

I. For All Licensees

A. Human Exposure to Radiation from Licensed Material

1. Any unintended radiation exposure to an adult (any individual 18 years of age or older) resulting in an annual total effective dose equivalent (TEDE) of 250 mSv (25 rem) or more; or an annual sum of the deep dose equivalent (external dose) and committed dose equivalent (intake of radioactive material) to any individual organ other than the lens of the eye, the bone marrow, and the gonads of 2,500 mSv (250 rem) or more; or an annual dose equivalent to the lens of the eye of 1 Sv (100 rem) or more; or an annual sum of the deep dose equivalent and committed dose equivalent to the bone marrow of 1 Sv (100 rem) or more; or a committed dose equivalent to the gonads of 2,500 mSv (250 rem) or more; or an annual shallow-dose equivalent to the skin or extremities of 2,500 mSv (250 rem) or more.

2. Any unintended radiation exposure to any minor (an individual less than 18 years of age) resulting in an annual TEDE of 50 mSv (5 rem) or more, or to an embryo/fetus resulting in a dose equivalent of 50 mSv (5 rem) or more.

3. Any radiation exposure that has resulted in unintended permanent functional damage to an organ or a physiological system as determined by a physician.

B. Discharge or dispersal of radioactive material from its intended place of confinement which results in the release of radioactive material to an unrestricted area in concentrations which, if averaged over a period of 24 hours, exceeds 5,000 times the values specified in Table 2 of Appendix B to 10 CFR Part 20, unless the licensee has demonstrated compliance with § 20.1301 using § 20.1302(b)(1) or § 20.1302(b)(2)(ii).

This criterion does not apply to transportation events.

C. Theft, Diversion, or Loss of Licensed Material, or Sabotage or Security Breach[1] [2]

1. Any unrecovered lost, stolen, or abandoned sources that exceed the values listed in Appendix P to Part 110, ''High Risk Radioactive Material, Category 2.'' Excluded from reporting under this criterion are those events involving sources that are lost, stolen, or abandoned under the following conditions: sources abandoned in accordance with the requirements of 10 CFR 39.77(c); sealed sources contained in labeled, rugged source housings; recovered sources with sufficient indication that doses in excess of the reporting thresholds specified in AO criteria I.A.1 and I.A.2 did not occur while the source was missing; and unrecoverable sources (sources that have been lost and for which a reasonable attempt at recovery has been made without success) lost under such conditions that doses in excess of the reporting thresholds specified in AO criteria I.A.1 and I.A.2 are not known to have occurred and the agency has determined that the risk of theft or diversion is acceptably low.

2. A substantiated [3] case of actual theft or diversion of licensed, risk-significant radioactive sources or a formula quantity [4] of special nuclear material; or act that results in radiological sabotage.[5]

3. Any substantiated [3] loss of a formula quantity [4] of special nuclear material or a substantiated [3] inventory discrepancy of a formula quantity [4] of special nuclear material that is judged to be caused by theft or diversion or by a substantial breakdown [6] of the accountability system.

4. Any substantial breakdown [6] of physical security or material control (i.e., access control containment or accountability systems) that significantly weakened the protection against theft, diversion, or sabotage.

5. Any significant unauthorized disclosures (loss, theft, and/or deliberate) of classified information that harms national security or safeguards information that harms the public health and safety.

D. Initiation of High-Level NRC Team Inspections [7]

II. For Commercial Nuclear Power Plant Licensees

A. Malfunction of Facility, Structures, or Equipment

1. Exceeding a safety limit of license technical specification (TS) [10 CFR 50.36(c)].

2. Serious degradation of fuel integrity, primary coolant pressure boundary, or primary containment boundary.

3. Loss of plant capability to perform essential safety functions so that a release of radioactive materials which could result in exceeding the dose limits of 10 CFR Part 100 or 5 times the dose limits of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 19, could occur from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system).

B. Design or Safety Analysis Deficiency, Personnel Error, or Procedural or Administrative Inadequacy

1. Discovery of a major condition not specifically considered in the safety analysis report (SAR) or TS that requires immediate remedial action.

2. Personnel error or procedural deficiencies that result in loss of plant capability to perform essential safety functions so that a release of radioactive materials which could result in exceeding the dose limits of 10 CFR Part 100 or 5 times the dose limits of 10 CFR Part 50, Appendix A, GDC 19, could occur from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod drive mechanism).

C. Any reactor events or conditions that are determined to be of high safety significance.[8]

[1] Information pertaining to certain incidents may be either classified or under consideration for classification because of national security implications. Classified information will be withheld when formally reporting these incidents in accordance with Section 208 of the ERA of 1974, as amended. Any classified details regarding these incidents would be available to the Congress, upon request, under appropriate security arrangements.

[2] Due to increased terrorist activities worldwide, the AO report would not disclose specific classified information and sensitive information, the details of which are considered useful to a potential terrorist. Classified information is defined as information that would harm national security if disclosed in an unauthorized manner.

[3] ''Substantiated'' means a situation where an indication of loss, theft, or unlawful diversion such as: an allegation of diversion, report of lost or stolen material, statistical processing difference, or other indication of loss of material control or accountability cannot be refuted following an investigation; and requires further action on the part of the Agency or other proper authorities.

[4] A formula quantity of special nuclear material is defined in 10 CFR 70.4.

[5] Radiological sabotage is defined in 10 CFR 73.2.

[6] A substantial breakdown is defined as a red finding in the security inspection program, or any plant or facility determined to have overall unacceptable performance, or in a shutdown condition (inimical to the effective functioning of the nation's critical infrastructure) as a result of significant performance problems and/or operational events.

[7] Initiation of any Incident Investigation Teams, as described in NRC Management Directive (MD) 8.3, ''NRC Incident Investigation Program,'' or initiation of any Accident Review Groups, as described in MD 8.9, ''Accident Investigation.''

[8] The NRC ROP uses four colors to describe the safety significance of licensee performance. As defined in NRC Management Directive 8.13, ''Reactor Oversight Process,'' green is used for very low safety significance, white is used for low to moderate safety significance, yellow is used for substantial safety significance, and red is used for

Continued

D. Any operating reactor plants that are determined to have overall unacceptable performance or that are in a shutdown condition as a result of significant performance problems and/or operational event(s).[9]

III. Events at Facilities Other Than Nuclear Power Plants and All Transportation Events

A. Events Involving Design, Analysis, Construction, Testing, Operation, Transport, Use, or Disposal of Licensed Facilities or Regulated Materials

1. An accidental criticality [10 CFR 70.52(a)].
2. A major deficiency in design, construction, control, or operation having significant safety implications that require immediate remedial action.
3. A serious safety-significant deficiency in management or procedural controls.
4. A series of events (in which the individual events are not of major importance), recurring incidents, or incidents with implications for similar facilities (generic incidents) that raise a major safety concern.

B. For Fuel Cycle Facilities

1. Absence or failure of all safety-related or security-related controls (engineered and human) for an NRC-regulated lethal hazard (radiological or chemical) while the lethal hazard is present.
2. An NRC-ordered safety-related or security-related immediate remedial action.

C. For Medical Licensees A medical event that:

1. Results in a dose that is
a. Equal to or greater than 1Gy (100 rad) to a major portion of the bone marrow or to the lens of the eye; or equal or greater than 2.5 Gy (250 rad) to the gonads; or
b. Equal to or greater than 10 Gy (1,000 rad) to any other organ or tissue; and
2. Represents either
a. A dose or dosage that is at least 50 percent greater than that prescribed, or
b. A prescribed dose or dosage that
(i) Uses the wrong radiopharmaceutical or unsealed byproduct material; or
(ii) Is delivered by the wrong route of administration; or
(iii) Is delivered to the wrong treatment site; or
(iv) Is delivered by the wrong treatment mode; or
(v) Is from a leaking source or sources; or
(vi) Is delivered to the wrong individual or human research subject.

IV. Other Events of Interest

The Commission may determine that events other than AOs may be of interest to Congress and the public and should be included in an appendix to the AO report as ''Other Events of Interest.'' Such events may include, but are not necessarily limited to, events that do not meet the AO criteria but that have been perceived by Congress or the public to be of high health and safety significance, have received significant media coverage, or have caused the NRC to increase its attention to or oversight of a program area, or a group of similar events that have resulted in licensed materials entering the public domain in an uncontrolled manner.

5 U.S.C. 552(a)]

Dated at Rockville, Maryland, this 5th day of October 2006.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E6–16871 Filed 10–11–06; 8:45 am]

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high safety significance. Reactor conditions or performance indicators evaluated to be red are considered Abnormal Occurrences. Additionally, Criterion II.C also includes any events or conditions evaluated by the NRC ASP program to have a conditional core damage probability (CCDP) or change in core damage probability (CDP) of greater than 1×10^{-3}.

[9] Any plants assessed by the ROP to be in the unacceptable performance column, as described in NRC Inspection Manual Chapter 0305, ''Operating Reactor Assessment Program.'' This assessment of safety performance is based on the number and significance of NRC inspection findings and licensee performance indicators.

NUCLEAR REGULATORY COMMISSION

[NUREG–1852]

''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire, Draft Report for Comment''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire, Draft Report For Comment,'' and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of and is seeking comments on NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire, Draft Report For Comment.''

DATES: Comments on this document should be submitted by November 6, 2006. Comments received after that date will be considered to the extent practical. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: Members of the public are invited and encouraged to submit written comments to Michael Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments attention to Michael Lesar, 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be sent electronically to *NRCREP@nrc.gov.*

This document, NUREG–1852, is available at the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* under Accession No. ML062350285; on the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/nuregs/docs4comment.html;* and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. The PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV.*

FOR FURTHER INFORMATION, CONTACT: Erasmia Lois, Human Factors and Reliability Branch, Office of Nuclear Regulatory Research, telephone (301) 415–6560, e-mail *exl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

NUREG–1852, ''Demonstrating the Feasibility and Reliability of Operator Manual Actions in Response to Fire, Draft Report For Comment,'' September 2006

This NUREG provides criteria that licensees may use to demonstrate the feasibility and reliability of operator manual actions in response to fire. This NUREG does not clarify circumstances under which licensees may use operator manual actions in lieu of fire barriers. Licensees should refer to 10 CFR 50.48 and their license bases to determine applicable regulatory requirements with respect to operator manual actions in fire protection. Additional guidance on regulatory requirements pertaining to operator manual actions are provided in Regulatory Issue Summary 2006–10, ''Regulatory Expectations with

Appendix R, Paragraph III.G.2 Operator Manual Actions,'' dated June 2006.

Section 9.5.1, ''Fire Protection Program,'' of the Standard Review Plan, NUREG–0800, will be revised to incorporate the guidance provided by RIS 2006–10 and NUREG–1852.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the document, incorporate suggested changes as necessary, and issue the final NUREG–1852 for use.

Dated at Rockville, MD, this 11th day of September, 2006.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Risk Assessment and Special Projects, Office of Nuclear Regulatory Research.

[FR Doc. E6–16872 Filed 10–11–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collections; Comment Request

Upon written request; copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Rule 12d1–3, OMB Control No. 3235–0109, SEC File No. 270–116.

Schedule 13E–4F, OMB Control No. 3235–0375, SEC File No. 270–340.

Form F–X, OMB Control No. 3235–0379, SEC File No. 270–336.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Rule 12d1–3 (17 CFR 240.12d1–3) requires a certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(d)) to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes one-half hour per response to provide the information required under Rule 12d1–3 and that the information is filed by 688 respondents for a total annual reporting burden of 344 hours (.5 hours per response × 688 responses).

Schedule 13E–4F (17 CFR 240.13e–102) may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 hours per response to prepare Schedule 13E–4F and that the information is filed by 3 respondents for a total annual reporting burden of 6 hours (2 hours per response × 3 responses).

Form F–X (17 CFR 239.42) is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 or filing periodic reports on Form 40–F under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 hours per response to prepare Form F–X and that the information is filed by 129 respondents for a total annual reporting burden of 258 hours (2 hours per response × 129 responses).

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: September 28, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–16849 Filed 10–11–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54565; File No. SR–Amex–2006–84]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Suspension of Transaction Charges for Specialist Orders in the Nasdaq-100 Tracking Stocksup® (QQQQ)

October 3, 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 8, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Amex has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Amex Exchange Traded Funds and Trust Issued Receipts Fee Schedule to suspend transaction charges for specialist orders in connection with the trading of the Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from September 8, 2006 through December 31, 2006. The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

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 Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to suspend transaction charges for specialist orders in the Nasdaq-100 Index Tracking Stocksup® (QQQQ) from September 8, 2006 through December 31, 2006. Previously, the Amex suspended the transaction charges of specialist orders in connection with the QQQQ through August 31, 2006.[5]

Currently, specialist orders are charged $0.0034 ($0.34 per 100 shares), capped at $300 per trade (88,235 shares). Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® (formerly ''QQQ'') transferred its listing from the Amex to the Nasdaq Stock Market, Inc. It now trades on Nasdaq under the symbol QQQQ. After the transfer, the Amex began trading QQQQ on an unlisted trading privileges basis.

The Exchange believes that the proposed suspension of transaction fees for specialist orders in connection with the QQQQ is consistent with Section 6(b)(4) of the Act.[6] Specifically, the Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members largely based on the fact that a specialist has greater obligations than other members and is also subject to other Exchange fees, in addition to transaction fees.

For example, specialists are subject to a variety of Exchange fees other than transaction charges; the Exchange imposes floor fees solely on specialists such as a floor clerk fee, a floor facility fee, a post fee, and registration fee.[7] In addition, for those members on the floor of the Exchange, a technology fee and membership fees are also charged by the Exchange.[8] Certain market participants, such as customers, non-member broker-dealers, market-makers and member broker-dealers are not subject to the majority of these fees.

In addition, specialists have certain obligations under Exchange rules as well as the Act that do not exist for other market participants. For example, pursuant to Amex Rule 170, a specialist must maintain a fair and orderly market in his or her assigned securities. Other members of the Exchange as well as non-member market participants do not have this obligation. To adequately ''make a market'' in assigned securities, a specialist unit must be sufficiently staffed[9] and have adequate technology resources to handle the volume of orders (especially in the QQQQ) that are sent to the Exchange. As a result, the Exchange believes that the proposed suspension of transaction charges for specialist orders in the QQQQ is reasonable and equitable given the obligations that specialists must adhere to in making markets.

Further, the Exchange submits that the fee suspension will provide greater incentive to the specialist to continue to provide market liquidity, rendering the Exchange an attractive venue for market participants to execute orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4)[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and paragraph (f)(2) of Rule 19b–4 thereunder[13] because it establishes or changes a member due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–84. 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

[5] *See* Securities Exchange Act Release No. 54227 (July 27, 2006), 71 FR 44055 (August 3, 2006) (SR–Amex–2006–65).

[6] 15 U.S.C. 78f(b)(4). Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[7] The floor clerk, floor facility, post and registration fees on an annual basis are $900, $2,400, $1,000 and $800, respectively.

[8] A technology fee of $6,000 per year is assessed on all specialists and other floor participants at the Exchange. Annual membership dues of $1,500 must be paid by all members while annual membership fees are payable depending on the type of membership and circumstances. Non-members are not subject to these fees.

[9] *See* Securities Exchange Act Release No. 53386 (February 28, 2006), 71 FR 11250 (March 6, 2006) (SR–Amex–2005–110).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–84 and should be submitted on or before November 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–16848 Filed 10–11–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54563; File No. SR–CBOE–2006–78]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange and Regulatory Bulletin Annual Subscription Fee

October 3, 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 22, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to amend the Exchange and Regulatory

Bulletin annual subscription fee. The text of the proposed rule change is set forth below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEES SCHEDULE

1.–4. Unchanged.

Footnotes: (1)–(16) Unchanged.

5.–14. Unchanged.

15. *MISCELLANEOUS:*

Periodic license or royalty fees for DPM-traded products—CBOE costs passed-through to DPM (12)

Member Death Benefit (calculated @ $50,000 divided by number of members assessed)

Trading Floor Printer Maintenance (Per Month) $75

Exchange Bulletin Subscription (Annual) $200 [paper]*per hard copy subscription*; no charge for electronic delivery

Late Payment Penalty (Assessed to balances over 30 days old, per month, compounded) prime rate

Market Maker Failure to Change Appointment or Failure to meet in-person Trading Requirements (allowed 1 warning letter before fee) $250 per quarter

ABIL Brokerage Billing $.005 per contract, minimum $50, maximum $200 per month

ORS Analysis, Floor Efficiency Project or Market Penetration Reports $100 per month

Ad Hoc Information Services Requests Production Costs

DPM requests for post modifications/equipment CBOE costs passed-through

Crowd Space Dispute Resolution Hearing Fee (per hearing, per member) * $1,000

* The Crowd Space Dispute Resolution Hearing Fee is $1,000 per hearing for each party to the dispute and will escalate under certain circumstances pursuant to CBOE Rule 24.21(e). After the hearing is held and all rights of appeal are exhausted, the prevailing party in dispute shall obtain a refund of the Hearing Fee from the Exchange.

Remainder of Fees Schedule—Unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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, Proposed Rule Change

1. Purpose

The Exchange states that the Exchange and Regulatory Bulletin (''Bulletin'') is a weekly publication of the Exchange that contains Exchange notices of a regulatory, administrative, operational and informational nature. Currently, the Exchange provides each member with either an e-mail or a hard copy subscription to the Bulletin free of charge. Non-members, and members who wish to receive additional hard copy subscriptions, are charged $200 annually per hard copy subscription. There is no charge for e-mail delivery of the Bulletin.

In order to encourage even greater use of electronic delivery, the Exchange proposes to eliminate the complimentary hard copy subscription for members and assess a fee of $200 per year for each hard copy subscription to the Bulletin.

The Exchange intends to implement the revised fee effective October 1, 2006.

2. Statutory Basis.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and subparagraph (f)(2) of Rule 19b–4 [8] thereunder, because it establishes or changes a due, fee, or other charges imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–78 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–CBOE–2006–78. 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 CBOE. 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–CBOE–2006–78 and should be submitted on or before November 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16853 Filed 10–11–06; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54559; File No. SR–NYSE–2006–63]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 19 (Locking or Crossing Protected Quotations in NMS Stocks)

October 2, 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 28, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The NYSE has filed the proposed rule change, pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt Exchange Rule 19 in order to require its members to reasonably avoid displaying quotations that lock or cross any protected quotations in a Regulation NMS (''NMS'') stock or any quotation, protected or not in an NMS stock that is disseminated pursuant to an effective national market system plan.

The text of the proposed rule change is below. Proposed new language is in *italics.*

Rule 19.

Locking or Crossing Protected Quotations in NMS Stocks.

(a) Definitions. For purposes of this Rule, the following definitions shall apply:

(1) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.

(2) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(3) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

[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] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

(b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, members of the Exchange shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(c) Manual quotations. If a member of the Exchange displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member of the Exchange shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(d) Exceptions.

(1) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.

(2) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(3) The locking or crossing quotation was an automated quotation, and the member of the Exchange displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(4) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the member of the Exchange displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend its rules to include Rule 19 in order to comply with its obligation to establish, maintain and enforce written rules that require NYSE members to reasonably avoid displaying quotations that lock or cross any protected quotations in an NMS stock or any quotation, protected or not in an NMS stock that is disseminated pursuant to an effective national market system plan.[6]

Generally, the proposed rule provides that members of the Exchange shall not display any quotations that lock or cross a protected quotation unless an exception applies. Paragraph (d) sets forth the four exceptions under the rule. Pursuant to the rule, a locking or crossing quotation does not violate the prohibition when: (i) The trading center displaying the locked or crossed quotation is experiencing system malfunction; (ii) the protected bid was higher than the protected offer; (iii) the locking or crossing quotation was an automated quotation and the member simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed quotation; or (iv) a manual quotation locks and crosses another manual quotation and the member that caused the lock or cross simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

Exchange Rule 19 addresses intentional locks or crosses because it is understood that inadvertent locks or crosses will occur. It does not specify how market centers should reconcile locks or crosses between two automated quotations. The Commission's interpretation of the rule suggests that the market centers should continue trading and natural market forces will reconcile the locks or crosses. However, if a manual quotation locks or crosses a previously disseminated automated quotation to a national market system plan, the member that disseminated the manual quotation is required pursuant to paragraph (c) of the rule to, ''* * * promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.''

In addition to the proposal of Rule 19, it should be noted that the Exchange's technology will automatically route an intermarket sweep order to execute against the full displayed size of any participating market center that would be locked or crossed by an Exchange quotation prior to quoting.

2. Statutory Basis P≤The NYSE believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE believes that the proposed rule change is consistent with these objectives in that it enables the Exchange to meets its obligations pursuant to Regulation NMS, which serves to modernize and strengthen the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

NYSE has requested that the Commission waive both the five-day pre-filing requirement and the 30-day

[6] *See,* 17 CFR 242.610(d)(1).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

delayed operative delay.[13] The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the five-day pre-filing and 30-day operative periods will allow NYSE to adopt its uniform locking and crossing rule for NMS stocks similar to those adopted by other self-regulatory organizations and approved by the Commission.[14] Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

At any time within sixty (60) days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–63. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–63 and should be submitted on or before November 2, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16846 Filed 10–11–06; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (File No. SR–NSX–2006–08).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54560; File No. SR–NYSE–2006–74]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 17

October 2, 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 28, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to add Rule 17T (''Exchange Designated Default Sponsoring Member'') in order to establish an Exchange designated default sponsoring member broker/dealer for use when routing orders to the best bids and offers on other market centers in accordance with Exchange rules and SEC Regulation NMS.

The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Since 1978, the Exchange has routed orders (as commitments to trade) to other market centers and received them through the Intermarket Trading System (''ITS'').[5] Current anticipated changes to ITS, in addition to the adoption of Regulation National Market System (''Regulation NMS'')[6] to modernize and strengthen the regulatory structure of the National Market System, result in the Exchange's need to establish a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] ITS facilitates trades between members located in different markets. Through ITS, a member in any participating market may send orders, as commitments to trade, at the bid or offer on any other participating market. The ITS Plan is administered by the participating markets, and is filed with and approved by the Securities and Exchange Commission in accordance with Section 11A of the Securities Exchange Act of 1934.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

designated default sponsoring member broker/dealer in the destination market (hereinafter ''default Sponsoring Member'') in order to ensure that customer orders sent to the Exchange for execution are able to access better prices on other markets.

On July 17, 2006, the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Nasdaq Stock Market LLC, the National Stock Exchange, the New York Stock Exchange LLC, and the NYSE Arca, Inc., executed and filed with the Commission a ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934'' (''Linkage Plan'').[7] Pursuant to the Linkage Plan the Securities Industry Automation Corporation (''SIAC'') will serve as the facilities manager for the data processing hardware, software and communications network (the ''System'') that links electronically the market participants. SIAC will further be responsible for the operation and maintenance of the System. The current ITS hardware will remain in use until June 30, 2007.

Under the Linkage Plan, member access is provided to each market participant through the clearing member on the order or through the mechanism of a default Sponsoring Member. Upon the effective date of the Linkage Plan (October 1, 2006), through the end of June 2007, the Exchange intends to provide member access to the other market center participants in the Linkage Plan by utilizing the identifier of the default Sponsoring Member.

Specifically, the System will automatically substitute the identifier of all member organizations' orders that are routed to other market centers with the identifier of the default Sponsoring Member prior to the routing of the orders to the appropriate destination market.

The Linkage Plan allows participants to charge for orders executed in their market through the Linkage Plan. The destination market may bill the default Sponsoring Member for executions in that market, pursuant to such market's transaction fee schedule, based on the monthly reports provided by SIAC. As a result, the Exchange anticipates charging a fee for the services of the default Sponsoring Member. Charges related to the services of the default Sponsoring Member will be the subject of a separate fee filing.

In addition, pursuant to the proposed rule change, neither the Exchange nor the default Sponsoring Member shall be liable for any damages sustained by an allied member or member organization as a result of the services provided by the default Sponsoring Member, except as stated in Exchange Rules.

The interim establishment of the default Sponsoring Member serves only to provide member access to other destination market(s) for execution of orders at more favorable prices.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] As required under Rule 19b–4(f)(6)(iii) under the Act,[12] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Linkage Plan is expected to become operative on October 2, 2006, and waiving the 30-day operative period would enable the Exchange to implement the default Sponsoring Member mechanism at the start of the Linkage Plan's operation. For the reasons stated above, the Commission therefore designates the proposal to become operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

[7] The Commission approved the NMS Linkage Plan on September 29, 2006. *See* Securities Exchange Act Release No. 54551 (Sept. 29, 2006). It should be noted that the Philadelphia Stock Exchange, Inc. (''Phlx'') executed the Linkage Plan on August 1, 2006.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] *Id.*

[15] For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Number SR–NYSE–2006–74 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–74. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–74 and should be submitted on or before November 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16847 Filed 10–11–06; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54577; File No. SR–NYSE–2006–36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Provide Floor Brokers With the Ability To Enter Discretionary Instructions and/or Pegging Instructions With Respect to Floor Broker Agency Interest Files (e-Quotes)

October 5, 2006.

I. Introduction

On May 16, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide floor brokers with the ability to enter discretionary and pegging instructions with respect to their floor broker agency interest files. On June 14, 2006 and July 11, 2006, NYSE filed Amendment Nos. 1 [3] and 2 [4] to the proposed rule change, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 21, 2006.[5] The Commission received six comment letters from three commenters.[6] On September 13, 2006, the Exchange filed a response to the comment letters.[7] This order approves the proposed rule change, as amended.

II. Background

On March 22, 2006, the Commission approved NYSE's proposal to establish a Hybrid Market, which will alter the Exchange's market structure from a floor-based auction market with limited automated order interaction to a more automated market with limited floor-based auction market availability.[8] To create its Hybrid Market, NYSE changed its rules to permit its floor members to participate in the market electronically. For example, specialists will have the ability to manually and systematically place in a separate file (''specialist interest file'') within the Display Book system [9] their proprietary interest at prices at or outside the Exchange best bid or offer (''BBO''). In addition, specialists will establish algorithms (''Specialist Algorithm'') [10] to send messages via an Exchange-owned application program interface to quote and trade for their proprietary accounts.[11]

As approved in the Hybrid Market Order, floor brokers will represent their customers' orders electronically in a separate file in the Display Book system (''floor broker agency interest file'') at multiple prices at or outside the Exchange BBO (''e-Quotes''). As approved, e-Quotes can participate in automatic executions at the Exchange BBO or outside the Exchange BBO during a sweep. E-Quotes may not, however, initiate trades with incoming orders at prices better than the Exchange BBO. Accordingly, the Exchange now proposes additional changes that it believes will further replicate electronically the manner in which floor brokers represent their customers' orders on the floor. Specifically, NYSE proposes to provide floor brokers with the ability to enter discretionary instructions as to the size and/or price at which their e-Quotes may trade (''d-Quotes'').[12] In addition, the Exchange proposes to provide floor brokers with the ability to set their e-Quotes and d-Quotes to peg to the Exchange BBO so that their e-Quotes or d-Quotes would be available for execution at the BBO as the Exchange BBO changes (''pegging'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE proposed additional changes and clarifications to the proposal.

[4] Amendment No. 2 supersedes and replaces the original rule change and Amendment No. 1 in their entirety.

[5] *See* Securities and Exchange Act Release No. 54150 (July 14, 2006), 71 FR 41496.

[6] *See* Letters from George Rutherfurd, Consultant, dated June 22, 2006 (''Rutherfurd I''), August 3, 2006 (''Rutherfurd II'') and September 21, 2006 (''Rutherfurd Letter III''); Warren Meyers, President, Independent Brokers Action Committee, dated August 11, 2006 (''IBAC Letter''); and Junius W. Peake, Monfort Distinguished Emeritus Professor of Finance, Kenneth W. Monfort College of Business, dated August 18, 2006 (''Peake Letter I'') and October 3, 2006 (''Peake Letter II'').

[7] *See* Letter from Mary Yeager, Secretary, NYSE, to Nancy Morris, Secretary, Commission, dated September 13, 2006 (''Response to Comments'').

[8] *See* Securities and Exchange Act Release No. 53539, 71 FR 16353 (March 31, 2006) (''Hybrid Market Order'').

[9] The Display Book system (''Display Book system'') is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the customer limit order display book (''Book''), and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. In addition, the Display Book system is connected to a variety of Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems, *i.e.*, the Intermarket Trading System, the Consolidated Tape Association, Consolidated Quotation System, etc.

[10] *See* NYSE Rule 104(b).

[11] *See* NYSE Rule 104(e).

[12] NYSE also refers to d-Quotes as ''discretionary e-Quotes'' in its proposed rule text.

III. Description of the Proposal

A. Proposed Discretionary Instructions for e-Quotes

The Exchange proposes NYSE Rule 70.25 to permit floor brokers to enter discretionary instructions with respect to the size and/or price at which the e-Quote would trade through the d-Quote functionality.[13] Unlike e-Quotes, d-Quotes would provide floor brokers with the means to express a price range within which they are willing to actively trade at prices at or better than the BBO. The discretionary instructions would relate to the price at which the d-Quote could trade and the number of shares to which the discretionary price instructions would apply.[14]

The discretionary instructions would only be active when the e-Quote is at or joins the existing Exchange BBO or would establish a new Exchange BBO.[15] Furthermore, discretionary instructions would be active for automatic executions only, and not active with respect to the opening or closing transactions on the Exchange.[16] NYSE would also apply the discretionary instructions of a d-Quote only if all the d-Quoting prerequisites are met; otherwise, the d-Quote would be handled as a regular e-Quote (notwithstanding the fact that the floor broker has designated the e-Quote as a d-Quote).[17] For instance, to qualify as a d-Quote, the e-Quote would be required to have a discretionary price range.[18] Furthermore, the floor brokers must comply with the requirements for e-Quotes, as approved in the Hybrid Market, with regard to d-Quotes, including the requirement that floor brokers be present in the Crowd when they have placed interest in their floor broker agency interest files.[19]

Floor brokers would be permitted to have multiple d-Quotes, with different price and size instructions, on the same side of the market. Such multiple d-Quotes would not compete with each other for execution priority; rather, the trading volume would be allocated by floor broker, not the number of d-Quotes participating in an execution.[20] Discretionary instructions would apply to both displayed and/or reserve interest.[21] The specialist on the floor and the Specialist Algorithm would not have access to the discretionary instructions entered by floor brokers with respect to their e-Quotes.[22]

1. Discretionary Price Instructions

NYSE proposes to provide floor brokers with the ability to set a discretionary price range within the Exchange BBO to designate the prices at which their customers are willing to trade.[23] The floor brokers' e-Quote must be represented in the Exchange BBO for discretionary pricing to be utilized. The price discretion set by the floor broker would be used to initiate or participate in a trade with an incoming order that is capable of trading at a price within the Exchange BBO and the discretionary price range.[24]

Floor brokers may also specify whether their discretionary price instructions would apply to all or only a portion of their d-Quotes. If price discretion is provided for only a portion of a d-Quote, the residual would be treated as an e-Quote.[25] Finally, when price discretion is used, NYSE proposes that the shares executed from the d-Quote be decremented from reserve size first, if any, and then from its displayed size.[26]

2. Discretionary Size Instructions

In addition to discretionary price instructions, a floor broker may enter discretionary size instructions. Discretionary size instructions designate the portion of the e-Quote to which the discretionary price instructions would apply.[27] Floor broker may also specify a minimum and/or maximum size of contra side volume with which it would be willing to trade using price discretion.[28]

NYSE proposes that its systems would only consider NYSE displayed interest to determine whether the size of the contra side volume is within the d-Quote's discretionary size range. Contra side reserve and other interest at the possible execution price would not be considered.[29] Interest displayed by other market centers at the price at which a d-Quote could trade would not be considered by Exchange systems when determining if the d-Quote's minimum and/or maximum size range is met, unless the Floor broker electronically designates that such away volume should be included in this determination.[30] Once the total amount of a floor broker's discretionary volume has been executed, the d-Quote's discretionary price instructions would become inactive, and the remainder of such d-Quote would be treated as an e-Quote.[31]

3. Executions of d-Quotes

NYSE stated that the goal of discretionary e-Quoting is to secure the largest execution for the d-Quote, using the least amount of price discretion. Accordingly, d-Quotes may improve the execution price of incoming orders. However, if no discretion is necessary to accomplish a trade, none would be used.[32] In addition, future executions that could occur, such as those resulting from the execution of elected contra side CAP–DI orders, would not be considered in determining when, and to what extent, price discretion would be necessary to accomplish a trade.[33]

Pursuant to the proposed rules, d-Quotes would automatically execute against a contra side order that enters the Display Book system, if the order's price is within the discretionary price range, and the order's size meets any minimum or maximum size requirements that have been set for the d-Quote.[34] If there are multiple d-Quotes from different floor brokers on the same side of the market with the same discretionary price instructions, then such d-Quotes would trade on parity, after interest entitled to priority is executed.[35] Multiple d-Quotes from different floor brokers on the same side of the market also would compete for an execution, with the most aggressive price range establishing the execution price. If an incoming order remains unfilled at that price, executions within the less aggressive price range would

[13] *See* proposed NYSE Rule 70.25(a)(i).

[14] *See* proposed NYSE Rule 70.25(a)(i).

[15] *See* proposed NYSE Rule 70.25(a)(ii).

[16] *See* proposed NYSE Rule 70.25(a)(iii).

[17] *See* proposed NYSE Rule 70.25(a)(iv). For example, if the d-Quote is not at the Exchange BBO, it would not exercise its discretionary instructions and accordingly, would function like an e-Quote instead.

[18] *See* proposed NYSE Rule 70.25(a)(iv).

[19] *See* proposed NYSE Rule 70.25(a)(v).

[20] *See* proposed NYSE Rule 70.25(a)(vi).

[21] *See* proposed NYSE Rule 70.25(a)(vii).

[22] *See* proposed NYSE Rule 70.25(a)(viii).

[23] *See* proposed NYSE Rule 70.25(b)(i).

[24] *See* proposed NYSE Rule 70.25(b)(i). The minimum price range for a d-Quote would be the minimum price variation set forth in NYSE Rule 62, currently $0.01 for equity securities and $0.10 for equity securities trading at a price of $100,000 or greater. *See* proposed NYSE Rule 70.25(b)(ii) and NYSE Rules 62.10 and 62.20.

[25] *See* proposed NYSE Rule 70.25(b)(iii).

[26] *See* proposed NYSE Rule 70.25(b)(iv).

[27] *See* proposed NYSE Rule 70.25(c)(i).

[28] *See* proposed NYSE Rule 70.25(c)(ii). According to the Exchange, this should allow for more specific order management by preventing the d-Quote from trading with opposite side interest that the floor broker has judged to be too little or too great in the context of the order or orders it is managing.

[29] *See* proposed NYSE Rule 70.25(c)(iii). However, an increase or reduction in the size associated with a particular price that brings the contra side volume within a d-Quote's minimum/maximum discretionary size parameter would trigger an execution of that d-Quote. *See* proposed NYSE Rule 70.25(c)(v).

[30] *See* proposed NYSE Rule 70.25(c)(iv).

[31] *See* proposed NYSE Rule 70.25(c)(vi).

[32] *See* proposed NYSE Rule 70.25(d)(i).

[33] *See* proposed NYSE Rule 70.25(d)(i)(A).

[34] *See* proposed NYSE Rule 70.25(d)(ii).

[35] *See* proposed NYSE Rule 70.25(d)(iii).

then occur.[36] In addition, d-Quotes would compete with same-side specialist algorithmic trading messages that seek to trade with incoming orders.[37] If the price of d-Quotes and specialist trading messages are the same, d-Quotes and the specialist messages would trade on parity.[38]

D-Quotes from floor brokers on the opposite sides of the market could trade with each other. In these circumstances, the d-Quote that arrived at the Display Book system last would use the most discretion necessary to effect a trade.[39] All executions involving d-Quotes must comply with Rule 611 under Regulation NMS (''Reg. NMS'').[40] Accordingly, when a protected bid or offer, as defined in Reg. NMS,[41] is published by another market center at a price that is better than the price at which contra side d-Quotes could trade, the amount of discretion necessary to permit a trade on the Exchange that is consistent with Rule 611 would be used, or such portion of the d-Quote as is necessary would be automatically routed in accordance with Rule 611 in order to permit a trade to occur on the Exchange.[42]

D-Quotes also could provide price improvement to, and trade with, an incoming contra side specialist algorithmic trading message to ''hit bid/take offer,'' just as they could with any other marketable incoming interest.[43] D-Quotes may initiate sweeps in accordance with and to the extent provided by NYSE Rules 1000–1004, but only to the extent of their price and volume discretion. They also could participate in sweeps initiated by other orders, but, in such cases, their discretionary instructions would not be active.[44] Finally, d-Quotes would not trade at a price that would trigger a liquidity replenishment point (''LRP''), as defined in NYSE Rule 1000.[45] Accordingly, a sweep involving a d-Quote would always stop at least one cent before an LRP is reached.[46]

B. Pegging

NYSE proposes to allow its floor brokers to enter instructions with regard to their e-Quotes so that they would ''peg'' the Exchange BBO. A pegging instruction may be added as a separate type of discretionary instruction and may be active along with discretionary price instructions. Specifically, under the proposed rules, a floor broker could set an e-Quote, other than a tick-sensitive e-Quote, to be available for execution at the Exchange best bid (for an e-Quote that represents a buy order) or at the Exchange best offer (for an e-Quote that represents a sell order) as the Exchange BBO changes, so long as the Exchange BBO is at or within the e-Quote's limit price.[47] A floor broker could similarly employ pegging for its d-Quotes.[48]

The Exchange proposes that pegging be active only when auto-quoting is active.[49] Pegging interest would trade on parity with other interest at the BBO after the interest entitled to priority has been executed. Pegging is reactive. Accordingly, a pegging e-Quote or d-Quote would not establish the Exchange BBO as result of pegging,[50] and therefore could not establish price priority by pegging. The existence of pegging instructions, however, would not preclude an e-Quote or d-Quote from having priority.[51]

E-Quotes and d-Quotes with pegging instructions will only peg other non-pegging interest.[52] Further, an e-Quote or d-Quote would not be able to sustain the Exchange BBO as a result of pegging, if there is no other non-pegged interest at that price, and such price is not the e-Quote's or d-Quote's limit price.[53] Specifically, if the lowest quotable price established by the floor broker for a pegging e-Quote or d-Quote to buy is the Exchange best bid, and all other interest at that price cancels or is executed, the pegging e-Quote or d-Quote would remain displayed at that best bid price.[54] Similarly, if the highest quotable price established by the floor broker for a pegging e-Quote or d-Quote to sell is the Exchange best offer and all other interest at that price cancels or is executed, the pegging e-Quote or d-Quote would remain displayed at that best offer price.[55]

Floor brokers may establish price ranges for an e-Quote or d-Quote, beyond which the pegging function would not be available. Specifically, the floor broker can set a ''quote price,'' which would be the lowest price to which a buy e-Quote or d-Quote could peg or the highest price to which a sell e-Quote or d-Quote could peg.[56] The floor broker may also set a ''ceiling price,'' which is the highest price to which a buy side e-Quote or d-Quote could peg[57] and a ''floor price,'' which is the lowest price to which a sell side e-Quote or d-Quote could peg.[58] The quote, ceiling, and floor price may be at a price other than the limit price of the order being e-Quoted or d-Quoted, but may not be inconsistent with the order's limit.[59]

Under the proposed rules, as long as the Exchange best bid (offer) is at or within the pegging price range selected by the floor broker with respect to a buy-side (sell-side) e-Quote or d-Quote, the pegging e-Quote or d-Quote would join such best bid (offer) as it is auto quoted.[60] If the floor broker does not designate a pegging range, but has instructed that its e-Quote or d-Quote should peg, the e-Quote or d-Quote would peg to the Exchange best bid (offer) as long as such bid (offer) is within the limit of the order that is being e-Quoted or d-Quoted.[61]

Furthermore, as an e-Quote or d-Quote pegs, its discretionary price range, if any, would move along with it, subject to any floor or ceiling price set by the floor broker.[62] In addition, if the Exchange best bid is higher than the ceiling price of a pegging buy-side e-Quote or d-Quote, the e-Quote or d-Quote would remain at its quote price or the highest price at which there is other interest within its pegging price range, whichever is higher (consistent with the limit price of the order underlying the e-Quote or d-Quote).[63] Similarly, if the Exchange best offer is lower than the floor price of a pegging sell-side e-Quote or d-Quote, the e-Quote or d-Quote would remain at its

[36] *See* proposed NYSE Rule 70.25(d)(iv).

[37] *See* NYSE Rule 104(b). Specialists are limited in the instances in which they may trade with incoming orders.

[38] *See* proposed NYSE Rules 70.25(d)(v) and 104(c)(ix).

[39] *See* proposed NYSE Rule 70.25(d)(vi).

[40] *See* Rule 611 of Reg. NMS, 17 CFR 242.611 and proposed NYSE Rule 70.25(d)(vii).

[41] *See* Rule 600(b)(57) of Reg. NMS, 17 CFR 242.600(b)(57).

[42] *See* proposed NYSE Rule 70.25(d)(vi)(A).

[43] *See* proposed NYSE Rule 70.25(d)(viii).

[44] *See* proposed NYSE Rule 70.25(d)(ix).

[45] LRPs are pre-determined price points that would halt automatic executions for varying periods depending on the price and remaining size, if any, of an automatic execution order. *See* NYSE Rule 1000. The Commission notes that NYSE has proposed to amend its LRPs. *See* Securities Exchange Act Release No. 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006).

[46] *See* proposed NYSE Rule 70.25(d)(ix)(A).

[47] *See* proposed NYSE Rule 70.26(i).

[48] *See* proposed NYSE Rule 70.26(ii).

[49] *See* proposed NYSE Rule 70.26(iii). The Exchange represented that this means when the Autoquote System is active. Telephone conversation between Nancy Reich, Vice President, Office of the General Counsel, NYSE, and Kelly Riley, Assistant Director, Division of Market Regulation, Commission, on October 4, 2006.

[50] *See* proposed NYSE Rule 70.26(v).

[51] *See* proposed NYSE Rule 70.26(vi).

[52] *See* proposed NYSE Rule 70.26(vii).

[53] *See* proposed NYSE Rule 70.26(viii).

[54] *See* proposed NYSE Rule 70.26(viii)(A).

[55] *See* proposed NYSE Rule 70.26(viii)(B).

[56] *See* proposed NYSE Rule 70.26(ix)(A).

[57] *See* proposed NYSE Rule 70.26(ix)(B).

[58] *See* proposed NYSE Rule 70.26(ix)(C).

[59] *See* proposed NYSE Rule 70.26(ix)(D).

[60] *See* proposed NYSE Rule 70.26(x). *See also* note 49, *supra*.

[61] *See* proposed NYSE Rule 70.26(xi).

[62] *See* proposed NYSE Rule 70.26(xii).

[63] *See* proposed NYSE Rule 70.26(xii)(A).

quote price or the lowest price at which there is other interest within its pegging price range, whichever is lower (consistent with the limit price of the order underlying the e-Quote or d-Quote).[64] However, if the Exchange BBO returns to a price within the pegging price range selected by the floor broker, the e-Quote or d-Quote would once again peg to the Exchange BBO.[65]

Finally, a floor broker may specify the minimum and/or maximum size of same side volume to which its e-Quote or d-Quote would peg.[66] Other pegging e-Quote or d-Quote volume would not be considered in determining whether the volume parameters set by the floor broker have been met.[67]

C. Other Proposed Changes

1. NYSE Rule 70.20

The Exchange also proposes to amend NYSE Rule 70.20(j)(i) to specify that e-Quotes could participate in the closing trade, in accordance with the policies and procedures of the Exchange and NYSE Rule 70.20(k) to specify that during the close, a floor broker's reserve interest, if any, would be added to the size of its e-Quoted interest.

2. NYSE Rule 123(e)

The Exchange proposes to add certain required terms regarding e-Quotes, d-Quotes, and pegging instructions as part of its Rule 123, which requires the entry of certain order information into the Exchange's Front End Systemic Capture System before such order can be represented.

3. NYSE Rule 1000(d)

The Exchange proposes to amend NYSE Rule 1000(d)(iii)(A) to specify that d-Quotes will participate in sweeps in the manner specified in proposed NYSE Rule 70.25(d)(ix).

D. Implementation

As explained in the Response to Comments, NYSE proposes to implement the proposal in Phases 3 and 4 of the Hybrid Market in two parts.[68] The first part, which would be implemented as part of Phase 3 of the Hybrid Market, would provide the pegging and d-Quote functionality with respect to the ability to trade with marketable orders. The second part, which would provide the d-Quote functionality with opposite-side interest anywhere in its discretionary range, is scheduled for implementation in Phase 4 of the Hybrid Market. Phase 3 is currently scheduled to commence on or about October 6, 2006 and is expected to be completed in early-December 2006. Phase 4 is expected to begin in December 2006, immediately following the completion of Phase 3.

IV. Summary of Comments

The Commission received a total of six comment letters from three commenters on the proposed rule change[69] and NYSE filed the Response to Comments.[70] One commenter generally supported NYSE's proposal.[71] The other two commenters did not support the proposal and raised specific concerns about the proposal.

One commenter argued that the proposal raises significant market structure issues because he believes that it will allow hidden orders to compete directly with transparent market interest.[72] This commenter argues that the proposal would allow hidden order trading,[73] which makes the markets less transparent to those who seek liquidity and denies executions to those who post liquidity. Further, the commenter argued that hidden order trading would render meaningless the notion of published quotes or the national best bid/offer (''NBBO'') because of the existence of hidden immediately executable market interest available between the published quote. The commenter believes that these results are inconsistent with the principles of Section 11A of the Act[74] and the Commission's Reg. NMS in that they compromise the notion that a fully transparent market is the fairest for all investors.[75] This commenter also argued that the d-Quote proposal would hinder the price discovery process. By hiding interest willing to trade at a specified price, investors will not be able to make fully informed pricing decisions for their orders.

The commenter disagreed with NYSE's representation that the proposal replicated the manner in which floor brokers act on behalf of their customers in the physical auction market.[76] The commenter acknowledged that floor brokers have always provided in-between-the-published-quote executions on the floor but that in the physical auction, the decision of the floor broker to participate in an execution is made on a trade-by-trade basis after contra side orders arrive in the crowd. The commenter argued that in the auction ''everything is transparent.''[77] While floor brokers may hold discretionary orders that are not known to the public, these orders are not active until the floor broker makes a public bid (offer) that is known to all in the trading crowd. After a floor broker makes its bid (offer) public in the crowd, other brokers or the specialist can compete by bidding higher (offering lower). Thus, the commenter argued, ''everything is transparent, as the previously 'hidden' discretionary order must be disclosed prior to the trade, and even after it is disclosed, is not guaranteed an opportunity to trade if competing market participants then bid higher (offer lower).''[78]

According to the commenter, the d-Quote, however, would allow floor brokers to enter into an automated system better prices that are always available for immediate execution and because they are not disclosed, other market participants are not able to compete with them to provide an even better priced execution. The commenter argues that the proposal gives floor brokers a time/place advantage because they can react to what is placed in the Book. The commenter believes that this time/place advantage is more troubling than what floor members on the Exchange currently possess because it is not mitigated by transparency at the point of sale like it is in the current auction market.[79] Finally, the commenter noted investors do not enjoy the same informational benefit of knowing the prices at which floor brokers' customers are willing to trade. If they did, the commenter argued, they would be able to make the decision of how to price their own orders and thus, would be able to compete with the floor brokers' customers.

The commenter also argues that the proposal was inconsistent with Sections 6(b)(5)[80] and 11A[81] of the Act.[82] The commenter argues that by giving floor brokers the exclusive ability to enter

[64] *See* proposed NYSE Rule 70.26(xii)(B).

[65] *See* proposed NYSE Rule 70.26(xii)(C).

[66] *See* proposed NYSE Rule 70.26(xiii).

[67] *See* proposed NYSE Rule 70.26(xiii).

[68] *See* Response to Comments.

[69] *See supra* note 6.

[70] *See supra* note 7.

[71] *See* IBAC Letter.

[72] *See* Rutherfurd Letter I.

[73] The commenter disagrees with the NYSE's classification of d-Quotes as discretionary order instructions. The commenter argues that d-Quotes are actually conditional limit orders that will be automatically and immediately executed upon the satisfaction of the specified terms entered by the floor broker. *See also* Peake Letters I and II.

[74] 15 U.S.C. 78k–1.

[75] This commenter urges the Commission to issue a concept release on hidden order trading to consider the implications on market transparency, published quotations, public limit order protection, and price discovery processes. *See* Rutherfurd Letter I.

[76] *See* Rutherfurd Letters I and III.

[77] *See* Rutherfurd Letter III.

[78] *Id.*

[79] *See* Rutherfurd Letters I and III.

[80] 15 U.S.C. 78f(b)(5).

[81] 15 U.S.C. 78k–1.

[82] *See* Rutherfurd Letters I, II and III.

discretionary instructions, the NYSE proposal is inconsistent with Section 6(b)(5) of the Act, which states that an exchange's rules cannot be designed to ''permit unfair discrimination between customers, issuers, brokers or dealers * * *''[83] In addition, the commenter argues that by requiring members to use floor brokers to enter discretionary instructions, the proposal is inconsistent with Section 11A(a)(1)(C)(i) of the Act,[84] which reflects Congress' belief that it is in the public interest and appropriate for the protection of investors and the maintenance of a fair and orderly market to assure the ''economically efficient execution of securities transactions.'' This commenter argued that NYSE's proposal is a ''direct impediment to economically efficient execution of securities transactions'' because upstairs members can, and should be permitted to, exercise their own judgment and put discretionary instructions on their own orders without having to incur the significant additional expense of using a floor broker. This commenter believes that floor brokers will merely perform a clerical function of inputting an order with specific conditions and that the NYSE systems will thereafter represent and execute the order.

The commenter disagreed with NYSE's representation that the proposal would give floor brokers a means to compete with specialists' algorithmic trading and quoting. The commenter believes that specialist algorithmic trading on parity with interest represented by floor brokers is inconsistent with Section 11A of the Act[85] and argues the floor broker d-Quotes do not rectify this problem with specialist trading in the Hybrid Market. Specifically, the commenter cites Section 11A(a)(1)(C)(v) of the Act,[86] which reflects Congress' belief that investors' orders should have the opportunity to be executed without the participation of a dealer.[87]

Another commenter argued that floor brokers should continue to be allowed to object to specialists' trading on parity when opening or increasing a position, in order to closely replicate the present auction market.[88] Finally, this commenter urged that d-Quotes and specialist algorithms be phased-in together.

NYSE's Response

NYSE believes that its proposal does replicate the manner in which floor brokers represent customer orders in the current auction market. Specifically, NYSE believes that d-Quotes are necessary to ensure that floor brokers are able to perform a function similar to that which they perform today as the markets become faster and more automated. NYSE believes that the proposal should allow floor brokers to electronically replicate the order management decisions they make regarding the representation of customer orders. According to NYSE, investors that use floor brokers would not be able to access the market in the manner they do today. NYSE argues that the proposed discretionary instructions and pegging ability will allow floor brokers to use their judgment and expertise in managing their customers' orders in a faster, automated market.

In response to the comment that d-Quotes would negatively impact price discovery and provide informational advantages to floor brokers, NYSE noted that d-Quote function is similar to proposals by other markets that permit non-displayed orders that trade between the quote.[89] Furthermore, NYSE believes that d-Quotes would replicate that which occurs in the manual auction market and would not provide more or less information than is currently available in the Exchange's market. According to NYSE, the d-Quote is ''as transparent as any other floor broker-represented order that is not fully displayed in accordance with long established trading practices, SEC rules and regulations and NYSE rules and regulations.'' Because the Hybrid Market would continue to involve the interaction of floor brokers representing their customer's orders, limit orders on the Display Book system, and the specialist's dealer interest, NYSE believes that the price discovery mechanism would continue to exist. NYSE argues that d-Quotes would ''merely enhance the ability of floor brokers to effectively represent their customers' orders in the automated portion of the Hybrid Market'' and they do not replace order interaction or the price discovery process.[90]

In response the commenter's suggestion that d-Quotes would create price uncertainty, NYSE also believes that d-Quotes would provide investors with a better opportunity for price improvement and would moderate volatility by providing liquidity and better price continuity.[91] NYSE believes that d-Quotes would attract liquidity from incoming orders seeking the opportunity for a better priced and/or larger sized transaction that could result from an increase in competition between specialists and other floor brokers' d-Quotes.[92]

With respect to the concern that d-Quotes would create an ''unlevel informational playing field,'' NYSE noted while investors that use floor brokers would gain the benefits of d-Quotes, the d-Quotes do not create an unequal or unfair advantage for any market participant. NYSE pointed out that specialists and their algorithms would not know about any discretionary instructions, and floor brokers would have access only to information about their own agency interest, not to other broker's files.[93] NYSE refuted one commenter's suggestion that limit orders on the Book would have access to less information as a result of d-Quotes by representing that investors entering limit orders would be privy to the same information as is currently available to them, which, NYSE points out, does not presently include knowledge of a floor broker's decisions

[83] The commenter also argues that the proposal is anticompetitive because it benefits one class of market participants (floor brokers) at the expense of other market participants. *See* Rutherfurd Letter III. *See also* Peake Letter II. Another commenter argues that all market participants should have access to the ''national market system.'' *See* Peake Letter I.

[84] 15 U.S.C. 78k–1(a)(1)(C)(i).

[85] 15 U.S.C. 78k–1.

[86] 15 U.S.C. 78k–1(a)(1)(C)(v).

[87] *See* Rutherfurd Letter I. *See also* Peake Letter II. The commenter also argues that specialists trading on parity with investors' orders represented by floor brokers is inconsistent with the specialists' negative obligation. *See* Rutherfurd Letter I.

[88] *See* IBAC Letter. *See also* Rutherfurd Letter III (stating that if the specialist is permitted to trade on parity, the Commission should demand that NYSE allow a floor broker objection mechanism in the Hybrid Market so that floor brokers could protect the public).

[89] NYSE believes that these types of orders were approved in response to market participants' preference for order and customer anonymity, despite the typical argument that such anonymity could be detrimental to other market participants. *See* Response to Comments. *But see* Rutherfurd Letter III (arguing that NYSE is not replicating hidden order (reserve) trading that is conducted in other markets).

[90] *But see* Rutherfurd Letter III. Disagreeing with NYSE's response, this commenter argued that floor broker and specialist interest could not promote price discovery when such interest is entirely hidden.

[91] *See* Response to Comments. *But see* Rutherfurd Letter III. This commenter objected to NYSE's position that d-Quotes would provide increased opportunities for price improvement, arguing instead that the e/d-Quote ''overhangs'' the market and is pre-programmed to trade automatically. The commenter claims, therefore, that the e/d-Quote is, in actuality, the ''real'', non-discretionary NYSE market that is willing to trade at such hidden price. Rather than receiving price improvement, the incoming order is merely receiving an execution at the real, pre-existing NYSE price.

[92] *But see* Rutherfurd Letter III (arguing that e/d-Quotes could not attract liquidity or enhance competition when they are hidden).

[93] NYSE also indicated that neither the specialist on the floor nor the specialist algorithmic trading system would have access to any of the discretionary instructions entered by the floor broker in connection with the d-Quotes. *See* Response to Comments.

regarding order management, until after such decisions are affected.

With respect to the commenters' implication that d-Quotes would disadvantage limit orders on the Book by denying executions to those who post liquidity, NYSE responded that the principles of priority and parity at the NYSE BBO would not be changed with the introduction of the d-Quote.[94] Accordingly, a limit order with priority at the BBO on the same side of the d-Quote would trade first in any execution at the quote. Furthermore, NYSE stated that d-Quotes would not force nor cause limit orders to accept different or worse prices than what their limits dictate. NYSE explained that because discretionary pricing would allow d-Quotes to trade at prices in between the quote where there are no public limit orders, d-Quotes would provide price improvement to an incoming order capable of trading at such better price and would not negatively impact the limit order displayed at a worse price. If the commenter was implying that the person entering the limit order would have entered his or her limit order at the better price had he or she known there were other market participants interested in trading at such price, NYSE responded that nothing prevented the limit order from being entered at such better price at the outset.[95] Furthermore, NYSE believes that nothing in the securities laws or Exchange rules require that every market participant fully disclose their interest at the best price possible; instead, customers are permitted to choose from a variety of options, including the order management provided by floor brokers.

In response to commenters' suggestion that floor brokers should retain the right to exclude specialists from trading on parity when increasing a position with respect to automatic executions, NYSE noted that this provision was approved in the Hybrid Market Order. To the extent that floor brokers wish to prevent specialists from trading on parity with their orders in the Hybrid Market, NYSE stated that floor brokers could send those orders for execution through SuperDot.[96] In response to a commenter's objection to NYSE's proposal to deactivate the discretionary instructions of a d-Quote during a sweep that is initiated by other orders,[97] NYSE stated that this amendment recognizes that when a d-Quote is participating in a sweep, as opposed to initiating a sweep, employing the discretionary pricing instructions of the d-Quote would not provide additional value to the customer being d-Quoted.[98]

With regard to the comments on the Exchange's proposed implementation schedule,[99] NYSE acknowledged that, given the complexity of the software developed for the d-Quote functionality and the extensive system changes required to enable increased automatic execution capabilities, it has not been able to launch all of these initiatives at the same time.[100] NYSE explained that floor brokers had requested the d-Quoting functionality well after the design of e-Quoting was completed and the necessary programming changes were scheduled. As a result, d-Quoting was initially slated for implementation as part of the last phase of the Hybrid Market. However, in response to requests from floor brokers, NYSE claimed that it has made every effort to move d-Quote implementation forward as much as possible. In addition, NYSE stated that it would be adding to the upcoming software releases a number of other changes recently requested by floor brokers, designed to improve the efficiency of the devices they use to access the market. Furthermore, NYSE maintained that the rollout of d-Quotes is timed to a program that provides ample training and trading practice for floor brokers using the new functionality. Accordingly, NYSE believes that the sheer volume of system and other required software changes, coupled with the need for appropriate training, mandates that the Exchange implement d-Quoting in two parts.[101] Finally, NYSE believes that the phase-in process would be sensitive to the varied needs of all market participants affected by the introduction of these complex changes, and that thorough and proper broker training and preparation for the d-Quote is essential, as it protects the broker from making unintended trading errors.

V. Discussion

After careful review and consideration of the comments, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[102] Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[103] in that the proposal is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Commission believes that the proposed rule change, as amended, is consistent with Section 11A(a)(1)(C) of the Act,[104] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers and among exchange markets, and between exchange markets, and markets other than exchange markets; (3) the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best markets; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

Currently in the NYSE auction, floor brokers represent their customers' orders for execution. For many orders, floor brokers have discretion to determine the price at which their customers' orders should be executed, subject to their agency obligations and best execution requirements. As the NYSE market becomes more automated, NYSE and its floor brokers have considered how floor brokers can continue to represent their customers in a meaningful fashion. NYSE continues to believe that its physical auction on the floor will play an important role in

[94] *See* Response to Comments.

[95] *But see* Rutherfurd Letter III (arguing that participants entering public limit orders could only react to publicly available information).

[96] NYSE believes this solution was supported by floor brokers who worked with the Exchange in designing the e-Quote. *See* Response to Comments. *But see* Rutherfurd Letter III (arguing that NYSE's response is not providing a feasible means for a floor broker to protect its public customer from unnecessary specialist competition since, as a practical matter, floor brokers would not be able to participate in the Hybrid Market if they were to send their orders through SuperDot).

[97] *See* IBAC Letter.

[98] *See* Response to Comments.

[99] *See* IBAC Letter.

[100] *See* Response to Comments.

[101] *See* Section III., D. for a complete discussion of the two-part implementation.

[102] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[103] 15 U.S.C. 78f(b)(5).

[104] 15 U.S.C. 78k–1(a)(1)(C).

its market even as automated execution expands.

In the Hybrid Market, as approved, NYSE made provisions to allow its floor brokers to represent their customers in the electronic portion of the market. NYSE, however, also placed restrictions on their activities to reflect the continued role of the auction on the floor. Specifically, NYSE requires its floor brokers to be in the ''Crowd'' when representing customers electronically so that they can be available to represent their customers should the market move to the floor.

With this current proposal, NYSE proposes to give floor brokers more tools with which to represent their customers. NYSE represents that the discretionary instructions that it has proposed are intended to replicate the manner in which floor brokers represent orders in the auction. In addition, NYSE stated that d-Quotes will enable floor brokers to compete with other participants in an automated market place, including specialists, and may enhance the quality of order execution on the Exchange.

As discussed above, d-Quotes will enable floor brokers to place within the Display Book system, in a manner that is not displayed, the prices and sizes at which their customers are willing to trade if a contra side order arrives in the market. The d-Quote could enable floor brokers to better compete with other market participants, and possibly enhance the quality of order execution on the Exchange. The Commission believes that the Exchange's proposed d-Quote functionality is broadly consistent with the requirements of the Act, and within the realm of business judgment generally left to the discretion of individual markets.

The pegging function will enable floor brokers to remain in the Exchange BBO as the quote moves. As the markets become more electronic it may be very difficult for a floor broker to effectively manually adjust the prices of its customers' orders in the Display Book system. The Commission believes that the proposed pegging function should provide floor brokers with the ability to track the quote as it changes, thereby providing floor brokers with an additional tool to offer liquidity at the Exchange BBO, once the Exchange shifts from the manual auction market to a faster, predominantly electronic market. The pegging function also is designed to help them continuously meet one of the requirements for using the d-Quote—namely, maintaining an e-Quote at the NYSE BBO. Accordingly, the Commission finds that the proposal to implement a pegging function for floor brokers is consistent with the requirements of the Act.

A. Comments

1. Transparency

One commenter argued that the proposal would have an adverse impact on transparency because the discretionary instructions would not be disclosed to the public. The commenter argued that by not disclosing d-Quotes to the public, the Exchange was making its market less transparent to investors who seek liquidity and would be denying executions to investors who post liquidity. According to the commenter, the proposal would lessen incentives to post liquidity by allowing d-Quotes to trade despite the existence of displayed limit orders.

The commenter also argued that the lack of transparency of the d-Quotes would negatively impact the price discovery process by lessening the usefulness of the NBBO. The commenter argued that investors would be denied complete information about the current state of the prices and sizes at which other investors are willing to trade. Unlike the current auction where, according to the commenter, only interest that is disclosed is permitted to participate in an execution, d-Quotes will participate in an execution if their terms are fulfilled without disclosure to other market participants who may be willing to trade at the same or better price.

The Commission notes that it has never required complete disclosure of all trading interest, and that it has permitted the use of undisplayed order types. Today, for example, floor brokers may hold significant trading interest that may be available for execution that is not broadly disclosed, but that may participate in a transaction on the Exchange.

NYSE has proposed a means by which floor brokers can continue to represent customers without having to disclose the customers' entire orders. Floor brokers will be able to adjust their d-Quotes to reflect their customers' investment strategies.

The Commission believes that NYSE has designed its proposal to allow floor brokers to represent their customers in a manner similar to how they operate in the auction market. The Commission believes that the proposal is not likely to substantially reduce transparency because these orders are not currently displayed. The Commission also notes that it has approved similar undisplayed order types for use by other markets.[105] Accordingly, the Commission finds that the proposal is consistent with the Act.

2. Informational Advantages for Floor Brokers

In the proposal, the Exchange states that it is intending to replicate, in the Hybrid Market, the manner in which floor brokers utilize their judgment in quoting and trading on behalf of their customers' orders in the auction market. One commenter questions whether the proposal actually replicates the auction market.[106] The commenter believes that the proposal would introduce a new manner of trading that is unfair to public limit orders and provides informational advantages to floor brokers. The commenter believes that the proposal would replicate the time and place advantage enjoyed by floor brokers in the auction market, without maintaining the counterbalance of the auction market's transparency of bids and offers, and the requirement that orders cannot trade before they are exposed to the market. Further, the commenter argued that floor brokers could enter their d-Quotes with full knowledge of the public limit orders, while public investors would not be provided reciprocal knowledge of the d-Quotes. Thus, the commenter believes that public investors are inappropriately denied the ability to change their limit prices in response to the trading instructions attached to d-Quotes.

In the Response to Comments, the Exchange noted that, without d-Quotes, investors that use floor brokers to represent their orders would not be able to access the Hybrid Market in a similar manner to which they access the auction market today. The Exchange believes that it designed the proposal to closely replicate the auction market in an electronic environment.

Further, the Exchange responds that in today's auction market, orders that are held and represented by floor brokers are not transparent. The Exchange represented that it designed the proposal to permit floor brokers to make the same types of trading decisions for the orders they hold in the Crowd today. The Exchange believes the

[105] *See* Securities Exchange Act Release Nos. 47467 (March 7, 2003), 68 FR 12134 (March 13, 2003) (approving pegging orders in Pacific Exchange, Inc.) and 48798 (November 17, 2003), 68 FR 66147 (November 25, 2003) (approving pegging orders in Nasdaq Stock Market, Inc.); and 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (approving discretionary orders in Pacific Exchange, Inc.) and 49085 (January 15, 2004), 69 FR 3412 (January 23, 2004) (approving discretionary orders in Nasdaq Stock Market, Inc.). *See also* Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460 (October 3, 2006) (approving passive liquidity order in NYSE Arca, Inc.).

[106] *See* Rutherfurd Letters I and III.

proposal would not substantially alter the amount of information currently available on the Exchange. Specialists and floor brokers would not have access to information about d-Quotes entered by other floor brokers. The Exchange also stated that public investors entering limit orders would have the same amount of information as is currently available, which does not include knowledge of floor broker trading interest. Likewise, floor brokers would not have any more market information on the Exchange than they do today.

Accordingly, the Commission does not believe that the proposal would provide floor brokers with an inappropriate informational advantage or reduce the amount of information that is currently publicly available.

3. Section 11A of the Act

One commenter argued that the proposal was inconsistent with Section 6(b) of the Act and Section 11A(a)(1)(C)(i) of the Act [107] because the commenter believes that the proposal is unfairly discriminatory and anti-competitive.[108] Specifically, the commenter argues that because the proposal would provide floor brokers with an exclusive right to enter d-Quotes, the proposal unfairly discriminates against customers who do not use floor brokers, and places a burden on competition that is not necessary in furtherance of the purposes of the Act. Further, the commenter argues that the proposal inhibits the economically efficient execution of orders, which Section 11A(a)(1)(C)(i) of the Act [109] states is a goal of the national market system. The commenter notes that, under the proposal, investors who seek to utilize discretionary instructions would be forced to pay a floor broker, who the commenter argues, then merely performs the clerical function of entering the order into the Exchange system for execution. The commenter believes that institutional investors should be free to exercise their own judgment without the requirement to employ any third parties. The commenter also noted that all market participants should have a fair opportunity to trade and trading should not be conducted with unnecessary human intervention.

The Commission notes that today if investors wish to have their orders represented in the NYSE auction market, they must either send their order to the Book for representation by a specialist or send their order to a floor broker for representation.[110] In the Hybrid Market, NYSE has decided to retain a role for its floor members in its market. The commenter stated that he believed that ''pure electronic trading is not only defensible but highly desirable'' and thus, appears to fundamentally disagree with the market structure that NYSE has developed. However, Congress clearly contemplated that the markets should be able to compete through the adoption of different market models.[111]

NYSE has sought to replicate its current market in a more electronic manner, yet while retaining some distinctive features of its floor. As the Commission indicated in the Hybrid Market Order, the Exchange has a degree of flexibility to develop its market model so long as it does so within the framework of the Act.

The Commission believes that the proposal is broadly consistent with Section 11A of the Act in that it incorporates features that may provide investors with the opportunity to receive economically efficient execution of their securities transactions and promote fair and orderly markets.[112] The Commission believes that while d-Quotes would not be displayed, they could provide benefits to the market such as increased liquidity and improved prices. The Commission notes that undisplayed d-Quotes would never execute ahead of a displayed order that is at the same or better price.

A significant feature of the d-Quote is to potentially offer public investors a means, through the use of floor brokers, to compete with specialists in providing price improvement to incoming marketable orders. The Commission believes that d-Quote could provide meaningful competition to the specialist in providing price improvement, and thus promote competition on the Exchange floor.

Accordingly, the Commission does not believe that the proposal is inconsistent with Section 11A of the Act.[113]

4. Sweeps

In the Hybrid Market, once an auto ex order trades with interest at the Exchange BBO, the remainder, if any, would automatically sweep the Display Book system by trading with liquidity outside the BBO. Under the proposal, d-Quotes could also participate in sweeps initiated by other orders, but their discretionary instructions would not be active.[114] One commenter believes that a sweep initiated by other orders should not deactivate the discretionary instructions.[115] The Exchange responds that when a d-Quote is participating in a sweep, the discretionary functions would not provide additional value to the customer.

The Commission believes that the Exchange has some latitude to determine the types of functions that it believes would be most attractive to its market participants. Accordingly, the Commission believes that the treatment of d-Quote in sweeps is reasonable and broadly consistent with the requirements of the Act.

5. Implementation

The Exchange proposes to implement the d-Quote proposal in two parts, in Phase 3 and Phase 4 of the Hybrid Market implementation. One commenter argued that d-Quote should be implemented at the same time as the Specialist Algorithms, because the commenter believes that the proposal is necessary to maintain market balance.[116] The commenter believes that implementing the Specialist Algorithms first would risk a mass exodus of volume from the Exchange. In the Response to Comments, the Exchange stated that, due to the complexities of the system changes required by the implementation of the Hybrid Market, the Exchange is not able to launch the proposal at the same time as the Specialist Algorithms.

The Commission believes that the Exchange's proposed implementation schedule is reasonable and consistent with the requirements of the Act. The Commission notes that Phase 3 is when the Exchange anticipates switching to a substantially more automated market, and believes that the proposed staggered implementation schedule is reasonably designed to allow the Exchange to adequately test the changes to its systems.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed

[107] 15 U.S.C. 78k–1(a)(1)(C)(i).

[108] *See* Rutherfurd Letters I and III.

[109] 15 U.S.C. 78k–1(a)(1)(C)(i).

[110] Small marketable limit orders can be automatically executed in Direct+.

[111] As Congress noted when it adopted the 1975 Act Amendments that it was ''not the intention of the bill to force all markets for all securities into a single mold.'' *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 7 (1975). Congress instructed the Commission to seek to ''enhance competition and to allow economic forces, interacting with a fair regulatory field, to arrive at appropriate variation in practices and services. It would obviously be contrary to this purpose to compel elimination of differences between types of markets or types of firms that might be competition-enhancing. *Id.*

[112] 15 U.S.C. 78k–1.

[113] 15 U.S.C. 78k–1.

[114] *See* proposed NYSE Rule 70.25(d)(ix).

[115] *See* IBAC Letter.

[116] *See* IBAC Letter.

rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act[117] and Section 11A of the Act.[118]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[119] that the proposed rule change (SR–NYSE–2006–36) and Amendment Nos. 1 and 2 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[120]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16888 Filed 10–11–06; 8:45 am]

BILLING CODE 8011–01–P

[117] 15 U.S.C. 78f(b)(5).

[118] 15 U.S.C. 78k–1.

[119] 15 U.S.C. 78s(b)(2).

[120] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54578; File No. SR–NYSE–2006–82]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to A Pilot Until 10/31/06 to Put Into Operation Certain Rule Changes Pending Before the Securities and Exchange Commission to Coincide With the Exchange's Implementation of Phase 3 of the NYSE HYBRID MARKETSM

October 5, 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 October 5, 2006 the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a pilot (the ''Pilot'') to put into operation certain rule changes pending before the Commission to coincide with the Exchange's implementation of NYSE HYBRID MARKETSM (''Hybrid Market'')[3] Phase 3 for the securities identified in Exhibit 3 of its filing. The text of the proposed rule change is available on NYSE's Web site (*http://www.nyse.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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 NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved the Hybrid Market on March 22, 2006.[4] The approved rules did not become effective immediately; rather they are being implemented in a series of phases over a period of time.

Implementation of Phase 1 of the Hybrid Market, which focused primarily on the ability of Floor brokers to electronically represent their customers' interest (''e-Quote''), was substantially completed on April 5, 2006.

Phase 2 of the Hybrid Market focused primarily on the ability of specialists to use their algorithmic systems to quote and trade. The installation of software necessary to implement Phase 2 of the Hybrid Market has been installed Floor-wide. Some specialist firms have been in the process of readying their systems to quote and trade with receipt of order information, while others have begun quoting with receipt of such information. Phase 2 will continue to become operational concurrently with the roll out of Phase 3. In addition, beginning June 21, 2006, specialists were permitted to algorithmically quote (''s-Quote'') in their specialty securities, without the receipt of order information as such orders are entering Exchange systems.[5] Starting August 15, 2006, specialists were permitted to send algorithmically-generated trading messages to interact with the Exchange quotation (''hit bid/take offer''), also without receipt of order information as such orders are entering Exchange systems.[6]

Phase 3 of the Hybrid Market, as approved, includes implementation of the following features:

- Automatic routing of orders to automated markets posting better bids and offers in accordance with Regulation NMS;
- Availability of NYSE IOC orders for automatic executions;
- Use of indicators to identify NYSE quotations that are not immediately available for automatic execution;
- Implementation of gap quoting requirements;
- Elimination of 1,099 size restriction for automatic executions and increase in size eligibility for automatic executions to 1 million shares;[7]
- Elimination of 30-second restriction on the entry of auto ex orders on orders from the same person;
- Availability of automatic executions through the close;
- Elimination of Direct+ availability only to straight limit orders;
- Elimination of Direct+ suspensions due to price (*i.e.*, a trade at a price that would be more than five cents from the last trade in the stock on the Exchange);
- Elimination of Direct+ suspensions due to size (*i.e.*, a 100-share published bid or offer);
- Conversion of marketable limit orders to auto ex orders; and
- Automatic executions of market orders.[8]

The Exchange intends to begin implementation of Phase 3 on October 6, 2006. The Exchange has proposed changes to some of the rules already approved for implementation in Phase 3[9] as well as moving the implementation of sweeps and liquidity replenishment points (''LRPs'')

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Hybrid Market was approved on March 22, 2006. *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05) (''Hybrid Market Order'').

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 54024 (June 21, 2006), 71 FR 36849 (June 28, 2006) (SR–NYSE–2006–44). This is effective until Phase 2 is fully implemented.

[6] *See* Securities Exchange Act Release No. 54316 (August 15, 2006), 71 FR 48569 (August 21, 2006) (SR–NYSE–2006–59). This is effective until Phase 2 is fully implemented.

[7] *See* Securities Exchange Act Release No. 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006) (SR–NYSE–2006–65) (proposing to amend several Exchange Rules to clarify certain definitions and systemic processes (''Omnibus Filing'')).

[8] *Id.*

[9] *See* Omnibus Filing.

originally included for Phase 4 to Phase 3.[10]

In addition, the Exchange has proposed modifications to other Exchange Rules that the Exchange proposes to become operational as part of Phase 3 and are the subject of other pending rule filings.[11] The substantive proposed amendments in the Omnibus Filing, Stabilization Filing and Block Cross Filing are necessary to a successful implementation of Phase 3, except the proposed changes in the Omnibus filing applicable to ''auction limit'' and ''auction market'' orders. These order types will not be available in Phase 3.

Accordingly, the Exchange proposes to implement on a pilot basis the changes that the Exchange has proposed in the Omnibus Filing, Stabilization Filing, and the Block Cross Filing.[12] The proposed amendments to rules previously approved in the Hybrid Market[13] and new proposals[14] are discussed in detail in those filings. The Pilot would apply to a group of securities, known as Phase 3 Pilot securities (''Pilot securities'').[15] The Pilot would commence following Securities and Exchange Commission approval of the Pilot[16] and will terminate on the close of business on October 31, 2006.

The Exchange plans to phase-in the securities in the Pilot, if approved, over several weeks. However, Exchange Rule 1002(P3) (''Availability of Automatic Execution Feature''), which extends automatic executions to the close, will apply to all securities on the Exchange upon commencement of the Pilot.[17]

To eliminate possible confusion as to which Exchange Rules or sections thereof apply to the Pilot securities, the Exchange has identified the rules that will be operational during the Pilot with a ''P3.''

For purposes of the Pilot, the Exchange further requests that the Commission re-interpret the specialist's negative obligation to eliminate the requirement with respect to Exchange Rule 104(a) that each trade by the specialist for the dealer account meet a test of reasonable necessity.[18] The Exchange believes that such an interpretation is appropriate in view of the development of the national market system over the past seventy years since the interpretation was initially issued.

According to the Exchange, the Commission has been granted specific authority by Congress to reinterpret the negative obligation. Specifically, in 1975, in connection with the 1975 amendments[19] to the Act, Congress eliminated the negative obligation clause from Section 11(b) of the Act and gave the Commission the flexibility to define dealer obligations for both exchange members and over-the-counter market makers. In making the changes, Congress noted that changes in the marketplace might warrant changes in the scope of the dealer obligation:

> It might well be that with active competition among market makers and the elimination of trading advantages specialists now enjoy, such a restriction on specialists' dealings would become unnecessary. Because trading patterns and market making behavior in the context of a national market system cannot now be predicted, it appears appropriate to expand the Commission's rulemaking authority in this area so that the Commission may define responsibilities and restrict activities of specialists in response to changing market conditions.[20]

The Exchange believes that the conditions for change that were identified by Congress have largely come to pass, and that as a result, it is appropriate to redefine the scope of the specialist's negative obligation. For example, the institutionalization of the market, increased competition, and increased application of computer and communication technology has significantly diminished the time-and-place advantages of specialists. As a result, markets have seen increases in the average daily trading volume and the movement off the Floor of the decision making that affects the direction and extent of movements in the specialty stocks. There is also a dramatic increase in transparency with respect to the specialist's book through, among other things, Exchange initiatives like Exchange OPENBOOK.™ This increased transparency gives all market participants, both on and off the Floor, a greater ability to see and react to market changes.

There has also been a significant increase in competition in Exchange-listed securities. For example, unlike in previous years, Exchange specialists must now compete with upstairs liquidity providers and with multiple OTC dealers, crossing networks and Alternative Trading Systems. As a result of UTP and dual listings, specialists also face competition from other national and regional exchanges. For all of these reasons, the Exchange believes that it is appropriate to reinterpret the negative obligation away from an emphasis on trade-by-trade necessity, and toward an approach based on patterns and practices in the trading of specialty securities for the dealer account.

New York Stock Exchange Regulation (''NYSER'') has appropriate surveillance procedures in place to surveil for compliance with the negative obligation by specialists. For example, NYSER will monitor, on a pattern and practice basis, specialist activity that appears to cause or exacerbate an excessive price movement in the market, as such transactions would appear to be in violation with a specialist's negative

[10] The Commission notes that the Exchange has proposed changes to its sweep functionality and LRPs. Specifically, in the Omnibus Filing, the Exchange proposes to amend NYSE Rule 1000(d)(iii) to provide that during a sweep, an order will trade with all interest at each price capable of trading, before moving to the next price point. In addition, the Exchange proposes to amend NYSE Rule 1000(a)(iv) to implement a single LRP rather than the two LRPs originally approved in the Hybrid Market Order. These Omnibus Filing changes are included in the Pilot.

[11] *See* Securities Exchange Act Release No. 54504 (September 26, 2006), 71 FR 57011 (September 28, 2006) (SR–NYSE 2006–76) (proposing to amend the specialist stabilization requirements set forth in Exchange Rule 104.10 (''Stabilization Filing'')); and SR–NYSE–2006–73 (filed on September 13, 2006) (proposing to amend Exchange Rule 127 which governs the execution of a block cross transaction at a price outside the prevailing NYSE quotation (''Block Cross Filing'')). *See also* Omnibus Filing (proposing amendments to Exchange Rules related to stop order and stop limit orders).

[12] The amendments to Exchange rules proposed pursuant to the Omnibus Filing, Stabilization Filing and Block Cross Filing are attached to the filing, available on the Exchange's Web site, as Exhibits 5A, 5B, and 5C respectively. In Exhibit 5 of the filing the Exchange proposes to retain NYSE Rule 104.10(7) and to add language to NYSE Rule 104.10(5)(i)(a)(II)(a) to clarify that such transactions are other than those reaching across the market. These changes are not reflected in the Stabilization Filing and Exhibit 5B. In addition, in Exhibit 5 of the filing, the Exchange proposes additional changes to Exchange Rule 127 that are also not reflected in the Block Cross Filing and Exhibit 5C. The Exchange intends to submit amendments to the aforementioned filings to the Commission to reflect these changes.

[13] *See* Omnibus Filing.

[14] *See* Stabilization Filing, Block Cross Filing and proposed amendments to stop orders and stop limit orders contained in Omnibus Filing.

[15] Phase 3 Pilot securities will also be posted on the Exchange's Web site.

[16] The changes related to stop orders and stop limit orders proposed in the Omnibus Filing will be implemented on October 16, 2006 pending SEC approval of this Pilot, to give customers and member organizations sufficient time to make any changes necessary as a result of the elimination of stop limit orders.

[17] The extension of automatic executions to the close as set forth in NYSE Rule 1002 was approved as part of the Hybrid Market filings. *See* Securities Exchange Act Release No. 53539, *supra* note 3. As approved, NYSE Rule 1002 was always intended for implementation in Phase 3. The amendments to NYSE Rule 1002, set forth in the pending Omnibus Filing, are merely technical in nature, clarifying the rule's applicability, rather than the operation.

[18] The Exchange is not seeking to have the Commission eliminate trade-by-trade analysis with respect to rules specifically calling for such an analysis, such as rules relating to Prohibited trades under NYSE Rule 104.10(5) and Conditional trades in inactive securities and NYSE Rule 104.10(6).

[19] Securities Acts Amendments of 1975 (''1975 Amendments''), Pub. L. No. 94–29, 89 Stat. 97 (June 4, 1975).

[20] S. Rep. No. 94–75, at 100 (1975).

obligation. Additionally, the Division of Market Surveillance of NYSER will monitor for all subsequent action taken by the specialist, or lack thereof, to cushion such price movement. As today, the Exchange will in the context of price volatility alerts, monitor for excessive price movements that may involve a failure to comply with either the affirmative or negative obligation. As the Exchange gains experience with its new market structure, the Exchange will enhance existing surveillances and/or create new surveillances where necessary and appropriate to monitor for compliance with the specialist negative obligations.

The Exchange believes the Pilot will prove beneficial from both a technology and a training perspective. The process will allow for a controlled and moderated roll out of the new systems and capabilities. The Pilot will allow the Exchange to commence implementation of Hybrid Market Phase 3, as amended, therefore providing the Exchange and users with real-time testing of those functionalities.

Further, the Pilot will give the Exchange the opportunity to identify and address any system problems and to identify and incorporate beneficial system changes that become apparent as a result of usage in real time and under real market conditions. The ability to have such real time user interface will be invaluable, as it is impossible to accurately anticipate behavioral changes in a development or mock-trading environment. In addition, the Pilot will allow users to gain essential practical experience with the new systems and processes in a well-modulated way.

Prior to the Pilot, there has been comprehensive training for both Floor brokers and specialists, individually and together in a mock trading environment. Training was conducted by the Exchange and was supplemented in most cases by firm-specific training conducted by member organizations for their employees. The Exchange training environment was made available also to proprietary system vendors for their training sessions.

In addition, testing has occurred at all levels, including development testing, automation testing, SIAC testing, NYSE testing, integrated system testing and code reviews, production environment testing, fall-back and recovery testing, and regression and new functionality testing.

Moreover, the Exchange intends to have available at all times during the Pilot two versions of the operating software—the new version that would be operational and the original, pre-Pilot version. If a problem develops during the Pilot, the Exchange will be able to revert to the pre-Pilot software within an average time of two minutes or less.

The Pilot will also enable the Exchange to be fully Regulation NMS [21]-compliant by February 5, 2007 date and comply with its obligations under the proposed NMS Linkage Plan.[22] Without this Pilot, it is unlikely the Exchange will be able to meet either requirement.

The Exchange anticipates that the Pilot will operate with minimal problems given the amount and degree of testing and training that has occurred to date. Accordingly, the Exchange believes that the extensiveness of the testing and training, the phase-in approach described above and the fall-back capabilities of Exchange Systems provide significant assurances that the Pilot will operate as expected. However, in the event systems or other problems arise with the Pilot that adversely impact investors or impede the Exchange's ability to maintain a fair and orderly market, the Exchange will immediately terminate the Pilot in whole or in part, as appropriate, and return trading to current operations under current NYSE rules.

Finally, the Exchange represents that it will provide the Commission with any and all data and analysis the Commission may request regarding the operation of the rules governing stabilization.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [23] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is also designed to support the principles of Section 11A(a)(1) [24] of the Act in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.[25]

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–NYSE–2006–82 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–NYSE–2006–82. 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

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (17 CFR Parts 200, 201, 230, 240, 242, 249, and 270).

[22] A ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934'' to facilitate trades between different market centers. *See* Securities Exchange Act Release No. 54551 (September 29, 2006). The Commission published notice of the NMS Linkage Plan on July 28, 2006. *See also* Securities Exchange Act Release No. 54239 (July 28, 2006), 71 FR 44328 (August 4, 2006), 17 CFR 242.608.

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1).

[25] The Commission notes that it has received a comment letter in response to the Omnibus Filing.

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–82 and should be submitted on or before November 2, 2006.

IV. Commission's Finding and Order Granting Accelerated Approval of the 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.[26] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5) of the Act because the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With this proposed rule change, the Exchange has requested temporary approval by the Commission of certain proposed amendments to the rules that govern its Hybrid Market, so that it may begin to implement Phase 3, with the rules that the Exchange has proposed to amend while these changes are pending approval by the Commission. According to the Exchange, this Pilot is necessary so that the Exchange can maintain its planned implementation schedule for the Hybrid Market and meet the Regulation NMS compliance dates. In addition, this Pilot will allow NYSE to comply with the new NMS Linkage Plan.

The Commission is considering each of the proposed filings that are pending, including comments received, if any, and has not reached a decision on whether they should be approved or disapproved. The Commission, however, believes that due to the limited nature of the Pilot and its short duration, it is consistent with the Act to allow NYSE to implement the Pilot so that it may remain on schedule for Regulation NMS compliance, begin testing its new systems with this Pilot and comply with the NMS Linkage Plan.

The NYSE explained in its filing that it has tested these Hybrid Market functions extensively but that it needs to test them in an actual trading environment to ensure that they operate as intended. Accordingly, NYSE represented that it does not anticipate any significant problems arising from the Pilot. However, NYSE will immediately terminate the Pilot, in whole or in part, as appropriate, should any systems or other problems arise that adversely impact the protection of investors or impede its ability to maintain a fair and orderly market, and return trading to its current operations under current NYSE rules.[27]

A. Stabilization Filing

The Commission is currently considering the Stabilization Filing. As noted above, the Exchange has also requested a temporary interpretation by the Commission of the specialists' negative obligation set forth in NYSE Rule 104(a) to eliminate the requirement that each trade by a specialist meet a test of reasonable necessity. NYSE Rule 104(a) states that ''no specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he or his member organization * * * is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market * * *'' In 1937, the Commission issued an interpretation (''Saperstein Interpretation'') that among other things, stated that each transaction by a specialist for his own account must meet the test of reasonable necessity.[28] The Saperstein Interpretation made clear that specialist's transactions for his own account would be required to meet the rule on a transaction-by-transaction basis, rather than on a review of such transactions generally.

In its filing, the NYSE requested that the Commission re-interpret the specialist's negative obligation to eliminate the requirement that each trade by the specialist for its dealer account meet a test of reasonable necessity. The Exchange has stated that it intends to amend the Stabilization Filing to include such a request there as well. The Commission notes that the comment period for the Stabilization Filing has not yet expired, and the Commission specifically requests comment on the appropriateness of the Exchange's request to amend the Commission's interpretation that the specialist's negative obligation be evaluated on a transaction-by-transaction basis.

The Commission agrees with the NYSE that the national market system has changed greatly in the nearly seventy years since the Saperstein Interpretation was issued. The Commission also agrees that increased automation and competition—both within the Hybrid Market and in the markets generally—are significant factors, among others, that must be considered with regard to the scope of specialists' responsibilities and obligations. The Commission intends to fully consider the NYSE's request relating to the transaction-by-transaction requirement of the Saperstein Interpretation when it decides whether to approve the Stabilization Filing, as amended. However, the Commission preliminarily believes that the Exchange's request may have merit and, therefore, is permitting, as part of this Pilot, the Exchange to review the specialists' negative obligations on a pattern and practice basis, rather than on a transaction-by-transaction basis. The Commission emphasizes that this review applies solely to the interpretation of Exchange Rule 104(a) and notes that the specific requirements and restrictions applicable to specialists, set forth in NYSE Rule 104.10(5)(i)(b), Rule 104.10(5)(i)(c), and Rule 104.10(6), must be reviewed and complied with for each individual transaction. Further, this temporary interpretation applies solely to the Pilot Securities.

The Exchange represented that it will conduct surveillance of specialist trading for compliance with their negative obligation. NYSE further represented that it will enhance existing surveillance and/or create new surveillances as necessary and appropriate to monitor for compliance with the negative obligation. The Commission wishes to emphasize that specialists remain subject to the restrictions set forth in the negative

[26] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] The Exchange stated that it would be able to revert back to pre-Pilot operations within an average of two minutes or less. The Exchange represents that it intends to have available at all times during the Pilot two versions of the operating software: (1) The new version that would be operational during the Pilot and (2) the original, pre-Pilot version which would operational in case the Pilot prematurely needs to be terminated. The Exchange will notify the public via its Web site if the Pilot is terminated in whole or in part. In addition, the Exchange will notify floor members at the post if the Pilot is terminated in whole or in part.

[28] *See* Securities Exchange Release No. 1117 (March 30, 1937), at 4.

obligation with regard to proprietary trading.[29]

B. Accelerated Approval of the Pilot Proposal

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[30] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice in the **Federal Register**. The Pilot, which as discussed above is limited in scope and duration, will allow the NYSE to remain on schedule for compliance with Regulation NMS, comply with the NMS Linkage Plan and to conduct real-time system and user testing of certain features of the Hybrid Market. According to NYSE, such testing should be beneficial from both a technology and a training perspective. Although preliminary steps have been taken—in the form of NYSE-provided training for both Floor brokers and specialists, training by member organizations for their employees, and training by proprietary system vendors in the NYSE trading environment for their training sessions—the Pilot should give the Exchange the opportunity to identify and address any system problems with these particular rules under the Hybrid Market. Further, the Pilot should allow users to gain essential practical experience with the new systems and processes. Therefore, the Commission finds that immediate implementation of the Pilot, which is limited in both scope and duration, should permit NYSE to remain on schedule to meet the Regulation NMS compliance dates, comply with the NMS Linkage Plan and continue to implement its Hybrid Market changes in an orderly manner.

V. Conclusion

It is therefor ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2006–82) is hereby approved on an accelerated basis until October 31, 2006.

For the Commission, by the Division of Market Regulation, by delegated authority.[31]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16897 Filed 10–11–06; 8:45 am]

BILLING CODE 8011–01–P

[29] *See also* Hybrid Market Order for a discussion of the negative obligation, supra note 3.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10634]

Disaster # ZZ-00002; The Entire United States and U.S. Territories

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/1/2006.

DATES: *Effective Date:* 10/1/2006.

MREIDL Loan Application Deadline Date: 90 days after the essential employee is discharged or released from active duty.

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 Public Law 106–50, the Veterans Entrepreneurship and Small Business Development Act of 1999, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program.

Effective 10/1/2006, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict existing on or after March 24, 1999 and those employees are essential to the success of the small business daily operations.

The purpose of the Military Reservist economic injury disaster loan program (MREIDL) is to provide funds to eligible small businesses to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up to active duty in their role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active duty. For information/applications contact 1–800–659–2955 or visit *http://www.sba.gov.*

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The Interest Rate for eligible small businesses is 4.000.

The number assigned for economic injury is 10634 0.

(Catalog of Federal Domestic Assistance Number 59002).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–16869 Filed 10–11–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Personal Computers.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for Personal Computers Manufacturing. According to the request, no small business manufacturers are supplying this class of product to the Federal government. If granted, the waiver would allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small business or SBA's 8(a) Business Development Program.

DATES: Comments and source information must be submitted October 27, 2006.

ADDRESSES: You may submit comments and source information to Edith Butler, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the

Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on a six digit coding system.

The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Personal Computers, Manufacturing, North American Industry Classification System (NAICS) 334111. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of NAICS code within 15 days after date of publication in the **Federal Register**.

Dated: October 3, 2006.

Karen C. Hontz,

Associate Administrator for Government Contracting.

[FR Doc. E6–16845 Filed 10–11–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5580]

Culturally Significant Objects Imported for Exhibition Determinations: ''Albers and Moholy-Nagy: From the Bauhaus to the New World''

ACTION: Notice, correction.

SUMMARY: On September 15, 2006, Notice was published on page 54548 of the **Federal Register** (volume 71, number 179) of the determinations made by the Department of State pertaining to the exhibit, ''Albers and Moholy-Nagy: From the Bauhaus to the New World.'' The referenced notice is corrected as to an additional object to be included in the exhibition. 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 an additional object to be included in the exhibition ''Albers and Moholy-Nagy: From the Bauhaus to the New World,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The additional object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at the Whitney Museum of American Art, New York, New York, from on or about November 2, 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 objects, contact Wolodymyr Sulzynsky, 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: October 4, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–16937 Filed 10–11–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5576]

Meetings of the United States-Chile Environment Affairs Council and the United States-Chile Joint Commission for Environmental Cooperation

ACTION: Notice and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that, as set forth in Chapter 19 (Environment) of the United States-Chile Free Trade Agreement (FTA), the United States and Chile intend to hold the third meeting of the Environment Affairs Council (the ''Council'') and the second meeting of the United States-Chile Joint Commission for Environmental Cooperation (the ''Commission'') in Santiago, Chile on October 23–24, 2006. A public information session will be held for members of the public on October 23, at 3:30 p.m., in the Ministry of Foreign Relations, Teatinos 180, Conference Room, 17th floor. The purpose of the Council and Commission meetings is detailed below under **SUPPLEMENTARY INFORMATION.**

The meeting agendas will include an evaluation of the eight cooperative projects outlined in the FTA's Environment Chapter and the 2005–2006 Work Program and a proposed 2007–2008 Work Program pursuant to the United States-Chile Environmental Cooperation Agreement (''the ECA''). The Department of State and USTR invite interested agencies, organizations, and members of the public to submit written comments or suggestions regarding agenda items.

In preparing comments, we encourage submitters to refer to:

- The FTA's Environment Chapter including Annex 19.3, and the Final Environment Review of the FTA, available at: *http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html.*
- The ECA, available at: *http://www.state.gov/g/oes/env/tr/.*
- Joint Declaration and Project Reports from the 2005 Council meeting at: *http://www.state.gov/g/oes/env/tr/2005/index.htm.*

DATES: To be assured of timely consideration, comments are requested no later than October 20, 2006.

ADDRESSES: Written comments or suggestions should be submitted to both:

(1) Lawrence Sperling, U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Policy Coordination Initiatives by electronic mail at *SperlingLI@state.gov* with the subject line ''US-Chile EAC and JCEC Meetings'' or by fax to (202) 647–5947 or (202) 647–1052; and (2) Mara M. Burr, Deputy Assistant United States Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative by electronic mail at *mburr@ustr.eop.gov* with the subject line ''US-Chile EAC and JCEC Meetings'' or by fax to or (202) 395–6865.

FOR FURTHER INFORMATION CONTACT: Lawrence Sperling, Telephone (202) 647–2061 or Mara M. Burr, Telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION: The United States-Chile Free Trade Agreement (FTA) entered into force on January 4, 2004. Article 3 of Chapter 19 (Environment) of the FTA establishes an Environment Affairs Council (the ''Council''), which is required to meet at least once a year to discuss the implementation of, and progress under, Chapter 19. Chapter 19 requires that

meetings of the Council include a public session, unless otherwise agreed by the two governments. Under Chapter 19, the two governments agreed to undertake eight specific cooperative activities set out in Annex 19.3 of the Chapter and to negotiate a United States-Chile Environmental Cooperation Agreement to further environmental cooperative activities. The United States-Chile Environmental Cooperation Agreement (the ''ECA'') entered into force on May 1, 2004 and sets out a framework for environmental cooperative activities between the two governments. Article II of the ECA establishes the United States-Chile Joint Commission for Environmental Cooperation (the ''Commission''), with responsibilities that include developing and periodically reviewing a Work Program. The Commission is required to meet at least every two years. The first meetings of the Council and the Commission were held on July 22, 2004, in Santiago, Chile, and the second meeting of the Council was held on October 24, 2005, in Washington, DC. Issues of mutual concern related to Chapter 19 of the FTA and progress reports on the eight cooperation projects under Chapter 19 were discussed at the second meeting of the Council. At the upcoming third meeting of the Council and second meeting of the Commission, the Council and Commission will consider implementation of the Chapter, including with respect to public participation, input from advisory committees, review of cooperative projects, the 2005–2006 ECA Work Program, and a proposed 2007–2008 ECA Work Program. At these meetings, the Council and Commission will also consider recommendations for future bilateral environmental cooperation.

The public is advised to refer to the State Department Web site at *http://www.state.gov/g/oes/env/* for further information related to the Council and Commission meetings.

Dated: October 6, 2006.

David E. Brown,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 06–8662 Filed 10–11–06; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF STATE

[Public Notice 5574]

Department of State Performance Review Board Members (at Large Board)

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the Department of State Performance Review Board (At-Large):

Susan Burk, Deputy Coordinator for Homeland Security, Office of the Secretary, Department of State;

John Kim, Assistant Legal Adviser for Treaty Affairs, Office of Legal Adviser, Department of State;

William Todd, Deputy Inspector General, Office of the Inspector General, Department of State;

Gretchen Welch, Director, Office of Policy, Planning and Resources, Office of the Under Secretary for Public Diplomacy and Public Affairs, Department of State; (Outside Member)

Ruth Whiteside, Director, Office of the Director, Foreign Service Institute, Department of State;

Dated: September 15, 2006.

George M. Staples,

Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 06–8537 Filed 10–11–06; 8:45 am]

BILLING CODE 4710–15–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 06–06).

TIME AND DATE: 11 a.m., October 13, 2006, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

STATUS: Open.

Agenda

Old Business

Approval of minutes of September 29, 2006, Board Meeting.

New Business

1. Report of the Human Resources Committee.

A. Chief Executive Officer selection process.

2. Report of the Operations, Environment, and Safety Committee.

A. Purchase of a combustion-turbine electric-generating facility located in Marshall County, Kentucky.

FOR FURTHER INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: October 6, 2006.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 06–8660 Filed 10–10–06; 12:40 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 15, 2006

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–25832.
Date Filed: September 12, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC1 Longhaul and Mail Vote 499; TC1 Teleconference, 24–26 July 2006 (Memo 0348); Policy Group Report: TC1 Policy Group Report (Memo 0352); Intended effective date: 1 November 2006.

Docket Number: OST–2006–25833.
Date Filed: September 12, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC1 Areawide and Mail Vote 500; TC1 Teleconference, 24–26 July 2006 (Memo 0349); Policy Group Report: TC1 Policy Group Report (Memo 0352); Intended effective date: 1 January 2007.

Docket Number: OST–2006–25834.
Date Filed: September 12, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC1 Longhaul and Mail Vote 501; TC1 Teleconference, 24–26 July 2006 (Memo 0350); Policy Group Report: TC1 Policy Group Report (Memo 0352); Technical correction: TC1 Longhaul and Mail Vote 501 Resolutions; TC1 Teleconference, 24–26 July 2006 (Memo 0353); Intended effective date: 1 January 2007.

Docket Number: OST–2006–25838.
Date Filed: September 12, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC1 Within South America and Mail Vote 502; TC1 Teleconference,

24–26 July 2006 (Memo 0351); Policy Group Report: TC1 Policy Group Report (Memo 0352); Intended effective date: 1 January 2007.

Docket Number: OST–2006–25839.

Date Filed: September 12, 2006.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 506—Resolution 010y; TC31 North & Central Pacific; Between Japan and North America, Caribbean; Special Passenger Amending Resolution 010y; Between Mexico and Japan (Memo 0377); Intended effective date: 15 November 2006.

Docket Number: OST–2006–25840.

Date Filed: September 12, 2006.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 507—Resolution 010z; TC3 Japan, Korea-South East Asia; Special Passenger Amending Resolution between Japan, Korea and South East Asia; Intended effective date: 20 September 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–16873 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 22, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–25917 and OST–2005–22228.

Date Filed: September 21, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 12, 2006.

Description: Application of Continental Airlines, Inc. requesting a certificate of public convenience and necessity authorizing Continental to provide scheduled air transportation of persons, property and mail between a point or points in the U.S. via intermediate points and a point or points in the open skies countries listed within the application, and beyond for an indefinite period.

Docket Number: OST–2006–25940.

Date Filed: September 22, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 13, 2006.

Description: Application of Kuzu Airlines Cargo requesting a foreign air carrier permit authorizing it to engage in charter foreign air transport of property and mail between Turkey, via intermediate points, and points in the United States and beyond, as well as such other charter authority permitted under the U.S.-Turkey Open Skies Agreement.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. E6–16874 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 15, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–24629.

Date Filed: September 11, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 2, 2006.

Description: Application of Yangtze River Express Airlines Co., Ltd. requesting to amend its foreign air carrier permit to serve Anchorage, AK as a co-terminal with Los Angeles, CA, as authorized by the current bilateral air transport agreement between the Governments of the United States of America and the People's Republic of China, and not as a technical stop only, as applied for in the original application.

Docket Number: OST–2006–25857.

Date Filed: September 14, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 5, 2006.

Description: Application of Sundance Air Venezuela S.A. requesting a foreign air carrier permit authorizing it to engage in charter (non-scheduled) foreign air transportation of property and mail between an airport or airports in Venezuela, to an airport or airports in the United States of America, to include: Aguadilla, Puerto Rico; and San Juan, Puerto Rico.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–16875 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 12, 2006, Vol. 71, No. 133, page 39386. FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations.

DATES: Please submit comments by November 13, 2006.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Flight Operational Quality Assurance (FOQA) Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0660.

Forms(s): There are no FAA forms associated with this collection.

Affected public: An estimated 30 Respondents.

Frequency: This information is collected monthly.

Estimated Average Burden Per Response: Approximately 12 minutes per response.

Estimated Annual Burden Hours: An estimated 360 hours annually.

Abstract: FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations. The purpose is to enable early corrective action for potential threats to safety. 14 CFR 13.401 codifies protection from punitive enforcement action based on FOQA information and required operators with FAA approved FOQA programs to provide aggregate FOQA data to the FAA. Aggregate FOQA information provided to the FAA is protected from public release under 14 CFR part 193.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 4, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–8616 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

User Input to the Aviation Weather Technology Transfer (AWTT) Board

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

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold an informal public meeting to seek aviation weather user input on convective weather products. Details: October 17, 2006; Orlando Orange County Convention Center, 9800 International Drive, Room N210A, Orlando, Florida 32819, 2 p.m. to 4 p.m. The objective of this meeting is to provide an opportunity for interested Government and commercial sector representatives who use Government-provided aviation weather information in operational decision-making to provide input on FAA's plans for implementing new weather products.

DATES: The meeting will be held at the Orlando Orange Country Convention Center, 9800 International Drive, Room N210A, Orlando, Florida 32819; Times: 2 p.m. to 4 p.m. on October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Debi Bacon, Air Traffic Organization, Operations Planning, NAS Weather Policy and Requirements, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7705; Fax: (202) 385–7701; E-mail: *debi.bacon@faa.gov*.

SUPPLEMENTARY INFORMATION:

History

In 1999, the FAA established an Aviation Weather Technology Transfer (AWTT) Board to manage the orderly transfer of weather capabilities and products from research and development (R&D) into operations. The Director, Systems Engineering, Operations Planning, Air Traffic Organization chairs the AWTT Board. The board is composed of stakeholders in the Air Traffic and Aviation Safety organizations in the Federal Aviation Administration and the Office of Climate, Water and Weather Services, the Office of Science and Technology, and the National Center for Environmental Predictions (NCEP) in the National Weather Service.

The AWTT Board meets semi-annually or as needed, to determine the readiness of weather R&D products for experimental use or full operational use for meteorologists or for end users. The board makes the determination based on technical and operational readiness, cost and benefits, user needs and budget considerations.

FAA has the sole responsibility and authority to make decisions intended to provide a safe, secure, and efficient U.S. national airspace system. However, it behooves FAA to not make decisions in a vacuum. Rather, FAA is seeking inputs from the user community before decisions are finalized.

Industry users are invited to participate in one-day meetings two or three times per year to give specific feedback to the Government. Meetings are often focused on a specific domain (*e.g.* terminal, enroute) or specific weather phenomena (*e.g.* turbulence, convection) but may also focus on specific weather products ready for operational decisions. Meetings will include a time for users to provide input on specific weather products and to surface issues on concerns with those products. The industry review sessions will be announced in the **Federal Register** and open to all interested parties.

This meeting is the industry session focused on convective weather products, roadmaps and research activities.

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Headquarters.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate. This meeting is being held in conjunction with the NBAA Convention 2006. There is a charge to attend the NBAA convention; however, any person desiring to attend this informal meeting will be admitted to NBAA convention officials to this meeting only, at no charge.

(c) FAA personnel will conduct overview briefings on aviation weather products, the status of on-going research, the implementation of the Graphical Turbulence Guidance (GTG) product and the newly developed safety risk assessment process. Questions may be asked during the presentation and FAA personnel will clarify any part of the process that is not clear.

(d) Any person present may offer comment or feedback in the session. Comments and feedback will be captured through discussion between FAA personnel and those persons attending the meeting.

(e) FAA will not take any action items from this meeting nor make any commitments to accept specific user suggestions. An official verbatim transcript of the meeting will not be made. However, a list of the attendees and a digest of discussions during the meeting will be produced and posted on a Web site. Instructions to access the Web site will be provided to all persons attending the meeting and provided to any who desire it.

(f) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback is also solicited and may be submitted to FAA personnel for the period October 18–November 17, 2006.

Agenda

(a) Opening Remarks.
(b) Review of AWTT weather products and research efforts.
(c) Overview of the Safety Risk Assessment process.
(d) Review of implementation of the Graphical Turbulence Guidance (GTG) product and solicitation of user feedback.
(e) Closing Comments.

* * * * *

Issued in Washington, DC on October 4, 2006.

Richard J. Heuwinkel,

Manager, NAS Weather Policy and Requirements.

[FR Doc. 06–8614 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Hearing and Availability of a Draft Environmental Assessment (DEA) for the Proposed Runway 22R/4L Offset ILS at Detroit Metropolitan Wayne County Airport (DTW) Located in Romulus, Detroit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice to Hold a Public Hearing and of Availability of a Draft Environmental Assessment for the Proposed Runway 22R/4L Offset ILS at Detroit Metropolitan Wayne County Airport.

SUMMARY: The Federal Aviation Administration (FAA) has prepared and is making available the Draft Environmental Assessment (DEA) for the following proposed actions at the Detroit Metropolitan Wayne County Airport: the development and use of the offset ILS approach procedures for Runways 22R and 4L, the installation of two (2) offset localizers, the construction of localizer buildings and associated equipment, the construction of an access road, the installation of multilateration equipment including 32 precision runway monitors (Precision Runway Monitors), the installation of Airport Surveillance Detection Equipment (ASDE), the installation of the four Aerobahn multilateration subsystem components on airport property, the reissuance of aeronautical charts with the 22R/4L offset ILS approach information, the issuance of National Airspace System (NAS) Change Proposal (NCP) waivers associated with design and installation of the preceding, the development, issuance, and implementation of Air Traffic procedures, flight check and testing of proposed equipment, and funding for development and implementation of the proposed action.

The Draft EA is being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Orders 1050.1E, ''Environmental Impacts: Policies and Procedures'' and FAA Order 505.4B, ''NEPA Implementing Instructions for Airport Actions''. The proposed development action is consistent with the National Airspace System Plan prepared by the U.S. Department of Transportation, Federal Aviation Administration (FAA).

A Draft Environmental Assessment will be available for public review 30 days prior to the Public Hearing during normal business hours at the following locations:

(1) Romulus Public Library, 11121 Wayne Rd., Romulus, MI 48174, (734) 942–7589.
(2) Wayne City Public Library, 3737 S. Wayne Rd., Wayne, MI 48184, (734) 721–7832.
(3) Taylor Community Library, 12303 Pardee Rd., Taylor, MI 48180, (734) 287–4840.
(4) Inkster Public Library, 2005 Inkster Rd., Inkster, MI 48141, (313) 563–2822.
(5) Wayne County Library, 30555 Michigan Ave., Westland, MI 48186, (734) 727–7310.

DATES, TIMES AND PLACE: Oral or written comments may also be given at a Public Hearing that will be held on Thursday, November 16, 2006, from 3 p.m. to 7 p.m. at the Detroit Metropolitan Hotel, 31500 Wick Road, Romulus, Michigan 48174. Telephone number: 734–467–8000.

ADDRESSES: Written comments are encouraged from persons or interested parties unable to attend the public hearing or who do not wish to make public statements. Written comments concerning the Draft EA will be accepted until 5 p.m. CST, Wednesday, November 22, 2006. Written comments may be sent to: Ms. Virginia Marcks, Environmental Engineer, ANI–430, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Environmental Engineer, ANI–430, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number; 847–294–7494.

SUPPLEMENTARY INFORMATION:

Background

The FAA proposes to provide for an offset to the DTW Runway 22R/4L Instrument Landing System (ILS) approach that would be used to reduce traffic delays at DTW by eliminating the need to stagger aircraft during inclement weather conditions thereby improving the Airport Acceptance Rate (AAR) during Instrument Meteorological Conditions (IMC). During Visual Meteorological Conditions (VMC) and times when triple simultaneous independent approaches during IMC are not necessary the airport would continue to operate as it does today with straight in approaches.

The lateral distance from Runway 22R/4L to its nearest parallel runway, Runway 22L/4R, at DTW is not sufficient to safely conduct triple dependent/independent ILS approaches other than in visual flight conditions. During IMC, air traffic separation standards require greater distance between aircraft, this reduces the number of arrivals an airports is capable of accepting each hour.

When weather conditions do not permit simultaneous visual approaches, increased air traffic delays could occur at DTW which could result in delays at other airports and significant costs to the airline industry.

Precision runway monitoring is a function that supports Air Traffic in monitoring simultaneous closely spaced approaches to parallel runways separated by less than 4,300 feet. When used with the appropriate air traffic procedures precision runway monitoring enables operations in which aircraft are allowed to fly shorter separation distances than otherwise permitted during IMC. This reduction in separation during IMC would reduce delays at DTW by allowing Air Traffic to conduct triple independent simultaneous straight-in ILS approaches to Runways 22L/22R/21L using precision runway monitoring capability, and offset localizer approaches to Runway 22R/4L. This entails compliance with a combination of rules of FAA Order 7110.6P, Air Traffic Control.

The DEA includes an assessment of the potential environmental impacts associated with the proposed ILS offset at DTW and reasonable alternatives pursuant to the National Environmental Policy Act. The analysis in the DEA disclosed that there would be a total of

5.14 acres of wetland impacts with the implementation of the Proposed Action. However, it would be possible to mitigate these impacts with the replacement of wetland functions through the creation or restoration of wetlands.

Meeting Procedures

(a) Persons wishing to speak at the meeting are asked to limit their comments to five minutes. This cold be extended depending on the number of persons wishing to speak.

(b) Persons wishing to make oral presentations will be required to identify themselves for the record.

(c) A court reporter will be present to document and record the proceedings of the meeting and a transcript of the proceedings will be made. Any person who wishes to submit documentation or other written comments for the record may do so.

(d) This meeting is designed for listening carefully to public statements. As such, there will be no rebuttal from persons facilitating the meeting.

Issued in Des Plaines, Illinois October 2, 2006.

Art V. Schultz,

Acting Manger, Chicago NAS Implementation Center, ANI–401, Central Service Area.

[FR Doc. 06–8615 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Runway Incursion Information Evaluation Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of program continuation.

SUMMARY: This document announces the continuation for a 24-month period and expansion of the Runway Incursion Information Evaluation Program (RIIEP). The purpose of the RIIEP is to gather critical safety data not otherwise available concerning the root causes of surface incidents, including runway incursions. The primary means of gathering the data is through in-depth interviews of pilots and maintenance technicians involved in these incidents. This document affirms the FAA's policy concerning enforcement-related incentives for pilots and maintenance technicians to encourage them to participate in the program. It also reiterates the FAA's policy concerning the use for enforcement purposes of information provided by pilots and maintenance technicians under the program.

DATES: The program is in effect from July 21, 2006, through July 20, 2008.

FOR FURTHER INFORMATION CONTACT: Chris Monteleon, Representative of the Associate Administrator for Aviation Safety (AVS) and the Director, Flight Standards Service (AFS) to the FAA Office of Runway Safety, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 7100, Washington, DC 20024; Telephone (202) 385–4719; e-mail *Chris.Monteleon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

One of the FAA's top safety priorities is to prevent runway incursions.[1] To help achieve this goal, the FAA has implemented system-safety initiatives to reduce runway incursions by gathering and evaluating data concerning root causes of runway incursions and through enhanced education and training of pilots and maintenance technicians.[2]

The Flight Standards Service (AFS) ordinarily becomes aware of reported surface incidents, including runway incursions, through notification by the Air Traffic Organization (ATO). However, the FAA often has insufficient data to fully analyze the risk factors and root causes leading to an incident. Accordingly, in March 2000, the FAA implemented the Runway Incursion Information Evaluation Program (RIIEP) for a period of one year, which was renewed in July 2004, through July 2006. Through the RIIEP, the FAA sought data concerning runway incursions by interviewing pilots involved in such events. Under the RIIEP, pilots involved in runway incursions who cooperated with FAA Aviation Safety Inspectors (ASI) by providing information concerning the incident were generally not subject to legal enforcement. We expected the pilot to share valuable safety information that would help us identify the cause of the runway incursion. We wanted this information to aid in determining root causes of runway incursions and to develop effective mitigation action.

The program, since its inception, has been successful in gathering root-cause data leading to the development of risk-reduction strategies. The FAA has learned, however, that the program needs enhancements to assure the RIIEP will reach its voluntary safety-program potential.

Therefore, ninety days before the end of the current period, the FAA evaluated the RIIEP. In particular, the FAA identified a need for improved methods of gathering and analyzing data collected under the RIIEP, and for implementing improved risk-reduction strategies. The FAA considered factors, including the following, in determining whether the RIIEP should continue to build on its success, as well as provide enhanced, critical system-safety, risk-reduction measures in the future: The FAA and the NTSB consider the risk of runway incursion, in commercial aviation and general aviation, and at towered and non-towered airports, an ever-present, high-visibility risk.

- The current implementation of ISO 9001 throughout AVS would provide controls for successful RIIEP processes.
- The future value to runway safety found in the current effort of voluntary, aviation safety information database-sharing through the collaboration of FAA, industry, and academia: An important example is a current aviation rulemaking committee review of the possible benefit of integrating certain program aspects of the RIIEP Database Management and Reporting System (DMRS) with the Distributed National Aviation Safety Action Program (ASAP) Archives (DNAA), perhaps together with the Distributed National Flight Operations Quality Assurance (FOQA) Archives (DNFA) and the Aviation Safety Reporting System (ASFS) databases.
- The continued interface with the Surveillance and Evaluation Program (SEP) and the Air Transportation Oversight System (ATOS) risk identification and mitigation processes.
- The opportunity for RIIEP to develop into the international leader for runway-incursion risk reduction.
- The program-management continuity necessary to increase the current volume and quality of reported data.
- The value of providing the opportunity to increase the size of the RIIEP database and enhance the methodology of its database analysis.
- The development and implementation of more effective means of reaching operators, agencies, and training centers, and their pilots, maintenance technicians, instructors, and designees.

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[1] Runway incursion is currently defined in the United States as ''any occurrence in the airport runway environment involving an aircraft, vehicle, person, or object on the ground that creates a collision hazard or results in a loss of required separation with an aircraft taking off, intending to take off, landing or intending to land.'' Runway incursions are identified and tracked at towered airports (airports with an operating FAA or contract tower).

[2] Surface incident (for the purpose of the RIIEP) is defined as an incident where an aircraft operated by a pilot or maintenance technician taxiing enters a runway safety area without a clearance but another aircraft was not present.

• The widespread publication of a brief, periodic ''tip'' to further RIIEP knowledge and maintain program awareness within AFS and its customers.

• With these enhancements, the FAA believes RIIEP will become the leader in analyzing the root causes of surface incidents, including runway incursions. Further, we believe these enhancements will improve methods of providing critical data that would be used as the basis for the FAA to recommend and implement world-standard risk mitigation.

Accordingly, we have further modified the RIIEP and shall continue the program for 24 months. In addition, 120 days before the end of the current period, the Associate Administrator for Aviation Safety (AVS) and the Air Traffic Organization (ATO) shall provide the Administrator a report summarizing root causes identified, resulting plans in progress, and programs and technologies implemented. Ninety days before the end of this period, the FAA will evaluate the RIIEP and whether we should continue the program or let it expire.

Continued Runway Incursion Information and Evaluation Program

Under the continued RIIEP, pilots and maintenance technicians taxing aircraft involved in an alleged runway incursion may expect to be contacted by an ASI shortly after the incident. The ASI will inform the pilot or maintenance technician that participation in the RIIEP interview process is voluntary. The ASI may conduct the interview in person, electronically, or by telephone. AFS has developed standardized RIIEP methodology in the form of questionnaires, one for pilots and one for maintenance technicians, from which the ASI will obtain important, sometimes critical, safety data. To obtain complete recordable data concerning a runway incursion for analysis and to implement preventive measures, the ASI also will encourage pilots and maintenance technicians to provide additional comments. The ASI will record those comments in the RIIEP questionnaire ''comments section.'' These comments should capture perception, as well as fact, concerning the event and may range from general to specific.

Note that RIIEP guidance for Flight Standards' Regions, Divisions, and Field Offices is Joint Flight Standards Information Bulletin, FSAW 04–09, FSAT 04–03, and FSGA 04–01, Implementation of the Renewed Runway Incursion Information Evaluation Program (RIIEP), which is located at *http://www.faa.gov/library/manuals/examiners_inspectors/8300/fsaw/media/FSAW0409_fsat0403.doc.*

RIIEP Enforcement Policy

A pilot deviation (PD) is a type of surface incident, including runway incursion, which involves possible regulatory violation by a pilot. A vehicle or pedestrian deviation (V/PD) is a type of surface incident, including runway incursion, involving a vehicle or pedestrian that involves possible regulatory violation by the same. (RIIEP analysis considers relevant incidents involving aircraft operated by maintenance technicians to be vehicle deviations.)

When ATO provides report of either a preliminary PD, or preliminary V/PD, AFS may open an enforcement investigation.

If the investigation reveals a violation of FAA regulation, the pilot or maintenance technician is further subject to legal enforcement action (certificate action or civil penalty). However, as an incentive to encourage participation in the RIIEP, for certificated airmen who cooperate and provide detailed information regarding that deviation, the FAA intends to continue foregoing legal enforcement action and, instead, offer administrative action [3] or counseling [4], which involve no finding of violation, provided:

1. The nature of the apparent violation does not indicate that a certificate holder lacks qualification to hold a certificate;

2. The apparent violation was inadvertent, *i.e.*, not the result of purposeful misconduct;

3. The apparent violation was not a substantial disregard for safety or security;

4. The apparent violator has a constructive attitude toward complying with the regulations; and

5. The apparent violation does not indicate a trend of noncompliance.

In certain cases, the FAA may determine an airman should complete corrective action, such as remedial training, to help prevent further runway incursion or surface incident. Such corrective action is voluntary; however, refusal by the pilot or maintenance technician to undertake the same could result in legal enforcement action being taken.

If an apparent violation resulting from the surface incident, including runway incursion, or the circumstances surrounding the same, demonstrate or raise a question of lack of qualification of an airman, the FAA will proceed with appropriate action. Such action may include reexamination, certificate suspension pending successful reexamination, or certificate revocation.

Foreign airmen may not participate in the RIIEP.

Runway Safety Education Demonstrating a Constructive Attitude

In determining whether an apparent violator has a constructive attitude regarding compliance with the regulations, the FAA will consider documentation showing the completion of an FAA- or industry-sponsored safety seminar on the subject(s) causal to the alleged violation.

Through the collaboration of FAA and industry, pilot and maintenance technician runway-safety education programs are available at *http://www.aopa.org/asf/runway_safety; www.alpa.org/runwaysafety;* and *http://www.faa.gov/runwaysafety.* We will consider successful completion and documentation of these runway-safety education programs favorably in determining the course of action we will take when a pilot or maintenance technician is involved in a surface incident, including a runway incursion. The Runway Safety Education program also qualifies for credit under the Pilot Proficiency Awards (WINGS) Program or the Aviation Maintenance Technician Awards (AMT) Program.

FAA Use of Information Provided by Pilots or Maintenance Technicians Under the RIIEP

The FAA recognizes pilots and maintenance technicians may have concern that the information they provide under this program would be used by the FAA for legal enforcement action. The FAA, however, does not expect to use information provided by pilots or maintenance technicians during interviews conducted by ASIs under the RIIEP in FAA legal enforcement action. The record since the inception of the RIIEP displays excellent collaboration in this regard.

RIIEP Coordination With a FAA Aviation Safety Action Program (ASAP)

Notwithstanding published FAA RIIEP policy to the contrary, reports of surface incidents, including runway incursions, accepted under an ASAP will be conducted in accordance with

[3] An administrative action is either a warning or letter of correction, which is generally issued when remedial training is taken.

[4] Counseling is an action carried out under the guidance of the FAA's Aviation Safety Program, which is a program designed to promote safety and technical proficiency by providing guidance and support for the aviation community through education and cooperative efforts.

Advisory Circular (AC) 120–66B, Aviation Safety Action Programs (ASAP), as amended, and a memorandum of understanding between the FAA, the certificate holder and, where applicable, pilot or maintenance-technician groups. As with ASAP, the objective of the RIIEP is to encourage the voluntary reporting of safety information not otherwise available that could be critical in identifying casual factors leading to accidents, incidents—particularly runway incursions, and violations.

We encourage certificate holders and representatives of pilot and maintenance-technician groups having ASAP programs to incorporate RIIEP as a voluntary part of their ASAP process by providing RIIEP awareness information to their pilot and maintenance-technician groups.

We strongly encourage ASAP programs, and their event review committee (ERC) members to provide the RIIEP Questionnaire to pilot or maintenance technician who submits an ASAP report involving a runway incursion or surface incident, and to request voluntary completion of the questionnaire by that employee.

Note that RIIEP Questionnaires are located in FSAW 04–09 *et al.* (*see* above), Appendices 8 and 9.

In the case of a sole source report, the employee should be instructed not to enter the name identification information requested in Section 1 of the questionnaire. With the ERC's concurrence, that ASI should provide the completed questionnaire to the appropriate FSDO or CMO, which would process the safety data in accordance with Joint FSIB FSAW 04–09, *et al.* For runway incursions or safety events accepted under an accepted ASAP MOU, the guidance in FAA Order 8400.10, Volume 1, Chapter 5, Section 1, paragraph 293E concerning enforcement investigation coordination of alleged violations applies.

RIIEP Continuation

This continuations of the RIIEP will be in effect for 24 months beginning the effective date listed above.

Issued in Washington, DC on August 2, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06–8619 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting, Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

SUMMARY: The FAA is issuing this notice to advise the public of a first meeting of RTCA Specialist Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

DATES: The meeting will be held October 31–November 1, 2006, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org* for directions.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 211 meeting. The agenda will include:

- October 31–November 1:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview).
- Review/Approve Change 1 to DO–293.
- Discuss and decide if the Lithium Rechargeable Batteries Special Requirements can be added to DO–293 or a new separated standards as needed.
- Develop Lithium MOPS (Minimum Operational Performance Standard).
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 27, 2006.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 06–8617 Filed 10–11–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Billings County, ND

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed roadway project and river crossing over the Little Missouri River in Billings County, North Dakota.

FOR FURTHER INFORMATION CONTACT: Mark Schrader, Environment and Right-of-Way Engineer, Federal Highway Administration, 1471 Interstate Loop, Bismarck, North Dakota 58503, Telephone: (701) 250–4343 Extension 111. Blane Hoesel, Local Government, North Dakota Department of Transportation, 608 E. Boulevard Avenue, Bismarck, North Dakota 58505–0700, Telephone: (701) 328–3482.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota Department of Transportation and Billings County, will prepare an environmental impact statement (EIS) on a proposal to provide a roadway by either upgrading and/or new construction to a proposed river crossing over the Little Missouri River in Billings County, North Dakota. The proposed project would be located between the northern border of the Billings County line, the western border of ND Highway 16, the eastern border of U.S. Highway 85, and the southern border of the Theodore Roosevelt National Park.

The proposed project in the corridor is considered necessary to provide for system linkage between ND Highway 16 and U.S. Highway 85 and for a variety of socioeconomic demands, such as emergency management services, industry, agriculture, and recreation. Alternatives under consideration include: (1) Taking no action; (2) construction of a river crossing structure: bridge, low-water crossing, or box culvert; (3) different roadway alignments to the river crossing, including upgrading and/or

constructing roadways to meet NDDOT guidelines/standards.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held between October 2006 and March 2007. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. Formal scoping meetings will be held for the agencies and the public.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: October 5, 2006.

Allen R. Radliff,

Division Administrator, Federal Highway Administration.

[FR Doc. E6–16887 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on August 2, 2006 (71 FR 43837).

DATES: Comments must be submitted on or before November 13, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Gina Christodoulou, Office of Financial Management, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On August 2, 2006, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 71 FR 43837. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Inspection Brake System Safety Standards For Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars).

OMB Control Number: 2130–0008.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: Section 7 of the Rail Safety Enforcement and Review Act of 1992, Public Law No. 102–365, amended Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431 *et seq.*), empowered the Secretary of Transportation to conduct a review of the Department's rules with respect to railroad power brakes and, where applicable, prescribe standards regarding dynamic brake equipment. In keeping with the Secretary's mandate and the authority delegated from him to the FRA Administrator, FRA published a comprehensive regulatory revision of the then current requirements related to the inspection, testing, and maintenance of the brake equipment used in freight car operations. The Final Rule focused solely on freight and other non-passenger trains, and codified and solidified the maintenance requirements related to the power brake system and its components. The collection of information is used by FRA to monitor and enforce safety requirements related to power brakes on freight cars. The collection of information is also used by locomotive engineers and road crews to verify that the terminal air brake test has been performed in a satisfactory manner.

Annual Estimated Burden Hours: 844,452.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; *Attention:* FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 5, 2006.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6–16835 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 27, 2006. No comments were received.

DATES: Comments must be submitted on or before November 13, 2006.

FOR FURTHER INFORMATION CONTACT: Michael H. Franklin, Maritime Administration, 400 7th Street SW., Washington, DC 20590. Telephone: 202–366–2628; FAX: 202–366–3954; or e-mail: *michael.franklin@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Automated Mutual-Assistance Vessel Rescue System (AMVER).

OMB Control Number: 2133–0025.

Type of Request: Extension of currently approved collection.

Affected Public: U.S.-flag and U.S. citizen-owned vessels that are required to respond under current statute and regulation.

Forms: None.

Abstract: This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes. This collection consists of vessels that transmit their positions through various electronic means.

Annual Estimated Burden Hours: 2,342 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

(Authority: 49 CFR 1.66)

Issued in Washington, DC, on October 5, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–16906 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25981; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that certain tires that it imported in 2005 and 2006 do not comply with S6.5(d) of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Michelin has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Michelin's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 6,189 11R24.5 Load Range H BFGoodrich DR444 tires produced between November 20, 2005 and July 22, 2006. S6.5(d) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with ''[t]he maximum load rating and corresponding inflation pressure of the tire * * *.'' The sidewall labeling on the subject tires incorrectly states the maximum dual load carrying capacity. They are incorrectly marked ''Max load dual 3075 kg (6780 lbs) at 830 kPa (120 psi).'' They should have been marked ''Max load dual 3000 kg (6610 lbs) at 830 kPa (120 psi).'' The tires are correctly marked for the maximum single load carrying capacity. Michelin has corrected the problem that caused these errors so that they will not be repeated in future production.

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Michelin states,

> When both single and dual loads are marked on the tire (as is the case here), FMVSS No. 119 requires that performance compliance testing be done based on the single (higher, more punishing) tire load. Therefore, an incorrect maximum dual load marking is inconsequential and [the] tire meets all FMVSS No. 119 minimum performance requirements.

Michelin cites NHTSA's grant of a previous inconsequential noncompliance petition it submitted for a similar maximum dual load noncompliance (69 FR 62512), where NHTSA stated,

> The agency also agrees that safety will not be compromised for the tires marked with the incorrect ''max load dual'' since the more severe ''max load single'' load is marked correctly. In addition, these tires meet or exceed all of the performance requirements of FMVSS No. 119, and all other informational markings as required by FMVSS No. 119 are present.

Michelin says that the tires meet or exceed all other FMVSS No. 119 requirements.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400

Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 13, 2006.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: October 5, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–16836 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Application Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION:

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
X—Renewal.
PM—Party to application with modification request.

Issued in Washington, DC, on October 5, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Safety, Special Permits & Approvals.

Application number	Applicant	Reason for delay	Estimated date of completion
New Special Permit Applications			
14229–N	Senex Explosives, Inc., Cuddy, PA	4	11–30–2006
14239–N	Marlin Gas Transport, Inc., Odessa, FL	1	11–30–2006
14237–N	Advanced Technology Materials, Inc., (ATMI), Danbury, CT	1	12–31–2006
14257–N	Origin Energy American Samoa, Inc., Pago Pago, AS	4	11–30–2006
14285–N	INO Therapeutics LLC, Port Allen, LA	4	11–30–2006
14318–N	Lockheed Martin Technical Operations, Vandenberg AFB, CA	4	12–31–2006
14314–N	North American Automotive Hazmat Action Committee	4	11–30–2006
14310–N	Praxair, Danbury, CT	4	10–31–2006
14316–N	VOTG North America, Inc., West Chester, PA	4	12–31–2006
14341–N	Baker Petrolite, Sugar Land, TX	4	10–31–2006
14337–N	NKCF Co., Ltd. Jisa-Dong, Kangseo-Gu Busan	4	11–30–2006
14343–N	Valero St. Charles, Norco, LA	4	10–31–2006
14330–N	Chemical & Metal Industries Inc. Hudson, CO	4	12–31–2006
14298–N	Air Products and Chemicals, Inc., Allentown, PA	4	10–31–2006
14266–N	NCF Industries, Inc. Santa Maria, CA	3	11–30–2006
14277–N	Ascus Technologies, Ltd., Cleveland, OH	3, 4	12–31–2006
Modification to Special Permits			
12677–M	Austin Powder Illinois Company, Cleveland, OH	1	10–31–2006
5749–M	E.I. DuPont de Nemours, Wilmington, DE	4	12–31–2006
12277–M	Indian Sugar and General Engineering Corporation, Haryana	4	12–31–2006
10481–M	M–1 Engineering Limited, Bradfrod, West Yorkshire	4	12–31–2006
11202–M	Newport News Shipbuilding and Dry Dock Company (NNS), Newport News, VA.	4	10–31–2006

[FR Doc. 06–8613 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 5, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 13, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0160.

Type of Review: Extension.

Title: Annual Information Return of Foreign Trust with a U.S. Owner.

Forms: 3520–A.

Description: Section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return on Form 3520–A. The form is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

Respondents: Individuals or households.

Estimated Total Burden Hours: 21,700 hours.

OMB Number: 1545–1560.

Type of Review: Extension.

Title: Public Disclosure of Material Relating to Tax-Exempt Organizations.

Description: The collections of information in section 301.6104(d)–3, 301.6104(d)–4 and 301.6104(d)–5 are necessary so that tax-exempt organizations can make copies of their applications for tax exemption and annual information returns available to the public.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 551,500 hours.

OMB Number: 1545–1846.

Type of Review: Extension.

Title: Revenue Procedure 2003–48, Update of Checklist Questionnaire Regarding Requests for Spin-Off Rulings.

Description: This revenue procedure updates Rev. Proc. 96–30, which sets forth in a checklist questionnaire the information that must be included in a request for ruling under section 355. This revenue procedure updates information that taxpayers must provide in order to receive letter rulings under section 355. This information is required to determine whether a taxpayer would qualify for non-recognition treatment.

Respondents: Business or other for profit institutions.

Estimated Total Burden Hours: 36,000 hours.

OMB Number: 1545–0393.

Type of Review: Extension.

Title: Return Requesting Refund Unlocatable or Not Filed.

Description: The code requires tax returns to be filed. It also authorizes IRS to refund any overpayment of tax. If a taxpayer inquires about their non-receipt of refund and no return is found, this letter is sent requesting the taxpayer to file another return.

Respondents: Business or other for profit institutions.

Estimated Total Burden Hours: 1,513 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–16883 Filed 10–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of New System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires all agencies to publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''Enterprise Project Management (EPM) Tool—VA'' (122VA005P3).

DATES: Comments on this new system of records must be received by November 13, 2006. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system of records will become effective November 13, 2006.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted by: mail or hand-delivery to Director, Office of Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov.* All comments received will be available for public inspection at the above address in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Warner, Director, Information Technology Program and Project Management Service, 810 Vermont Avenue, NW., Washington, DC 20420–0001 at (202) 565–8828.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

The Clinger-Cohen Information Technology Management Reform Act, which states the ''Director shall develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments made by an executive agency for information systems,'' outlines numerous requirements for managing and tracking information technology systems. In an effort to meet these requirements, VA is using the EPM Tool to manage, track, and report on IT projects.

The EPM Tool is an enterprise project, process, and resource management software tool that provides overall visibility into priorities, progress, and staffing. This will allow VA to make informed decisions and deliver projects on time through the capture and re-use of best practices by integrating project management capabilities into a unified information system for all project stakeholders in an easy-to-use, collaborative environment. The EPM Tool will also unite project, resource, and process management and give project managers and senior management clear visibility and insight into VA projects.

Once the project manager establishes a project in the EPM Project Manager Module Tool, a project schedule may be created using the functionalities within the EPM Tool. Resources, or individuals working on the project, are then assigned to each activity or task, based on area of expertise, *e.g.*, computer specialist, training expert, etc. Resources may be assigned directly to the activity or task by name or by role, *e.g.*, computer specialist, training expert, etc., and are responsible for reporting the amount of time spent working on an activity in the EPM Tool. Project resource costs may be calculated by several methods, including (1) Resource base salary plus a percentage for benefits/incidentals; (2) exact salary of the resource; or (3) average salary. Average salary is based on the resource's grade at Step 5. Contractor and subcontractor salaries may be tracked based on exact or blended rates for time and material contracts.

The records contain information on current and former VA employees, contractors, and subcontractors acting in the capacity of project managers and project team members. In particular, the records include information related to:

1. Identifying information, including name, title, and other unique identifier (not Social Security Number);

2. Project work activities;

3. Hours of effort spent on project activities/tasks;

4. Hours of effort spent on non-project activities, such as administrative duties and assignments;

5. A generic leave category or specific vacation and/or sick time; and

6. Salaries of project managers and team members.

Because this information is retrieved by the name or other unique identifier of a VA employee, contractor, or subcontractor, VA must establish the EPM Tool as a new system of records.

The authority for maintaining the EPM Tool is found in 38 United States Code, Section 501. Records are maintained at the Hines Office of Information Field Office, Hines, IL. Data will be stored on a central server, currently located at Hines. While the central server in Hines is considered to be the ''production'' database, information stored on this central server can be exported to a stand-alone version of tool on the client computers. This allows the project managers to do ''what if'' scenarios without corrupting the information in the production database. In addition, at the central processing site, backup media are created and stored.

II. Proposed Routine Use Disclosures of Data in the System

VA is proposing to establish the following routine use disclosures of information maintained in the system:

1. VA may disclose information to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made on behalf and at the written request of that individual.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before VA. When the Member of Congress writes VA, VA must be able to provide sufficient information to be responsive to the inquiry.

2. VA may disclose information to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44, United States Code.

NARA is responsible for archiving records no longer actively used but may be appropriate for preservation, and is responsible in general for the physical maintenance of the Federal Government's records. VA must be able to turn records over to NARA in order to determine the proper disposition of such records.

3. VA may disclose information to the Department of Justice (DOJ), including United States Attorneys, or in a proceeding before a court, adjudicative body, or other administrative body when the litigation or adjudicative or administrative process is likely to affect VA, its employees, or any of its components; or when VA, its employees, or any of its components is a party to the litigation or process, or has an interest in the litigation or process; and the use of these records is deemed by VA to be relevant and necessary to the litigation or process, provided that the disclosure is compatible with a purpose for which the records were collected.

When VA is involved in litigation or an adjudicative or administrative process, or occasionally when another party is involved in litigation or an adjudicative or administrative process, and VA policies or operations could be affected by the outcome of the litigation or process, VA must be able to disclose information to the court, adjudicative or administrative bodies, or parties involved. A determination would be made in each instance that, under the circumstances involved, the purpose served by the use of the information in the particular litigation or process is compatible with a purpose for which VA collected the information. This routine use would not constitute authority to disclose records in response to a subpoena unless signed by a judge, a court order under Privacy Act subsection (b)(11), 5 U.S.C. 552(b)(11), or any other provision of Privacy Act subsection (b) because of the Court's analysis in *Doe* v. *DiGenova*, 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens*, 851 F.2d 1457, 1465–67 (DC Cir. 1988).

4. VA may disclose information to individuals, organizations, private or public agencies, or other entities with which VA has a contract or agreement, or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA must be able to provide information to contractors or subcontractors with which VA has a contract or agreement in order to perform the services of the contract or agreement.

5. VA may disclose information to the Office of Management and Budget (OMB) in order for them to perform their statutory responsibilities for evaluating Federal programs. VA must be able to provide information to OMB in order for it to carry out its responsibilities for evaluating Federal programs.

6. VA may disclose on its own initiative any information in this system, except the names of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

VA must be able to disclose information within its possession on its own initiative that pertains to a violation of law to the appropriate authorities in order for them to investigate and enforce those laws. VA may disclose the names of veterans and their dependents only to Federal entities

with law enforcement responsibilities under 38 U.S.C. 5701(a) and (f). Accordingly, VA has so limited this routine use.

7. VA may disclose information to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

VA must be able to disclose information to FLRA to comply with the statutory mandate under which FLRA operates.

8. VA may disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

VA must be able to disclose information to officials of labor organizations to assist them in fulfilling their responsibilities in representing employees. This routine use is intended to provide no greater authority to release records to officials of labor unions than provided under 5 U.S.C. 7114(b)(4).

9. VA may disclose information to offices of the Merit Systems Protection Board (MSPB), including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

VA must be able to disclose information to the MSPB to assist it in fulfilling its responsibilities regarding Federal employees.

10. VA may disclose information to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

VA must be able to disclose information to the EEOC to assist it in fulfilling its responsibilities to protect employee rights.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs or to provide a benefit to VA, or disclosure is required by law.

A report of the new system of records has been submitted to the Senate Committee on Homeland Security and Government Affairs, the House Committee on Government Reform, and the Office of Management and Budget (OMB), pursuant to the Privacy Act, 5 U.S.C. 552a(r), as amended, and Appendix I to OMB Circular No. 1–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' as amended on 61 FR 1996 (Feb. 20, 1996)

Approved: September 26, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

122VA005P3

SYSTEM NAME:

Enterprise Project Management Tool.

SYSTEM LOCATION:

Records will be maintained at the Hines Office of Information Field Office, Edward Hines, Jr. Hospital, Bldg. 37, Hines, IL 60141.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former VA employees, contractors, or subcontractors acting in the capacity of project managers and project team members on Information Technology (IT) projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information related to: names and other identifying information, project work activities, hours of effort spent on project activities/tasks and on non-project activities, generic leave category or specific vacation and/or sick time, and salaries of project managers and team members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 501.

PURPOSE (S):

The records will be used to track, manage, and report on the development of IT systems within VA in order to make informed decisions and deliver projects on time through the capture and re-use of best practices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. VA may disclose information to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made on behalf and at the written request of that individual.

2. VA may disclose information to the National Archives and Records Administration in records management inspections conducted under authority of Title 44, United States Code.

3. VA may disclose information to the Department of Justice (DOJ), including United States Attorneys, or in a proceeding before a court, adjudicative body, or other administrative body when the litigation or adjudicative or administrative process is likely to affect VA, its employees, or any of its components, or when VA, its employees, or any of its components is a party to the litigation or process, or has an interest in the litigation or process and the use of these records is deemed by VA to be relevant and necessary to the litigation or process, provided that the disclosure is compatible with the purpose for which the records were collected.

4. VA may disclose information to individuals, organizations, private or public agencies, or other entities with which VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose information to the Office of Management and Budget in order for them to perform their statutory responsibilities for evaluating Federal programs.

6. VA may disclose on its own initiative any information in this system, except the names of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or

charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

7. VA may disclose information to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

8. VA may disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

9. VA may disclose information to offices of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. VA may disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained on electronic storage media, such as disks, drives, or more specifically, the IT Project Office database.

RETRIEVABILITY:

Records are retrieved by individual name or other unique identifier (not Social Security number).

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA personnel, including contractors or subcontractors, on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours, and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Physical access to the Hines Office of Information Field Office is restricted to Center personnel, custodial personnel, the Federal Protective Service or other security personnel, and authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted.

3. Access to computer rooms is generally limited by appropriate locking devices and restricted to authorized VA personnel. IT peripheral devices are placed in secure areas that are locked, with limited access, or otherwise protected. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes, which must be changed periodically by the user. Access by authorized VA employees at remote locations, including VA field offices and health care facilities, Information Systems Centers, and VA Central Office, who may access information stored in the computer, is controlled in the same manner.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule (GRS) 14, which specifies that information service project case files in formally designated information offices be maintained for one year after close of file or completion of project.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures is: Director, Information Technology Program and Project Management Service, 810 Vermont Avenue, NW., Washington, DC 20420–0001, (202) 565–8828.

NOTIFICATION PROCEDURE:

Individuals seeking information on the existence and content of a record pertaining to them should contact the VA facility at which they are or were employed, or have or made contact. Inquiries should include the person's full name, project name, dates of work on the project, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information on access to and contesting of a record in this system may contact the VA facility where they are or were employed, or have or made contact. Inquiries should include the person's full name, project name, dates of the project, and return address.

CONTESTING RECORD PROCEDURE:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by VA employees, contractors, and subcontractors.

[FR Doc. E6–16843 Filed 10–11–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
October 12, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–T90

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising critical habitat for the Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*) and Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*) and designating critical habitat for the St. Andrew beach mouse (*Peromyscus polionotus peninsularis*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 6,193 acres (ac) (2,506 hectares (ha)) are being designated as critical habitat for the three subspecies. This action adds approximately 135 ac (44 ha) to the amount of currently designated critical habitat for the Perdido Key beach mouse and 1,629 ac (659 ha) to the area designated for the Choctawhatchee beach mouse. The critical habitat is located in Baldwin County, Alabama; and Escambia, Okaloosa, Walton, Bay, and Gulf Counties, Florida.

DATES: This rule becomes effective on November 13, 2006.

ADDRESSES: To review comments and materials received, as well as supporting documentation used in the preparation of this final rule, make an appointment with the Field Supervisor during normal business hours, at the Panama City Field Office, 1601 Balboa Avenue, Panama City, Florida 32405. The final rule, economic analysis, and maps will also be available via the Internet at *http://www.fws.gov/panamacity.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Panama City Field Office, (850) 769–0552 (telephone) or (850) 763–2177 (fax). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 7 days a week and 24 hours a day.

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,310 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that these measures may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*. In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before

making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For ecological and life history information on the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse, please refer to the proposed rule published in the **Federal Register** on December 15, 2005 (70 FR 74426).

Previous Federal Actions

The Perdido Key beach mouse and Choctawhatchee beach mouse were listed as endangered on June 6, 1985 (50 FR 23872). Critical habitat was designated for the Perdido Key beach mouse and the Choctawhatchee beach mouse at the time of listing, consisting primarily of primary and secondary dunes, but not including high-elevation (scrub dune) habitat. A recovery plan for these beach mice was completed in 1987. On November 5, 1991, the Service received a petition from the Alabama Conservancy to revise critical habitat for the Perdido Key beach mouse through an emergency rule. A notice announcing our finding that the petitioned action was warranted, but would be delayed until higher priority actions had been completed, was published on June 18, 1993 (58 FR 33606). On February 2, 1999, the Service was petitioned by the Sierra Club and Biodiversity Legal Foundation to revise critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and Alabama beach mouse (*Peromyscus polionotus ammobates*). The Service published a 90-day finding on November 18, 1999 (64 FR 63004). The 12-month finding, published September 26, 2000 (65 FR 57800), found that revision of critical habitat for the three subspecies of beach mice was warranted. Since that time, critical habitat revision has been precluded due to other higher priority listing and critical habitat actions. On June 17, 2003, a lawsuit was filed in the U.S. District Court for the Southern District of Alabama (*Sierra Club and Center for Biological Diversity* v. *Norton et al.,* 1:03–CV–00377–CB) alleging that the Service violated the Act by failing to revise critical habitat for the Perdido Key, Choctawhatchee, and Alabama beach mice, and withheld or unreasonably delayed the revision under the Administrative Procedure Act. In a December 2004 declaration, we stated we would submit a proposed revision for the Perdido Key beach mouse and the Choctawhatchee beach mouse by November 15, 2005, and a final revision by September 30, 2006. The revision of critical habitat for the Alabama beach mouse will be published as a separate determination.

The St. Andrew beach mouse was listed as endangered on December 18, 1998 (63 FR 70053). The designation of critical habitat was found to be not prudent at the time of listing. After a lawsuit was filed against the Service in 2003 by the Center for Biological Diversity (*Center for Biological Diversity* v. *Norton,* 4:03CV315–WS/WCS) challenging the ''not prudent'' finding, the U.S. District Court for the Northern District of Florida granted the Service's motion for voluntary remand and ordered the Service to publish a new final decision with respect to the designation of critical habitat for the St. Andrew beach mouse on or before September 30, 2006.

Further information regarding previous Federal actions for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse can be found in our proposal for critical habitat for these three subspecies published in the **Federal Register** on December 15, 2005 (70 FR 74426), and in our revised proposal and notice of availability of the draft economic analysis published June 16, 2006 (71 FR 35048).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse in the proposed rule published on December 15, 2005 (70 FR 74426), and in the revised proposed rule and announcement of the availability of the draft Economic Analysis and public hearings published on June 16, 2006 (71 FR 35048). We also contacted Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. In addition, we held two public hearings, on June 26 and June 27, 2006, in Panama City and Pensacola, Florida, respectively.

During the comment period that opened on December 15, 2005, and closed on February 13, 2006, we received 73 comments directly addressing the proposed critical habitat designation: 5 from peer reviewers and 68 from organizations or individuals. During the comment period that opened on June 16, 2006, and closed on July 17, 2006, we received 48 comments directly addressing the proposed critical habitat designation and the draft economic analysis. Of these latter comments, all were from organizations and individuals. Collectively, 30 commenters supported the designation of critical habitat for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice and 90 opposed the designation. One letter did not express support or opposition to the proposed critical habitat designation, but provided information only. Comments received were grouped into 6 general categories specifically relating to the proposed critical habitat designation for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice, and are addressed in the following summary and incorporated into the final rule as appropriate. We received 10 requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from five of the peer reviewers. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. All peer reviewers concurred that revision of critical habitat to include interior scrub habitat

is warranted. Data provided by peer reviewers led us to consider the addition of several areas and removal of one area that had been proposed as critical habitat. Several comments were submitted regarding the paucity of information regarding the specific habitat needs and influences on habitat use within a fragmented, urbanized landscape. Suggestions were also made and language was provided to clarify biological information or make the proposed rule easier to follow and review.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice, and addressed them in the following summary.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer suggested that the term ''critical habitat'' has lost much of its initial meaning.

Our Response: The term ''critical habitat'' is often misunderstood. A designation of critical habitat does not designate or identify a preserve or refuge. It does not allow the government to ''take'' property. It does not affect individuals, organizations, States, local governments, or other non-Federal entities that do not require Federal permits or funding. Critical habitat provides non-regulatory benefits to the species by informing the public of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. On the other hand, listed species and their habitats are protected by the Act whether or not they are in areas designated as critical habitat. For this reason, the Service has assigned a low priority to designating critical habitat because it believes that a more effective use of limited resources is to place imperiled species on the threatened and endangered species list. Many declining species are currently lacking any protection under the Act. We believe it is a higher priority to list those species in need of protection rather than to designate critical habitat for species already protected under the Act. Continuing court decisions however, have required us to designate critical habitat for an increasing number of listed species.

(2) *Comment:* Two peer reviewers questioned our use of the term ''core population'' without a definition and do not believe the term was consistently or objectively applied.

Our Response: Reference to ''core populations'' was removed from the unit descriptions for clarity reasons because it has different definitions and uses. The use of the term was a reference to mainland versus island or core versus satellite metapopulation models, in which the core population is relatively resistant to extinction while some satellite populations tend to go extinct repeatedly and are recolonized by individuals dispersing from the core. What was meant by a ''core population'' in the proposed rule is a historically relatively stable, source population from which individuals are believed to disperse and recolonize adjacent areas. In a natural landscape, locations of core populations would change through time, due to localized disturbances or changes in habitat quality. Currently, with the populations existing in isolation with no connectivity (with the exception of Perdido Key), it is believed that core populations perpetually occupy the large contiguous patches that remain.

(3) *Comment:* Two peer reviewers and one commenter stated that evaluation of management plans at individual sites was not clear. The commenter questioned why the proposed rule stated that, if revised, the draft Tyndall Air Force Base Integrated Natural Resources Management Plan (INRMP) may provide sufficient protection to beach mice and allow for the military lands to be excluded, whereas the same weight was not given to a management plan that was submitted to the Service as a part of a consultation for development of private lands.

Our Response: Exclusions of military lands and privately owned property are provided for in the Act. Section 4(a)(3)(B) of the Act prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation. At the time of the proposed rule, Tyndall Air Force Base (AFB) did not have an INRMP that had been approved by the Secretary of the Interior. It is currently in the process of preparing an updated INRMP; however, this document is still in draft form. Therefore, the Service has found that the draft Tyndall INRMP does not qualify for exemption of Tyndall AFB from critical habitat pursuant to section 4(a)(3) of the Act. Portions of Tyndalll AFB have been excluded because they do not contain the primary constituent elements (PCEs). Once completed and approved, Tyndall's INRMP can be used to amend this designation.

Private lands may be excluded pursuant to section 4(b)(2) if they have management plans that benefit the species. We have excluded two existing HCPs from critical habitat designation (Stallworth Preserve and Watercolor and Watersound). The private lands referred to in this comment, however, are in the early stages of a consultation under section 7 of the Act, and do not have finalized design plans or habitat management plans developed sufficiently that they could be reviewed for possible exclusion. Compliance with CH designation will be included in any future section 10 permit.

(4) *Comment:* One peer reviewer suggests that our statement that beach mice were initially thought to be restricted to the frontal dunes, and only recently have been found to occupy secondary dunes been found to be occupied, is not entirely accurate.

Our Response: Historically, beach mice were considered to be restricted to dunes with sea oats (Bangs 1898, pp. 195–200), concentrated within the line of dunes nearest the Gulf (Howell 1921, p. 239), or inhabiting the sand dunes near the ocean (Howell 1939, p. 364). As these descriptions of habitat use are relatively general and do not mention interior habitat, confusion about the use of scrub habitat may have led to subsequent research focusing on the frontal dunes. Later research reported captures both in the frontal dunes and in adjoining, inland scrub habitat (Blair 1951, p. 21; Pournelle and Barrington 1953, pp.133–134; Bowen 1968, p.4). While these studies documented the presence of beach mice in the scrub habitat, low population densities were interpreted to indicate that the scrub represented inferior or low quality habitat. More recent research has illustrated that beach mice use interior scrub habitat on a permanent basis, and that this habitat serves an invaluable role in the persistence of beach mouse populations after storm events (Swilling et al. 1998, pp. 294–296; Sneckenberger 2001, p. 18). Recent studies have also shown no significant difference between the two habitat types in availability of food resources or burrow sites, beach mouse body mass, survival rate, reproductive rate, and home range size (Swilling 2000, pp. 17–25; Sneckenberger 2001, pp. 80–87).

(5) *Comment:* Two peer reviewers found the PCE section difficult to follow, and the PCEs highly interrelated, and not used effectively to designate critical habitat.

Our Response: Beach mice are adapted to a wide range of conditions as they inhabit areas with frequent severe disturbance. The PCEs may appear to be interrelated, but they are based on five key components: (1) Land that includes all beach mouse habitat types, (2) Land that provides only frontal dunes, (3) Land that provides only scrub dune habitat, (4) Land that serves to preserve habitat connections, and (5) Land within the coastal dune ecosystem that maintains a natural light regime (please refer to Primary Constituent Elements section for full description of PCEs). PCEs aid in identifying key habitat features necessary for the conservation of beach mice.

(6) *Comment:* Three peer reviewers and several commenters suggested inclusion of several specific areas (additional lands on Gulf Islands National Seashore, St. Andrew State Park, and Tyndall AFB; the area on St. Joseph Peninsula from Cape San Blas to Money Bayou, several small areas near Grayton Beach and Lake Powell). One peer reviewer suggested the inclusion of additional private lands, but did not specify where.

Our Response: All of the areas suggested by the commenters were considered for inclusion. We added the areas on Tyndall Air Force Base and Gulf Islands National Seashore. We concluded, however, that the other areas did not meet the criteria for designation of critical habitat. Many of the suggested areas did not include beach mouse habitat or contain the PCE's, or were not of sufficient size to provide any long-term conservation benefits.

Critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. However, a critical habitat designation is limited to areas occupied by the species at the time of listing on which PCE's are found, or areas that are essential to the conservation of the species. The designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Please note that when beach mice occupy such areas, they are still consulted on under the Act, regardless of their inclusion within critical habitat.

(7) *Comment:* One peer reviewer suggested that Bates (1992) and the trapping work of others concerning presence or absence of beach mice on Henderson Beach, Grayton Beach, and St. Andrew State Park should be cited.

Our Response: Trapping results discussed in the proposed rule were limited to occurrence data important to the critical habitat designation, which includes documented presence or absence at the time of listing and current knowledge regarding occurrence. A single trapping event can provide evidence of beach mouse presence in an area if beach mice are caught, however due to detection probabilities, a single trapping event, during which no beach mice were caught, does not determine absence. Our trapping protocol recommends quarterly trapping for two years as necessary to determine absence of beach mice. The Service is tasked with using the best scientific information available. Given the limited, sporadic nature of efforts, such as Bates (1992), if beach mice are not captured, this provides little information regarding the probability of beach mice occupying an area. Therefore, while this information was considered in formulating this rule, it was not found to be dispositive.

(8) *Comment:* One peer reviewer found the boundary of SABM–1 (particularly the private lands on the eastern edge of Crooked Island East, and land east of St. Andrew Sound), and the description of SABM–3 to be unclear.

Our Response: As the coastline in these areas erodes and accretes severely in relatively short periods of time, mapping data represent a ''snapshot'' of the coastline in the recent past. This may have been the cause for the ambiguity in the boundary. In the final rule we have clarified the SABM–3 boundary description. Since the narrative unit descriptions may lack precision, we also published a list of the Universal Transverse Mercator (UTM) coordinates to define a more exact boundary.

(9) *Comment:* One peer reviewer and one commenter alerted us to an error that the proposed rule wrongly asserts the presence of mice within SABM–2.

Our Response: We regret that an error was inadvertently made in the proposed rule. We published a correction in a notice in the **Federal Register** on June 16, 2006 (71 FR 35048).

(10) *Comment:* One peer reviewer suggested describing details of the two Habitat Conservation Plans in the Background section.

Our Response: The Background section of the proposed rule is limited to a discussion of only those biological topics directly relevant to the designation of critical habitat and provides an expansive, broad view of the species' status and threats to their persistence. Habitat Conservation Plans are described in detail in the *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section of this final rule. The proposed rule for the Perdido Key, Choctawhatchee, and Perdido Key beach mice followed this format.

(11) *Comment:* One peer reviewer suggested a more detailed review of the subject of corridors, connectivity among habitat patches, and dispersal filters, particularly explaining what type of corridors may be considered ''functional.''

Our Response: Because of the frequent misuse or confusion with the term ''corridor,'' we deliberately did not use or discuss that term and instead used ''habitat connectivity,'' a term that is easily understood and does not have multiple meanings or uses. Habitat connectivity and fragmentation are discussed both in the Background section and in the Habitat Connectivity section under the Primary Constituent Elements heading. While we can ascertain from other research what factors may influence the use of or dispersal through patches of habitat by beach mice, we do not know the minimum size or shape requirements of these areas, or what other features are necessary for functional use of small or linear patches of habitat.

(12) *Comment:* One peer reviewer suggested considering habitat types adjacent to beach mouse habitat for inclusion, as these areas may provide important resources.

Our Response: The Act requires us to designate critical habitat on the basis of the best scientific data available. Neither the published literature nor our knowledge supports other habitat types as containing the physical and biological features that are essential to the conservation of the beach mice. Habitat types adjacent to those used by beach mice, therefore, do not meet the requirements for inclusion in the critical habitat designation. We reiterate, however, that designation of areas as critical habitat does not signal that habitat outside the designation is unimportant or may not be required for recovery.

(13) *Comment:* One peer reviewer questioned the ability of isolated critical habitat units to preserve genetic connectivity.

Our Response: With the exception of Perdido Key, critical habitat units are isolated by cities and towns, which are believed to be impenetrable by dispersing beach mice. Since connectivity, both for transfer of individuals and genetic material, cannot occur through these areas it was crucial

that we designate lands sufficient in size and habitat quality to support multiple, independent populations. If appropriate and necessary, genetic studies will be used to determine if any additional special management is needed to maintain genetic connectivity or preserve rare alleles.

(14) *Comment:* One peer reviewer questioned if the Henderson Beach Unit and the Deer Lake Unit are large enough to support beach mouse populations.

Our Response: We do not know the minimum area necessary to support a population of beach mice, but with habitat management efforts, we believe that the Henderson Beach and Deer Lake Units may be sufficient in size to support populations of beach mice. Henderson Beach (or the Henderson Beach unit) is 96 ac (39 ha) and has been recommended as a site for translocation in the past (Bates 1992, p. 6; Florida Department of Environmental Protection (FDEP) 2001, p. 6). Due to its westernmost location, it may serve as an important source population if storms extirpate or greatly reduce local populations or populations to the east. Deer Lake State Park is within the Deer Lake Unit (49 ac; 20 ha), which also includes adjacent private lands. While a portion of the private lands (71 ac; 29 ha) has been excluded in the final rule, these areas are under a management plans that serve to maintain and improve the beach mouse's primary constituent elements. Together, we believe these lands should be sufficient to support a population of beach mice.

(15) *Comment:* One peer reviewer stated that genetic evidence indicates that Crooked Island East should be considered within the range of Choctawhatchee beach mice, not St. Andrew Beach mice.

Our Response: Genetic analyses using microsatellite data (Wooten and Holler 1999, pp. 65–66), revealed that beach mice inhabiting Crooked Island East historically may have had some genetic exchange with beach mice inhabiting Shell Island (Choctawhatchee beach mice). However, the analyses did not suggest that beach mice inhabiting Crooked Island East should not be classified as St. Andrew beach mice. Furthermore, coat coloration and patterns were also evaluated and agreed with Bowen's (1968; pp. 82–85) taxonomic classification of Crooked Island East specimens as St. Andrew beach mice. Recent research findings (Van Zant 2006, p. 65), available after the publication of the proposed rule, suggest that Crooked Island East was historically inhabited by Choctawhatchee beach mice, contradicting the accepted historic ranges of the subspecies. These findings have yet to be peer reviewed, and at this time, we do not find a formal change is warranted.

(16) *Comment:* One commenter suggested that if beach mice were present on the mainland portion of St. Andrew State Park, FDEP staff would have been aware of their presence.

Our Response: Beach mice were documented at St. Andrew State Park mainland as late as 1968 (Bowen 1968, pp. 86–88), though no records of survey efforts exist again until Humphrey and Barbour (1981, pp. 41–42) and Meyers (1983, p. 5), when beach mice were not detected. These studies did not document the absence of beach mice. No known modification or impact to the coastal dunes that would logically lead to a local extirpation has occurred on the park since beach mice were known to occupy the area, and habitat appears to be healthy and suitable to support a population of beach mice. Therefore, we consider it occupied.

General Comments

Comments Related to Regulatory Burden and Private Property Concerns

(17) *Comment:* Several commenters believe that the proposed critical habitat designation is a violation of their property rights.

Our Response: Designation of private lands as critical habitat does not mean they are or will be taken by the Federal government or that reasonable uses will be restricted. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not enable government or public access to private lands. We evaluated this rule in accordance with Executive Order 12630, and we believe that this critical habitat designation for the Perdido Key, Choctawhatchee, and St. Andrew beach mice will not have significant takings implications. We do not anticipate that property values, rights, or ownership will be significantly affected by the critical habit burden above that cat designation. In fact, we determined that the designation would result in little additional regulatoryurrently in place, as the subspecies are already federally listed and the majority of the area designated is occupied by the subspecies.

(18) *Comment:* Several commenters, including Florida Department of Transportation (FDOT), voiced concern or confusion related to the voluntary mitigation option used by some property owners on Perdido Key for projects impacting beach mice or their habitat.

Our Response: Mitigation is recommended for all section 10 (Habitat Conservation Planning) projects impacting beach mice or their habitat regardless of whether the area is designated as critical habitat. The voluntary mitigation option involves donation into a conservation fund to support surveys, research, and recovery measures for the Perdido Key beach mouse. The conservation fund was developed through an interagency agreement to give property owners on Perdido Key an additional mitigation option to offset impacts to beach mice and their habitat from new development. This agreement responds to requests from the development community, and sets in motion a new process—created by Escambia County, Florida Fish and Wildlife Commission, and the Service—to aid in mitigating impacts to the beach mouse and its habitat while reducing the time needed to review permit applications by implementing a broad-based, interagency, conservation strategy. This voluntary mitigation option and the associated fund were developed completely outside of the critical habitat designation process. Because critical habitat does not affect individual landowners applying for Federal permits through the Habitat Conservation Planning process, the designation of critical habitat for the Perdido Key beach mouse will have no effect on the Interagency Agreement adopted by Escambia County. Additionally, no permits or mitigation are required for property owners rebuilding within the footprint of the previous developments.

(19) *Comment:* Several commenters, including the FDOT, were concerned about the economic impacts of the critical habitat designation. They believe that the designation adds to the hardship caused by the recent tropical storms and hurricanes and will lead to decreased property values.

Our Response: It is our belief that the primary effect of critical habitat is to identify areas important for the conservation of the species. Regardless of critical habitat designation, private property owners are already required to consult with the Service because the subspecies are already federally listed. The Act requires us to consider potential economic impacts of a critical habitat designation when designating critical habitat. If the benefits of excluding an area outweigh the benefits of including it, the Service may exclude an area from critical habitat, unless the exclusion would result in the extinction

of the species. Due to the difficulty in making a distinction between listing and critical habitat effects within critical habitat boundaries, the economic analysis considers all future conservation-related impacts to be coextensive with the designation. Coextensive effects may also include impacts associated with overlapping protective measures of the other Federal, State, and local laws that aid habitat conservation in the areas designated. The designation will result in little additional regulatory burden beyond that currently in place; Section 3 of the Economic Analysis quantifies property value losses associated with conservation efforts for the three subspecies. Nearly all of these losses would result with or without critical habitat designation (see also our response to comment 17).

(20) *Comment:* Several commenters believed that the designation of beach mouse critical habitat is holding up development or may restrict their future development plans or recreational use, or require restoration on private lands. The FDEP voiced concerns that the consultation process may restrict future development plans on State lands.

Our Response: There has been some confusion concerning the revision of critical habitat and the permitting process for coastal development in Perdido Key beach mouse habitat. Some private landowners believe the Service's current regulations (including critical habitat) are delaying development. However, permits are needed if the take of mice is expected. That requirement is unaffected by critical habitat. Of the 72 Perdido Key landowners that have contacted the Service, approximately 55 percent received ''no permit needed'' letters from the Service, and the remaining approximately 45 percent received letters and information on the process to apply for an incidental take permit. To date, 12 landowners have submitted design plans or applications for incidental take permits.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands, close public beaches, or require restoration of private lands. Under the Act, we have specific time frames in which to complete the section 7 consultation process with Federal action agencies. These time frames remain the same whether or not there is critical habitat within the project area. Designation of critical habitat for the beach mice notifies the Federal action agencies and the public that federally authorized, permitted, or funded activities within these designated critical habitat areas must comply with section 7 consultation requirements. For each section 7 consultation, we already review the direct and indirect effects of the proposed projects on the beach mice and currently designated habitat, and will continue to do so for additional critical habitat if it is designated. A critical habitat designation does not create a separate process and timelines do not change.

(21) *Comment:* Several commenters were concerned that the designation of private property within a critical habitat unit is similar to the Coastal Barrier Act designation of ''Other Protected Areas,'' and that, as a result, they will lose their homeowner's insurance policy.

Our Response: Inclusion of property within a critical habitat unit does not prevent development or issuance of flood insurance since it does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area; nor does it alter existing Coastal Barrier System unit boundaries. In contrast,the Coastal Barrier Improvement Act of 1990 provides for establishment of ''otherwise protected areas'' (OPA) which are undeveloped coastal barriers established primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. New construction within otherwise protected areas cannot receive Federal flood insurance unless it conforms to designated purposes for protection of the area. No other restrictions are placed on Federal expenditures in OPAs. Activities carried out with private or other non-Federal funds are not restricted, so inclusion of property in a CBRS unit or an OPA does not prevent development of that property.

(22) *Comment:* One commenter requested that we further explain and define ''destruction or adverse modification of critical habitat'' and explain how it can be mitigated for.

Our Response: Destruction or adverse modification of critical habitat is currently defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of a listed species (50 CFR 402.02). However, this regulatory definition was found to be invalid in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.* 245 F.3d 434). In a subsequent ruling on August 6, 2004, the United States Court of Appeals for the Ninth Circuit (*Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*) also found this regulatory definition to be contrary to law. We are reviewing our regulatory definition of adverse modification in response to these decisions. In the interim, the Service no longer relies on the regulatory definition of destruction or adverse modification of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statutory provisions of the Act to complete the analyses required under section 7 consultation with respect to critical habitat. This includes determining whether the critical habitat would remain functional (or retain its current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

According to the Director's December 9, 2004, memorandum, if an action affects critical habitat but does not appreciably diminish the value of primary constituent elements, the adverse modification threshold is not exceeded (see *Adverse Modification Standard* section below). In these cases, it is possible minimize the adverse effects of an action through implementation of conservation measures. If, during a consultation, the Service finds that an action would adversely modify or destroy critical habitat, the Act requires that we identify reasonable and prudent alternatives to the proposed action that would eliminate the likelihood of adverse modification.

(23) *Comment:* Several commenters, including Tyndall AFB, requested that their property be excluded from critical habitat designation. The FDOT requested that road right-of-ways be excluded from critical habitat designation.

Our Response: We have designated areas that we believe are sufficient for the conservation of the species using the best available science. The Act provides for the exemption and exclusion from critical habitat under sections 4(a)(3) and 4(b)(2), respectively. We have excluded several areas from critical habitat designation under 4(b)(2) based on existing HCPs that preclude the need for special management considerations. However, beyond those areas, we have determined that none of the requested additional areas meet the criteria for exemption under section 4(a)(3) of the Act or exclusion under section 4(b)(2) of the Act. See response to Comment 3 concerning Tyndall AFB. FDOT right-of-ways provide habitat for the Perdido Key, Choctawhatchee, and St. Andrew beach mice. These areas were included in our proposed designation because we have determined that they are essential to the conservation of the beach mice

and satisfy the criteria for inclusion in critical habitat.

Comments Related to Suggested Alternatives to Designating Critical Habitat

(24) *Comment:* Several commenters believed that the public land on Perdido Key is sufficient for conservation of the Perdido Key beach mouse.

Our Response: While 51 percent of Perdido Key overall is public lands, only a portion of this is suitable for beach mice. Approximately 42 percent of the Perdido Key barrier island (2,949 ac) (1,193 ha) is identified as beach mouse habitat (1,300 ac; 526 ha). Of that, 76 percent (991 ac; 401 ha) is public land. Historic evidence has illustrated that without human intervention (translocation project), the Perdido Key beach mouse would have been extirpated in the late 1980s (Holler *et al.* 1989, pp. 402, 403), when there was even more habitat available on Perdido Key than there is currently. This process witnessed on Perdido Key in recent history follows the primary literature concerning population persistence and the need for multiple populations and functional connectivity (Soulé and Wilcox 1980; Ehrlich 1988, pp. 21–27; Fahrig and Merriam 1994, pp. 50–59; Oli *et al.* 2001, pp. 113–116). It is based on this research, coupled with beach mouse research and ecological tenets, that we designated critical habitat for the Perdido Key beach mouse (as well as the Choctawhatchee and St. Andrew beach mouse).

(25) Several commenters suggested that Federal dollars and Federal programs should be used to acquire more conservation lands for the beach mice instead of proposing the designation of privately owned lands.

Our Response: Some Federal funds are available to contribute towards the purchase of property intended for protected species conservation, but generally, our budgets do not easily allow for land acquisition as a method of conservation.

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (EPA 2003, p. 3–3) and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (USGAO 1994, p. 4). Stein et al. (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 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.

Furthermore, public lands (such as State and national parks) are under constant pressure to expand their facilities to increase access, parking, and concessions to accommodate the increased visitation, all of which may impact beach mouse habitat. Public lands managers consult with the Service and apply for incidental take permits just as a private landowner would. Federal funds mainly contribute toward habitat management, predator control programs, monitoring, and research, but rarely are Federal funds available to contribute towards the purchase of property intended for protected species conservation.

(26) *Comment:* Several commenters believed that the Perdido Key beach mouse is not native to Perdido Key, and, therefore, should not be federally protected. Other commenters believe that the Federal government created beach mice habitat when they dug the intracoastal waterway, or beach mice are simply old field mice and are, therefore, not a rare species warranting protection.

Our Response: It has been established that the oldfield mouse (*Peromyscus polionotus*) and its subspecies are native to the southeastern United States, and the Perdido Key beach mouse is native to Perdido Key in Florida and Alabama (Holler 1992a, pp. 102–104). Bowen (1968, pp. 8–13) used differences in fur color and skeletal measures to recognize subspecies of beach mice. Bowen's work is the latest published comprehensive review of beach mice classification, is the accepted taxonomy of the species, and is the taxonomy on which the Service continues to rely.

(27) *Comment:* One commenter suggested that there should be more effort or laws instituted to control feral cats on Perdido Key particularly those being fed at entrance to Ono Island.

Our Response: Feral cats are identified as a major threat to beach mice and are believed to be a contributing factor to the cause of several local extirpations. The Service works with partners to increase public awareness concerning the impacts feral cats have on beach mice and other wildlife. Local (Escambia County) pet laws require that cats must be confined to your property (in your house or inside a fence or pen) or under direct control (on a leash) when off your property. Cats are not permitted to roam at large, nor are they permitted on the public beaches. The Service works with private landowners as they develop their properties to address feral cat issues.

(28) *Comment:* One commenter suggests breeding beach mice in captivity instead of designating critical habitat.

Our Response: While demographics are a concern when population numbers are extremely low, habitat is the main factor influencing the persistence of beach mice. Research indicates that Beach mice are capable of recovering from severe population bottlenecks without human intervention, provided that sufficient habitat is available (Wooten 1994, p. 28).

Research into the feasibility of captive breeding is a task named in the recovery plan and preliminary studies of holding beach mice in captivity are underway; however, breeding beach mice in captivity that are capable of surviving in the wild is a challenging, complex, and expensive undertaking. Some beach mouse subspecies do not breed well in captivity, or cease breeding if the colony reaches even a moderate level of inbreeding. Beach mice in captivity may also become diurnal or lose their fear of predators. Furthermore, beach mice bred in captivity would still need habitat in which to be released, and adjoining habitat to colonize and expand the population in order to persist. The main focus for beach mouse conservation remains to manage or enhance habitat where possible (dune restoration, predator control efforts) and allow beach mouse populations to recover naturally in the wild.

(29) *Comment:* One commenter suggested that conservation efforts on public lands should be voluntary and involve partnerships instead of designating them as critical habitat.

Our Response: The Service encourages voluntary conservation efforts and partnerships that would provide management or enhancement of habitat for threatened and endangered species. Designation of critical habitat does not influence the extent of conservation efforts recommended for endangered species habitat on public lands. The Service often excludes lands from critical habitat based on conservation partnerships.

Comments Related to Criteria and Methods Used To Designate Critical Habitat

(30) *Comment:* Several commenters believed that not enough is known about the beach mice to properly designate critical habitat, that the proposed designation is arbitrary or incorrect, or that the best scientific information was not used. One commenter requested that the Director of the Service investigate the studies upon which the proposal is based.

Our Response: As required by section 4(b)(1)(A) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of the Perdido Key beach mice, Choctawhatchee beach mice and St. Andrew beach mice. We reviewed the available information pertaining to the historic and current distributions, previously designated critical habitat, life histories, habitats, and threats to the beach mice. We reviewed available information that pertains to the habitat requirements of these subspecies, including material received since completion of the 1987 recovery plan for the Choctawhatchee and Perdido Key beach mice. This material includes data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; regional Geographic Information System (GIS) coverages; and beach mouse habitat maps developed by the Service and Florida Fish and Wildlife Conservation Commission (FWC), as well as our own site-specific species and habitat information, recent biological surveys, reports and communication with other qualified biologists or experts, and unpublished species occurrence data contained within our files. The proposed rule was reviewed by and we received comments from 5 independent scientific experts (peer review). We reviewed all comments received from the peer reviewers and the public for substantive issues and new information and, where appropriate, have amended the final critical habitat designation.

(31) *Comment:* One commenter believed that special management and protection required by the critical habitat units is not properly identified.

Our Response: Special management and protection needs address the maintenance and improvement of the PCE's important to the species and manages for the long term conservation of the species. Examples may include management of non-native predators and competitors, preservation of habitat connectivity, management of non-native plants, protection of beach mice and their habitat from threats by road construction, urban and commercial development, heavy machinery, and recreational activities. In each unit description we have identified examples of the special management that may be necessary for that particular unit. See also Special Management Considerations or Protection section below.

(32) *Comment:* One commenter believed that the criteria used to delineate unit boundaries are not apparent.

Our Response: When determining which areas meet the definition of critical habitat, we considered theories of metapopulation persistence, and beach mouse life history and historic range information, in addition to habitat transitions. The mean high water level and the maritime forest were used to delineate the seaward and northern boundary of units, respectively. Use of the maritime forest as a northern boundary is justified biologically as this habitat type is generally directly landward of the scrub habitat, easily distinguished in the field, and is not inhabited by beach mice. The mean high water line was used as it is an accepted legal boundary. In urban areas, roads, driveways, and land parcel boundaries were used to delineate unit boundaries where appropriate.

(33) *Comment:* Several commenters believed that the Service has not complied with Federal rules and regulations, including the Act, NEPA, Administrative Procedure Act (APA), and the Commerce Clause. One commenter believed that other relevant impacts of the designation, besides economic impacts, have not been considered and that the Service did not properly consider regulatory alternatives.

Our Response: As set forth below, we have complied with Federal rules and regulations, including the Act, NEPA (see *National Environmental Policy Act* below), APA, and the Commerce Clause. We believe we have fully considered the relevant impacts of designation, as required by the Act.

(34) *Comment:* Two commenters believe that the Service has incorrectly defined occupied habitat or there is no evidence of beach mice on private lands.

Our Response: Beach mice can be difficult to detect because of their nocturnal movements and small size. Therefore, a specific protocol has been developed to determine the presence or absence of beach mice. Presence of beach mice can be established with one capture, but due to seasonal, annual, and disturbance-related population fluctuations, a minimum of two years of quarterly live-trapping is necessary to determine absence of beach mice. The Service may not visit private property unless given specific permission. Consequently, little monitoring or research has been conducted on private property. We have only designated areas where we have information about beach mice presence within their dispersal distance.

(35) *Comment:* One commenter felt that CBM–5 should not be split into two units.

Our Response: In our proposed rule, we specifically asked for public comment on whether we should split CBM unit 5 into two units, since areas within the unit differ as to whether they were known to be occupied at the time of listing. In this final designation, we have not split CBM unit 5 into separate units because the State requested that it be kept as one unit. Both areas are part of St. Andrew State Park and managed similarly by the Florida Park Service.

Comments Related to Mapping

(36) *Comment:* One commenter believed that including the areas proposed for exclusion in the critical habitat maps is confusing.

Our Response: We proposed certain areas for exclusion and requested public comment on these proposed exclusions. Excluded areas are removed from the maps in this final rule.

(37) *Comment:* One commenter stated that the maps do not allow for private landowners to determine whether they are within proposed critical habitat.

Our Response: Please refer to the UTM coordinates and the narrative description as well as the maps to determine if a specific location is within designated critical habitat.

Comments Related to Site-Specific Areas

(38) *Comment:* One commenter specified the Gulf Beach unit (PKBM–4) as not having the PCEs and having been designated without following designation criteria. Three commenters believe that much of the area proposed for designation on Perdido Key is unoccupied habitat and not essential to beach mice.

Our Response: The land proposed for critical habitat designation within the Gulf Beach Unit includes frontal dune habitat, scrub habitat, and provides connectivity (PCE 2, PCE 3, and PCE 4). While not known to be occupied at the time of listing, the presence of beach mice was confirmed within the unit in 2004 as a result of live-trapping efforts in conjunction with permitting (Service 2004a). This unit includes scrub habitat and serves as a refuge during storm events and as an important source population if storms extirpate or greatly reduce local populations. This unit currently provides essential habitat for connectivity between the populations at Gulf Islands National Seashore (PKBM–5) and Perdido Key State Park (PKBM–3), and provides essential habitat for

expansion, natural movements, and recolonization.

Please see the Perdido Key beach mouse critical habitat unit descriptions to review occurrence data, for which we have determined presence of beach mice in all units except for the Gulf State Park Unit (PKBM–1), and which were occupied at the time of listing. Occurrence data are limited in the Gulf Beach (PKBM–4) and West Perdido Key Units (PKBM–2), since these areas are privately owned and the Service is not permitted to visit or work on private lands without specific permission from the landowner. However, despite our limited access to these private lands, we have documented the presence of beach mice within the units.

Comments Related to Public Notification

(39) *Comment:* Several commenters from Walton County believed that they were not sufficiently notified about the proposed designation of critical habitat. The commenters requested two-week to three-month extensions to the July 17, 2006, deadline to comment.

Our Response: The Service provided extensive public notification of the proposed critical habitat designation (notice in the **Federal Register**, public notices in 4 newspapers, news releases to 11 newspapers, and notification of local television and radio stations). County, State, and Federal elected officials were also notified. This notification process was implemented twice—on December 15, 2005, to solicit comments on the proposed rule, and again on June 16, 2006, to solicit comments on the economic analysis and again on the proposed rule. The combined comment period was 90 days. Even though there were no requests for hearings within the range of the Choctawhatchee or St. Andrew beach mouse, we held an informational public meeting and public hearing in Panama City, Florida. We held an additional meeting and public hearing in Pensacola. An article ran in the Walton Sun on June 17, 2006, and included the dates of the public meetings and contacts for further information. Thus, although we did not specifically notify individual landowners within the areas to be designated, we believe we provided adequate opportunity for the public to review and provide comment on the original and revised proposed rules, and draft economic analysis.

Moreover, the Service had little flexibility about the length of the comment period. Based on the Services's own statements to the court, the court ordered us to publish a final revision for Perdido Key beach mouse and Choctawhatchee beach mouse critical habitat, as well as, a new final decision with respect to designation of critical habitat for the St. Andrew beach mouse by September 30, 2006.

Comments Related to the Draft Economic Analysis

(40) *Comment:* One commenter believes that the costs of the proposed designation of Perdido Key beach mouse critical habitat outweigh the benefits.

Our Response: Section 4(b)(2) of the Act allows the Secretary to take into consideration potential economic impacts of a critical habitat designation and to exclude areas from critical habitat for economic reasons if he determines that the benefits of such exclusion outweigh the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. Without knowing more specifically which areas the commentor wished to be excluded, the Service cannot conduct any specific analysis.

Please see the Economic Analysis and the Regulatory Flexibility Act sections of the rule for information regarding specific costs associated with the designation of critical habitat for these three subspecies and how these costs affected the final designation.

(41) *Comment:* One commenter believes that the economic impact of setting aside 29 acres should be included in the estimate for PKBM–4 for a development planned with the unit.

Our Response: This development is at an early stage of consultation. The information currently provided to us illustrates the preservation of 12 to 15 acres, and as this project is not at a stage of approval, it is uncertain what the final set aside may be. Furthermore, it would be considered predecisional for the Service to make such a determination when the outcome of the permitting process is unknown.

Comments From States

Section 4(i) of the Act states that ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from State agencies (Florida Department of Environmental Protection and Florida Department of Transportation) regarding the proposal to designate critical habitat for the Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice are addressed in the General Comments section, comments 18, 19, 20 and 23.

Summary of Changes From Proposed Rule

As a result of comments received on the initial proposal, the reproposal, the draft economic analysis, and a reevaluation of the revised proposed critical habitat boundaries, we have changed our proposed designation as follows:

(1) We adjusted the critical habitat boundaries of PKBM–5 and CBM–5 to include additions of 36 ac (15 ha) and 96 ac (39 ha), respectively, based on peer review, public comments, and biological information received during the public comment periods. Please see the revised proposed rule (71 FR 35048) for more information.

(2) We adjusted the boundaries of unit SABM–1 to remove areas that did not contain primary constituent elements or did not meet the designation criteria. This resulted in the removal of 144 ac (58 ha) of private and military lands (Tyndall AFB) that were included in the proposed designation.

(3) Under section 4(b)(2) of the Act, we excluded two areas of private lands. These lands (Stallworth Preserve, and Watersound and Watercolor) in Walton County, Florida, total 79 ac (32 ha), and are covered under legally operative HCPs for the Choctawhatchee beach mouse (Table 2). These HCPs provide for the conservation of Choctawhatchee beach mice, and in general include activities such as habitat protection, enhancement, and restoration; partnership in the implementation and monitoring of beach mouse translocation programs on the property; native landscaping; predator control; and through adaptive management, assurances that the conservation effort will be effective. For a detailed discussion of all exclusions and exemptions, please refer to ''*Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act*'' below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) 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 (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) 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. Conservation, as defined under section 3 of the Act, means to use, and the use, of all methods and procedures

that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Furthermore, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. However, an area currently occupied by the species but not known to have been occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically be included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When the Service is determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (PCEs) that are essential to the conservation of the species and occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for the Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice are derived from the biological needs of beach mice as described in the proposed critical habitat designation published in the **Federal Register** on December 15, 2005 (70 FR 74426).

Space for Individual and Population Growth and Normal Behavior

Long-term trapping data have shown that beach mouse densities are cyclic and fluctuate on a seasonal and annual basis. These fluctuations can be a result of reproduction rates, food availability, habitat quality and quantity, catastrophic events, disease, and predation (Blair 1951; Bowen 1968; Smith 1971; Hill 1989; Rave and Holler 1992; Swilling *et al.* 1998; Swilling 2000; Sneckenberger 2001). Without suitable habitat sufficient in size to support the natural cyclic nature of beach mouse populations as they expand, subspecies are at risk from local extirpation and extinction, and may not attain the densities necessary to persist through storm events and seasonal fluctuations of resources. The conservation of multiple large, contiguous tracts of habitat is a key to the persistence of beach mice.

At present, such large parcels exist mainly on public lands. Protection, management, and conservation of beach mice on public areas have been complicated by increased recreational use by humans as public lands are rapidly becoming the only natural areas left on the coast. Where protection of large contiguous tracts of beach mouse habitat along the coast is not possible, establishing multiple independent populations is the best defense against local and complete extinctions due to storms and other stochastic events (Danielson 2005). Protecting multiple populations increases the chance of at least one population within the range of a subspecies surviving episodic storm events and persisting while vegetation and dune structure recover.

The three beach mice utilize the rolling primary and secondary (frontal) dunes, which are characterized by a thick growth of sea oats (*Uniola paniculata*), as well as blue stem (*Schizachyrium scoparium*), beach grass (*Panicum amarum*), and beach goldenrod (*Chrysoma pauciflosculosa*). Beach mice also need scrub habitat, which consists of relict dunes of relatively high elevation, dominated by large patches of scrub live oak (*Quercus geminata*) with gopher apple (*Licania michauxii*) and green briar (*Smilax* spp.) ground covers. Directly landward of the scrub habitat is the maritime forest with tall, dense growth, thick ground cover, and leaf litter that consists mainly of *Pinus* sp. and thick patches of saw palmetto (*Serenoa repens*). The maritime forest is not occupied by beach mice and can be used to delineate the landward extent of beach mouse habitat.

Habitat Connectivity

Habitat loss and fragmentation associated with residential and commercial real estate development is the primary threat contributing to the endangered status of beach mice (Holler 1992a; Humphrey 1992). Coastal development has fragmented all the subspecies into disjunct populations. Isolation of habitats by imposing barriers to species movement is an effect of fragmentation that equates to reduction in total habitat (Noss and Csuti 1997). Furthermore, isolation of small populations of beach mice reduces or precludes gene flow between populations and can result in the loss of genetic diversity. Selander et al. (1971) found that allozyme variation in beach mouse populations (Perdido Key beach mice, Choctawhatchee beach mice, and Alabama beach mice) was significantly lower than the variation detected in adjacent inland populations. Correlations between genetic variation (heterozygosity) and other factors have been well-researched with oldfield mice. Lower levels of heterozygosity have been linked to less efficient feeding, fewer demonstrations of social dominance and exploratory behavior, and smaller body size (Garten 1976, Teska et al. 1990). Research focused on inbreeding depression in oldfield mice (including one beach mouse subspecies) determined that the effects of inbreeding negatively influenced factors such as litter size, number of litters, and juvenile survivorship (Lacy et al. 1995). Demographic factors, such as predation (especially by domestic cats), diseases, and competition with house mice, are intensified in small, isolated populations that may be rapidly extirpated by these pressures. Especially when coupled with events such as storms, reduced food availability, and reduced reproductive success, isolated populations may experience severe declines or extirpation (Caughley and Gunn 1996). The strength of influence these factors have on populations or individuals is largely dependent on the degree of isolation.

Connectivity becomes essential where mice occupy fragmented areas lacking one or more habitat types. If scrub habitat is lacking from a particular tract, adjacent or connected tracts with scrub habitat are necessary for food and burrow sites when resources are scarce in the frontal dunes, and are essential to beach mouse populations during and immediately after hurricanes. Trapping data suggest that beach mice occupying the scrub following hurricanes recolonize the frontal dunes once vegetation and some dune structure have recovered (Swilling *et al.* 1998; Sneckenberger 2001). Similarly, when frontal dune habitat is lacking from a tract and a functional pathway to frontal dune habitat does not exist, beach mice may not be able to obtain the resources necessary to expand the population and reach the densities necessary to persist through the harsh summer season or the next storm. Functional pathways may allow for natural behavior such as dispersal and exploratory movements, as well as gene flow to maintain genetic variability of the population within fragmented or isolated areas. To that end, contiguous tracts or functionally connected patches of suitable habitat are features that are essential to the long-term conservation of beach mice.

PCEs 1, 2, and 3 reflect the distinct roles of the frontal dune and scrub habitat when contiguous and when isolated. A consequence of coastal development is a high level of habitat fragmentation and loss of habitat connectivity. While areas providing both frontal dune and scrub dune habitat (PCE 1) is preferred and serves beach mice populations in all seasons and stochastic conditions, such areas are not readily available within the historic range of the three beach mouse subspecies. Frequently, areas exist that contain only frontal dune or scrub dune habitat. As discussed in the proposed rule and the PCEs, the two habitat types serve different roles and their relative importance to beach mouse populations fluctuate seasonally and annually. PCEs 2 and 3 capture the necessary elements and demonstrate the necessity of each individual habitat, while emphasizing that the benefits of both habitats are more than additive when the two habitat types are contiguous (PCE 1).

Food Resources and Vegetative Cover

Beach mice feed primarily upon seeds and fruits, but have been shown to prey on insects. Beach mice appear to forage on food items based on availability and have shown no preferences for particular seeds or fruits (Moyers 1996). Research suggests that the availability of food resources fluctuates seasonally in Gulf Coast coastal dune habitat; specifically, food resources may be limited during winter and spring in the scrub habitat and limited in the frontal dunes in the summer and fall (Sneckenberger 2001). Nutritional analysis of foods available in each habitat revealed that seeds of plant species in both habitats provide a similar range of nutritional quality. The frontal dunes appear to have more species of high-quality foods, but these sources are primarily grasses and annuals that produce large quantities of small seeds in a short period of time. Foods available in the scrub consist of larger seeds and fruits that are produced throughout a greater length of time and linger in the landscape. Consequently, large, contiguous tracts containing both frontal dune and scrub habitat types are necessary to provide both: (1) A large quantity of food resources coinciding with the reproductive season, and (2) a relatively stable source of food resources when availability is reduced.

Foraging activities and other natural behaviors of beach mice are influenced by many factors. Artificial lighting alters behavior patterns causing beach mice to avoid otherwise suitable habitat and decreases the amount of time they are active in those areas (Bird et al. 2004). Within the relatively sparsely vegetated frontal dune and scrub dune habitat occupied by beach mice, the presence of vegetative cover reduces predation risk and perceived predation risk of foraging beach mice, and allows for normal movements, activity, and foraging

patterns. Foraging in sites with vegetative cover is greater and more efficient than in sites without cover (Bird 2002). Beach mice have also been found to prefer coastal dune habitat (that is, not maritime forest) with increased percent cover of vegetation, and decreased distance between vegetated patches (Smith 2003). Behavioral modification or increased predation in response to these factors can result in population decreases and restricted use of available habitat.

Burrow Sites

Beach mice use burrows to avoid predators, protect young, store food, and serve as refugia between foraging bouts and during periods of rest. Beach mice have been shown to select burrow sites based on a suite of abiotic and biotic factors. A limitation in one or more factors may result in a shortage of suitable sites, and the availability of potential burrow sites in each habitat may vary seasonally. Beach mice tend to construct burrows in areas with greater plant cover, less soil compaction, steep slopes, and higher elevations above sea level (Lynn 2000; Sneckenberger 2001). These factors are likely important in minimizing energy costs of burrow construction and maintenance while maximizing the benefits of burrow use by making a safe and physiologically efficient refuge. Similar to food resources, this fluctuation in availability of burrow sites suggests that a combination of large, contiguous tracts of habitat with burrow sites in primary, secondary, and scrub dune habitat is essential to beach mice at the individual level.

Habitats Protected From Anthropogenic Disturbance

Artificial lighting, non-native species, and refuse can directly and indirectly increase predation pressure on beach mice beyond their natural levels. Free-roaming and feral pets are believed to have a devastating effect on beach mouse persistence (Bowen 1968; Linzey 1978) and are considered to be the main cause of the loss of at least one population of beach mice (Holliman 1983). Cat tracks have been observed in areas of low trapping success for beach mice (Auburn University 1999). The population and habitat viability analysis for the Alabama beach mouse indicated that if each population had as few as one feral cat that ate one mouse a day, rapid extinction of the species occurred in over 99 percent of all iterations (Traylor-Holzer et al. 2005). Refuse may attract competitors (house mice (*Mus musculus*)) and predators (such as coyotes (*Canis latrans*) and red foxes (*Vulpes vulpes*)), unsettling the natural predator-prey balance and competing with beach mice for resources. This issue is of particular importance and has the most impact when beach mouse populations are at low densities. This influx of development-related predators and competitors is believed to be the final cause of the extinction of the pallid beach mouse (*Peromyscus polionotus decoloratus*) (Humphrey 1992).

Beyond the direct effects of mortality due to predation, beach mouse habitat use and foraging patterns are influenced by these anthropogenic disturbances. Artificial lighting, for example, influences beach mouse foraging patterns and natural movements (for example, avoidance of an otherwise suitable area) due to an increased risk of predation in the lighted areas. Beach mice avoid areas with artificial lighting or reduce the time spent foraging in lighted areas (Bird et al. 2004). Consequently, because of these anthropogenic factors, mice may be unable to gather necessary food resources or fail to utilize otherwise suitable habitat.

Primary Constituent Elements for the Perdido Key Beach Mice, Choctawhatchee Beach Mice, and St. Andrew Beach Mice

Pursuant to our regulations, we are required to identify the known physical and biological features (Primary Constituent Elements or PCEs) essential to the conservation of Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. All areas designated as critical habitat for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice are occupied or essential to the conservation of the species, within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that PCEs for the Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice are:

1. A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites.

2. Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that, despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators.

3. Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge.

4. Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and recolonization of locally extirpated areas.

5. A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

This designation is designed for the conservation of PCEs necessary to support the life history functions that were the basis for the proposal. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features essential to the conservation of the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse. We have reviewed available information that pertains to the habitat requirements of these species. We have reviewed the overall approach to conservation of the three species of beach mice undertaken by the local, State, and Federal agencies operating within the species' range since their listing, and the recovery plan for Perdido Key and Choctawhatchee beach mice (1987). The St. Andrew beach mouse recovery plan is under development.

We reviewed the available information pertaining to the historic and current distributions, previously designated critical habitat, life histories, habitats, and threats to the beach mice. We reviewed available information that

pertains to the habitat requirements of these subspecies, including material received since completion of the 1987 recovery plan. This material includes: Data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; regional Geographic Information System (GIS) coverages; coastal imagery from 1999 and 2004; beach mouse habitat maps (developed by the Service and FWC); and our own site-specific species and habitat information, recent biological surveys, reports and communication with other qualified biologists or experts, and unpublished species occurrence data contained within our files.

Three steps were conducted to identify critical habitat units. First, based on a compilation of information listed above on the known occurrences of the three subspecies of beach mice, we created maps indicating the areas and habitat features associated with these occurrences. Our designation does not include all occupied areas. When determining which areas are essential to the conservation of the subspecies and meet the definition of critical habitat, we considered theories of metapopulation persistence, and beach mouse life history information.

The habitat units were delineated using Environmental Systems Research Institute, Inc.'s (ESRI) ArcGIS, a computer GIS program, to evaluate geospatial and locality data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. Habitat delineation included current and historic species occurrence locations. Our mapping process was based on the need to exclude areas that lack essential habitat features, while simultaneously accounting for the dynamic nature of coastal habitat. We depicted the mapped shoreline according to the mean high water line (MHWL), although the land configurations of these coastal areas change dramatically through time. Landward boundaries of the units, which frequently consist of urban areas or maritime forest, are more stable and provide easily discernable landmarks on the ground within a critical habitat unit.

Second, we identified, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical and biological habitat features (also called primary constituent elements, or PCEs) at those sites that are essential to the conservation of the species. We mapped critical habitat unit boundaries at each site based on the extent of habitat containing sufficient PCEs to support biological function. Critical habitat boundaries were delineated using 1-meter, true-color DOQ's developed in 2004, to photo-update the Services' existing beach mice habitat geospatial layer (created by digitizing habitat identified in 1994, 1-meter, color-infrared DOQ's and subsequently photo-updated using 1-meter, color-infrared DOQs from 1999). The critical habitat layers were digitized at a 1:3,000 view scale or larger, to identify habitat and other features on the ground. This allowed us to map or map-out (remove) the features on the ground to the greatest accuracy based on the resolution of the source data. We made every effort to avoid proposing the designation of developed areas such as buildings, paved areas, boat ramps, roads, and other structures that lack PCEs for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse. We also eliminated highly degraded tracts, and small, isolated, or highly fragmented tracts that provide little long-term conservation value.

Coordinates for the critical habitat unit descriptions in the regulation section of this rule were generated using the Ungenerate tool available in ET GeoWizards, a tool written by Mr. Ianko Tchoukanski for ArcGIS 9.x. Coordinates were generalized, based on formatting requirements for the **Federal Register,** from 9 decimal places in the X and 8 decimal places in the Y to 2 decimal places for both the X and Y. This generalization will result in a reduction in the accuracy of the data if generated from the x-y coordinate pairs reported herein this document.

In areas within a critical habitat unit in which it was necessary to split the unit into its component general ownership categories (Federal, State, Local, Private), county parcel data were used to digitize these boundaries.

The final step was to determine and identify any areas that do not meet the definition of critical habitat under section 3(5)(A) of the Act, and to identify other areas that may be subject to an approved INRMP that provides a benefit to the species and may be exempted under section 4(a)(3), and to identify units that may be excluded based on section 4(b)(2) of the Act (see the *Application of Sections 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act,* below, for a detailed description).

The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the exclusion of all such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the proposed rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Thirteen units were designated based on sufficient PCEs being present to support Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse life processes. Some units contained all PCEs and supported multiple life processes. Some segments contained only some of the PCEs necessary to support the particular use of that habitat by Perdido Key beach mice, Choctawhatchee beach mice, or St. Andrew beach mice.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Special Management Considerations or Protection

When designating critical habitat, we assess whether, within areas determined to be occupied at the time of listing, the PCEs may require special management considerations or protections. As discussed in more detail in the proposed critical habitat designation (70 FR 74426) and in the unit descriptions below, we find that the features essential to the conservation of beach mice in all of the areas we are designating may require special management considerations or protections due to threats to the subspecies or its habitat. Such management considerations and protections include: Management of non-native predators and competitors, management of non-native plants, protection of beach mice and their habitat from threats by road construction, urban and commercial development, heavy machinery, and recreational activities.

Critical Habitat Designation

We are designating 13 units as critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, containing the primary constituent elements essential for the conservation of the species and that may require special management,

and those additional areas found to be essential to the conservation of Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. Presented below are brief descriptions of all units. The units are listed in order geographically west to east.

Perdido Key Beach Mouse

We are designating five units as critical habitat for the Perdido Key beach mouse: (1) Gulf State Park, (2) West Perdido Key, (3) Perdido Key State Park, (4) Gulf Beach, and (5) Gulf Islands National Seashore. Table 1 provides the approximate area (acres and hectares) encompassed within each critical habitat unit determined to meet the definition of critical habitat for the Perdido Key beach mouse.

TABLE 1.—CRITICAL HABITAT UNITS DESIGNATED FOR THE PERDIDO KEY BEACH MICE

Critical habitat unit	Federal acres (hectares)	State acres (hectares	Local and private acres (hectares)	Total acres (hectares)
Gulf State Park (PKBM–1)	0	115 (46)	0	115 (46)
West Perdido Key (PKBM–2)	0	0	147 (59)	147 (59)
Perdido Key State Park (PKBM–3)	0	238 (96)	0	238 (96)
Gulf Beach (PKBM–4)	0	0	162 (66)	162 (66)
Gulf Islands National Seashore (PKBM–5)	638 (258)	0	0	638 (258)
Total	638 (258)	353 (142)	309 (125)	1,300 (525)

Since the Perdido Key beach mouse would be extinct without the aid of re-establishment programs (Holler et al. 1989, pp. 398, 403; Service 2004b, p. 1–2), most of the habitat remaining within the subspecies' historic range (Perdido Key) is considered essential for its continued existence. We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Perdido Key beach mouse below.

PKBM–1: Gulf State Park Unit

PKBM–1 consists of 115 ac (46 ha) in southern Baldwin County, Alabama, on the westernmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf State Park from the west tip of Perdido Key at Perdido Pass east to approximately 1.0 mi (1.6 km) west of where the Alabama-Florida State line bisects Perdido Key and the area from the MHWL north to the seaward extent of the maritime forest. This unit was occupied by the species at the time of listing. Perdido Key beach mice were known to inhabit this unit during surveys in 1979 and 1982, and by 1986 this was the only known existing population of the subspecies (Humphrey and Barbour 1981, pp. 841–842; Holler et al. 1989, p. 398). This population was the donor site for the reestablishment of Perdido Key beach mice into Gulf Islands National Seashore in 1986. This project ultimately saved Perdido Key beach mice from extinction as the population at Gulf State Park was considered extirpated in 1998 due to tropical storms and predators (Auburn University 1999, p 1.9).

Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat (PCEs 2 and 3), and some areas of connectivity (PCE 4). Because scrub habitat is separated from the frontal dunes by a highway in some areas, the population inhabiting this unit can be especially vulnerable to hurricane impacts, and therefore, further linkage to scrub habitat or habitat management would improve connectivity. This unit is managed by the Alabama Department of Conservation and Natural Resources and provides a relatively natural light regime (PCE 5). Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats and other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

PKBM–2: West Perdido Key Unit

PKBM–2 consists of 114 ac (46 ha) in southern Escambia County, Florida, and 33 ac (13 ha) in southern Baldwin County, Alabama. This unit encompasses essential features of beach mouse habitat from approximately 1.0 mi (1.6 km) west of where the Alabama-Florida State line bisects Perdido Key east to 2.0 mi (3.2 km) east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest. This unit consists of private lands and ultimately includes essential features of beach mouse habitat between Gulf State Park (PKBM–1) and Perdido Key State Park (PKBM–3). Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat (PCEs 2 and 3). Habitat fragmentation and other threats specific to this unit are mainly due to development. Consequently, threats to this unit that may require special management considerations include habitat fragmentation and habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, excessive foot traffic and soil compaction, and damage to dune vegetation and structure. This area was not known to be occupied at the time of listing. Beach mouse presence was confirmed in 2005 through observations of beach mouse burrows and tracks (Sneckenberger 2005), and this unit is adjacent to contiguous, occupied beach mouse habitat (PKBM–3). Therefore, we have determined this unit to be currently occupied. This unit is essential to the conservation of the species because it provides essential connectivity (PCE 4) between two more contiguous habitat patches (Perdido Key State Park and Gulf State Park), provides habitat for expansion, natural movements, and recolonization, and is therefore essential to the conservation of the species. Specifically, this unit may have historically provided for the recolonization of Gulf State Park (PKBM–1) or may facilitate similar recolonization in the future as the habitat recovers from recent hurricane events.

PKBM–3: Perdido Key State Park Unit

PKBM–3 consists of 238 ac (96 ha) in southern Escambia County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Perdido Key State Park from approximately 2.0 mi (3.2 km) east of the Alabama-Florida State line to 4.0 mi (6.4 km) east of the State line, and the area from the MHWL north to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists of primary, secondary and scrub dune habitat (PCEs 2 and 3) and some areas of connectivity (PCE 4). Live-trapping efforts in this area were

limited in the past. Perdido Key beach mice were known to inhabit this unit in 1979, though the population was impacted by Hurricane Frederic (1979) and no beach mice were captured during extensive surveys in 1982 and 1986 (Humphrey and Barbour 1981, pp. 841–843; Holler et al. 1989, p. 400); therefore, the unit was considered unoccupied at the time of listing. In 2000, a relocation program began to reestablish mice at Perdido Key State Park, and this project is considered a success. This unit is essential to the conservation of the species because it contains a reestablished population of beach mice that is needed for recovery. Improving or restoring habitat connections would increase habitat quality and provide more connectivity for dispersal, exploratory movements, and population expansion. This unit is managed by the Florida Park Service and provides a natural light regime (PCE 5). Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

PKBM–4: Gulf Beach Unit

PKBM–4 consists of 162 ac (66 ha) in southern Escambia County, Florida. This unit includes features essential to the conservation of beach mouse habitat between Gulf Islands National Seashore and Perdido Key State Park from approximately 4.0 mi (6.4 km) east of the Alabama-Florida State line to 6.0 mi (9.7 km) east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest. This unit consists of private lands. Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat (PCEs 2 and 3). Habitat fragmentation and other threats specific to this unit are mainly due to development. Consequently, threats to this unit that may require special management considerations include habitat fragmentation and habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, excessive foot traffic and soil compaction, and damage to dune vegetation and structure. While the unit was not known to be occupied at the time of listing, presence of beach mice has recently been confirmed as a result of live-trapping efforts in conjunction with permitting (Service 2004a). This unit includes high-elevation scrub habitat and serves as a refuge during storm events and as an important source population if storms extirpate or greatly reduce local populations. This unit is essential to the conservation of the species because it provides essential connectivity between two populations (Gulf Islands National Seashore and Perdido Key State Park) and provides essential habitat for expansion, natural movements, and recolonization (PCE 4).

PKBM–5: Gulf Islands National Seashore Unit

PKBM–5 consists of 638 ac (258 ha) in southern Escambia County, Florida, on the easternmost region of Perdido Key. This unit encompasses essential features of beach mouse habitat within the boundary of Gulf Islands National Seashore-Perdido Key Area (also referred to as Johnson Beach) from approximately 6.0 mi (9.7 km) east of the Alabama-Florida State line to the eastern tip of Perdido Key at Pensacola Bay and the area from the MHWL north to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists mainly of primary and secondary dune habitat but provides the longest contiguous expanse of frontal dune habitat within the historic range of the Perdido Key beach mouse. Perdido Key beach mice were known to inhabit this unit in 1979, though the population was impacted by Hurricane Frederic (1979) and no beach mice were captured during extensive surveys in 1982 and 1986 (Humphrey and Barbour 1981, pp. 841–843; Holler et al. 1989, p. 400); therefore, the unit was considered unoccupied at the time of listing. In 1986, Perdido Key beach mice were reestablished at this unit as a part of Service recovery efforts. This reestablishment project was identified as the most urgent recovery need for the mouse (Service 1987, p. 12; Holler et al. 1989, p. 398). The project is considered a success. In 2000 and 2001, Perdido Key beach mice captured from this site served as donors to re-establish beach mice at Perdido Key State Park (PKBM–3).

PKBM–5, in its entirety, possesses all five PCEs and is essential to the conservation of the species because it provides habitat for a population that is needed for recovery. However, most of this unit consists of frontal dunes, making the population inhabiting this unit particularly threatened by storm events. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats and other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality. Gulf Islands National Seashore is managed by the National Park Service.

Choctawhatchee Beach Mice

We are designating five units as critical habitat for the Choctawhatchee beach mouse: (1) Henderson Beach, (2) Topsail Hill, (3) Grayton Beach, (4) Deer Lake, and (5) West Crooked Island/Shell Island. Table 2 summarizes areas that meet the definition of critical habitat for the Choctawhatchee beach mouse, areas excluded, and areas designated as critical habitat. Table 3 provides the approximate area encompassed within each critical habitat unit determined to meet the definition of critical habitat for the Choctawhatchee beach mouse.

TABLE 2.—UNITS WITH AREAS DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE CHOCTAWHATCHEE BEACH MOUSE (DEFINITIONAL AREA) FOR WHICH THERE ARE AREAS EXCLUDED FROM THE FINAL CRITICAL HABITAT DESIGNATION (EXCLUDED AREA), AND THE AREA INCLUDED IN THE FINAL CRITICAL HABITAT DESIGNATION

CBM unit	Definitional area acres (hectares)	Excluded area acres (hectares)	Total acres (hectares)
Topsail Hill (CBM–2)	313 (127)	4 (2)	309 (125)
Grayton Beach (CBM–3)	183 (74)	4 (2)	179 (73)
Deer Lake (CBM–4)	120 (49)	71 (29)	49 (20)

TABLE 3.—CRITICAL HABITAT UNITS DESIGNATED FOR THE CHOCTAWHATCHEE BEACH MICE

Critical habitat unit	Federal acres (hectares)	State acres (hectares)	Local and private acres (hectares)	Total acres (hectares)
Henderson Beach (CBM–1)	0	96 (39)	0	96 (39)
Topsail Hill (CBM–2)	0	277 (112)	32 (13)	309 (125)
Grayton Beach (CBM–3)	0	162 (66)	17 (7)	179 (73)
Deer Lake (CBM–4)	0	40 (16)	9 (4)	49 (20)
West Crooked Island/ Shell Island (CBM–5)	1333 (539)	408 (165)	30 (12)	1771 (716)
Total	1333 (539)	983 (398)	88 (36)	2404 (973)

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Choctawhatchee beach mouse, below.

CBM–1: Henderson Beach Unit

CBM–1 consists of 96 ac (39 ha) in Okaloosa County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Henderson Beach State Park from 0.5 mi (0.8 km) east of the intersection of Highway 98 and Scenic Highway 98 to 0.25 mi (0.4 km) west of Matthew Boulevard and the area from the MHWL north to the seaward extent of the maritime forest. This westernmost unit provides primary, secondary, and scrub dune habitat (PCEs 2 and 3). This unit is within the historic range of the subspecies; however, it was not known to be occupied at the time of listing and current occupancy is unknown because no recent efforts have been made to document beach mouse presence or absence. This unit is essential to the conservation of the species because it includes protected, high-elevation scrub habitat and may serve as a refuge during storm events and as an important source population if storms extirpate or greatly reduce local populations or populations to the east.

This unit is managed by the Florida Park Service. Threats specific to this unit that may require special management considerations include habitat fragmentation, artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

CBM–2: Topsail Hill Unit

CBM–2 consists of 309 ac (125 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Topsail Hill Preserve State Park, as well as adjacent private lands from 0.1 mi (0.2 km) east of Gulf Pines to 0.6 mi (0.9 km) west of the inlet of Oyster Lake and the area from the MHWL north to the seaward extent of human development or maritime forest. This unit provides primary, secondary, and scrub dune habitat and possesses all five PCEs. Its large, contiguous, high-quality habitat allows for natural movements and population expansion. Choctawhatchee beach mice were confirmed present in the unit in 1979 (Humphrey 1992, p. 79), were present at the time of listing, and are still present. Beach mice have been captured recently on private lands within the unit, east of the park (Service 2003a, p. 2). The population of Choctawhatchee beach mice inhabiting this unit appears to harbor unique genetic variation and displays a relatively high degree of genetic divergence considering the close proximity of this population to other populations (Wooten and Holler 1999, p. 27).

This unit has portions with different ownership, purposes, and mandates. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

Lands containing the features essential to the conservation of the Choctawhatchee beach mouse within the area covered under the HCP for the Stallworth Preserve (4 ac (2 ha)) are excluded from critical habitat designation under section 4(b)(2) of the Act (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below).

CBM–3: Grayton Beach Unit

CBM–3 consists of 179 ac (73 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Grayton Beach State Park, as well as adjacent private lands and inholdings, from 0.3 mi (0.5 km) west of the inlet of Alligator Lake east to 0.8 mi (1.3 km) west of Seagrove Beach and the area from the MHWL north to the seaward extent of human development or maritime forest. This unit provides primary, secondary, and scrub dune habitat (PCEs 2 and 3), habitat connectivity (PCE 4) and is essential to the conservation of the species because it contains a population needed for recovery. This unit also provides a relatively natural light regime (PCE 5). Beach mice were not detected in the unit in 1979 (Holler 1992b, p. 79); however, they were found to be present in 1995 after Hurricane Opal (Moyers et al. 1999, p. 211). While it seems likely that beach mice were present at the time of listing (and may have been present, but not detected, in 1979), we do not have data to confirm this assumption. Therefore, we consider this unit to be unoccupied at the time of listing. A program to strengthen and reestablish the population began in 1997 and 1998 and yielded a persistent population at the State park. Further relocations, specifically in the west portion of Grayton Beach State Park, are under consideration. Recent evidence of beach mice on park lands was documented in 2004 (Service 2004c, pp. 1–4). Beach mice are also known to currently occupy the private lands immediately east of the park.

This unit has portions with different ownership, purposes, and mandates. Threats specific to this unit that may require special management considerations include hurricane impacts that may require dune restoration and revegetation, excessive open, unvegetated habitat due to recreational use or storm impacts that may require revegetation, artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

Lands containing the features essential to the conservation of the Choctawhatchee beach mouse within the area covered under the HCP for Watercolor (4 ac (2 ha)) are excluded from critical habitat designation under section 4(b)(2) of the Act (see *Application of Section 4(a)(3) and*

Exclusions Under Section 4(b)(2) of the Act section below).

CBM–4: Deer Lake Unit

CBM–4 consists of 49 ac (20 ha) in Walton County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of Deer Lake State Park as well as adjacent private lands from approximately 1 mi (1.6 km) east of the Camp Creek Lake inlet west to approximately 0.5 mi (0.8 km) west of the inlet of Deer Lake and the area from the MHWL north to the seaward extent of maritime forest or human development. This unit provides primary, secondary, and scrub dune habitat (PCEs 2 and 3), habitat connectivity to adjacent lands (PCE 4), and is essential to the conservation of the species. This unit also provides a relatively natural light regime (PCE 5). Because live-trapping efforts in this area have been limited to incidental trapping, and beach mice were not detected in 1998 (Auburn University 1999, p. 2.10–2.11), we consider this unit to be unoccupied at the time of listing. Choctawhatchee beach mice were translocated from Topsail Hill Preserve State Park to private lands adjacent to this unit in 2003 and 2005 (Service 2003a, pp. 1–2; 2005, pp. 1–2). Tracking within the adjacent State park lands have indicated expansion of the population into the park.

This unit is essential to the conservation of the species because it contains a population needed for recovery. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

Lands containing the features essential to the conservation of the Choctawhatchee beach mouse within the area covered under the HCP for Watersound (71 ac (29 ha)) are excluded from critical habitat designation under section 4(b)(2) of the Act (see *Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below). This excluded area is 0.5 mi west of the Camp Creek Lake inlet to 0.5 mi east of the Camp Creek Lake inlet.

CBM–5: West Crooked Island/Shell Island Unit

CBM–5 consists of 1,771 ac (716 ha) in Bay County, Florida. This unit encompasses essential features of beach mouse habitat within the boundaries of St. Andrew State Park mainland from 0.1 mi (0.2 km) east of Venture Boulevard east to the entrance channel of St. Andrew Sound, Shell Island east of the entrance of St. Andrew Sound east to East Pass, and West Crooked Island southwest of East Bay and east of the entrance channel of St. Andrew Sound, and areas from the MHWL north to the seaward extent of the maritime forest. Shell Island consists of State lands, Tyndall AFB lands, and small private inholdings. Choctawhatchee beach mice were known to inhabit the majority of Shell Island in 1987 (Holler 1992b, p. 79) and were again confirmed present in 1998 (Auburn University 1999, p. 2.18), 2002, and 2003 (Service 2002a, 2003b). Because beach mice inhabited nearly the entire suitable habitat on the island less than 2 years prior to listing and were reconfirmed after listing, we consider this area to be occupied at the time of listing. The West Crooked Island population is the result of a natural expansion of the Shell Island population after the two islands became connected in 1998 and 1999, a result of Hurricanes Opal and Georges (Service 2003b). (Shell Island was connected to the mainland prior to the 1930s when a navigation inlet severed the connection on the western end.) Beach mice were documented at St. Andrew State Park mainland as late as the 1960s (Bowen 1968, pp. 86–88), though no records of survey efforts exist again until Humphrey and Barbour (1981, pp. 841–843) and Meyers (1983, p. 10) at which time beach mice were not detected. Therefore, it seems likely that this area was not occupied at the time of listing. Current beach mouse population levels at this site are unknown, and live-trapping to document the absence of mice has not been conducted. Similar to the original designation, this Park is proposed as critical habitat because it has features essential to the Choctawhatchee beach mouse. It is also within the historic range of the mouse and is essential to the conservation of the species. This unit supports the easternmost population of Choctawhatchee beach mouse, with the next known population 22 miles (mi) (35 kilometers (km)) to the west.

This unit provides primary, secondary, and scrub dune habitat and possesses all five PCEs. Portions of this unit are managed by the Florida Park Service, while the remaining areas are federally (Tyndall AFB) and privately owned. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high residential or recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

St. Andrew Beach Mouse

We are designating three units as critical habitat for the St. Andrew beach mouse: (1) East Crooked Island, (2) Palm Point, and (3) St. Joseph Peninsula. Table 4 provides the approximate area encompassed within each critical habitat unit determined to meet the definition of critical habitat for the St. Andrew beach mouse. Urban development and the lack of available suitable habitat limited the designation to these areas. The large size and high quality of habitat in SABM–1 is considered to alleviate some of the need for additional units or independent populations.

TABLE 4.—CRITICAL HABITAT UNITS DESIGNATED FOR THE ST. ANDREW BEACH MOUSE

Critical habitat unit	Federal acres (hectares)	State acres (hectares)	Local and private acres (hectares)	Total acres (hectares)
East Crooked Island (SABM–1)	649 (263)	0	177 (72)	826 (335)
Palm Point (SABM–2)	0	0	162 (65)	162 (65)
St. Joseph Peninsula (SABM–3)	0	1280 (518)	222 (90)	1502 (608)
Total	649 (263)	1280 (518)	561 (227)	2490 (1008)

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the St. Andrew beach mouse below.

SABM–1: East Crooked Island Unit

SABM–1 consists of 826 ac (335 ha) in Bay County, Florida. This unit encompasses essential features of beach mouse habitat on East Crooked Island from the entrance of St. Andrew Sound to 1 mi (1.6 km) west of Mexico Beach, and the area from the MHWL to the seaward extent of the maritime forest (not including Raffield Peninsula). Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat and possesses all five PCEs. St. Andrew beach mice were known to inhabit the unit in 1986 and 1989 (James 1992, pp. 88–90), though the population was presumably extirpated after 1989 due to impacts from hurricanes. The East Crooked Island population was reestablished with donors from St. Joseph State Park in 1997. This unit was occupied at the time of listing. Recent live-trapping confirms present occupation of mice (Moyers and Shea 2002, p. 3; Service 2002b). This unit maintains connectivity along the island and this unit is essential to provide a donor population following storm events.

The majority of this unit is federally owned (Tyndall AFB), while the remaining habitat is privately owned. Threats specific to this unit that may require special management considerations include artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high recreational and military use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

SABM–2: Palm Point

SABM–2 consists of 162 ac (65 ha) of private lands in Gulf County, Florida. This unit encompasses habitat from Palm Point 1.25 mi (2.0 km) northwest of the inlet of the Gulf County Canal to the southeastern boundary of St. Joe Beach and the area from the MHWL to the seaward extent of the maritime forest. We consider beach mice to have been present in this unit at the time of listing, because St. Andrew beach mice were documented in the area by Bowen (1968, pp. 86–88). Since St. Andrew beach mouse habitat is limited to only two other areas, protecting this mainland site located within the species' historic range is needed for the subspecies' long-term persistence. As other viable opportunities are limited or nonexistent, this unit is essential to reduce the threats of stochastic events to this subspecies. Furthermore, as this unit is on the mainland, it is somewhat buffered from the effects of storm events. This area provides frontal and scrub dune habitat (PCEs 2 and 3), but may provide limited connectivity between habitats. Threats specific to this unit that may require special management considerations include habitat fragmentation, habitat loss, artificial lighting, presence of feral cats as well as other predators at unnatural levels, and high residential use that may result in soil compaction, damage to dunes, or other decrease in habitat quality.

SABM–3: St. Joseph Peninsula

SABM–3 consists of 1,502 ac (607 ha) in Gulf County, Florida. This unit encompasses essential features of beach mouse habitat within the boundary of St. Joseph Peninsula State Park (Park) as well as south of the Park to the peninsula's constriction north of Cape San Blas (also known as the ''stumphole'' region) and area from the MHWL to the seaward extent of the maritime forest. Beach mouse habitat in this unit consists of primary, secondary, and scrub dune habitat, and provides a relatively contiguous expanse of habitat within the historic range of the St. Andrew beach mouse. This unit possesses all five PCEs and was occupied at the time of listing. St. Andrew beach mice were known to inhabit this unit in 1986 and 1987 (James 1992, pp. 88–90), 1989, 1992, 1993, and 1994 (Gore 1994, pp. 2–5). In addition, recent tracking efforts suggest that mice continue to occupy private lands south of the Park. The Park alone does not provide sufficient habitat to allow for population expansion along the peninsula, which may be necessary for a population anchored by the tip of a historically dynamic peninsula. A continuous presence of beach mice along the peninsula is the species' best defense against local and complete extinctions due to storm events. The population of St. Andrew beach mice inhabiting this unit appears to possess unique genetic variation, and displays greater than expected genetic divergence from other populations (Wooten and Holler 1999, pp. 65–66).

Portions of this unit are managed by the Florida Park Service, while the remaining area is privately owned. Threats specific to this unit that may require special management considerations include artificial lighting, habitat fragmentation and habitat loss, presence of feral cats as well as other predators at unnatural levels, and high recreational use that may result in soil compaction, damage to dunes, or other decrease in habitat quality. The population inhabiting this unit may also be particularly susceptible to hurricanes due to its placement within St. Joseph Bay (the peninsula is a thin barrier peninsula with a north-south orientation).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed

action because of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice or their designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Perdido Key Beach Mice, Choctawhatchee Beach Mice, and St. Andrew Beach Mice and Their Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse jeopardy analyses that relies heavily on the importance of core area populations and connectivity to the survival and recovery of Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such

habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice include, but are not limited to:

(1) Actions that would significantly alter dune structure and stability, soil compaction levels, and substrate characteristics. Such activities could include, but are not limited to, excessive foot traffic; military missions; dredging and disposal operations; the use of construction, utility, or off-road vehicles in beach mouse habitat; and sand contamination from gravel, clay, or construction debris. These activities, even if temporary, could alter burrow construction, reduce the availability of potential burrow sites, and degrade or destroy beach mouse habitat.

(2) Actions that would significantly alter the natural vegetation of the coastal dune community. Such activities could include, but are not limited to, allowing non-native species to establish in the area, landscaping with plants that do not reflect habitat type prior to disturbance, and landscaping that yields excessive leaf litter. These activities could alter beach mouse foraging activities and degrade or destroy beach mouse habitat.

(3) Actions that would significantly alter the natural predator—prey balance of the coastal dune community by impacting the quality of the habitat. Such activities could include, but are not limited to, allowing unprotected refuse in the area and allowing or encouraging feral cat communities. These activities could alter beach mouse foraging activities and the availability of foraging resources, and directly alter beach mouse survival.

(4) Actions that would significantly alter natural lighting. Such activities could include, but are not limited to, allowing artificial lighting that does not comply with wildlife-friendly lighting specifications. These activities could alter beach mouse foraging activities, increase predation upon beach mice, and reduce or prohibit the use of otherwise suitable beach mouse habitat.

(5) Actions that would directly result in a significant loss of habitat or elimination or degradation of functional pathways within and among critical habitat units. Such activities could include, but are not limited to, residential or commercial development and associated use, road widening and maintenance, and land clearing. These activities eliminate beach mouse habitat; reduce connectivity necessary for gene flow; reduce all necessary resources, such as food, mates, burrow sites, and refugia from storms; and decrease space available to conduct natural behaviors, thereby limiting their ability to persist.

We consider all of the units designated as critical habitat, as well as those that have been excluded, to contain features essential to the conservation of the Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. All units are within the geographic range of the species, all were occupied by the species at the time of listing (based on observations made within the last 21 years) or essential to the conservation of the species, and are likely to be used by Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. Federal agencies already consult with us on activities in areas currently occupied by the Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice.

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Congressional record is clear that the Secretary is afforded broad discretion regarding which factors and how much weight to give to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the ESA to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. A draft INRMP developed by Tyndall Air Force Base (AFB) included the range of the critical habitat designation for the Choctawhatchee

beach mouse and St. Andrew beach mouse. The Service did not consult on the INRMP nor did the Service give its concurrence on the INRMP. Therefore, we are including Tyndall AFB lands in the critical habitat designation.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (EPA 2003, p. 3–3), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (USGAO 1995, p.4). Stein et al. (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 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.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Department of the Interior's Four C's philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as HCPs, Safe Harbors, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove et al. 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook et al. 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main et al. 1999; Brook et al. 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main et al. 1999; Bean 2002; Brook et al. 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the state is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. On the island of Lanai, Castle and Cooke Resorts, LLC, which owns 99 percent of the island, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (such as axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species) and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island, we believe that the benefits of excluding the lands covered by the MOA exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

> On Lanai, simply preventing ''harmful activities'' will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants.

The Department of the Interior's philosophy of conservation through communication, consultation, and cooperation is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private landowners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (such as Habitat Conservation Plans (HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Section 10(a)(1)(B) of the Act authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act

specifies that an application for an incidental take permit must be accompanied by an HCP, and specifies the content of such a plan. The purpose of conservation plans is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated, and that the action does not appreciably reduce the survival and recovery of the species. There are currently two legally operative HCPs in existence for the Choctawhatchee beach mouse covering areas that would otherwise meet the criteria for critical habitat (and therefore are excluded under 4(b)(2)): Stallworth Preserve in Unit CBM–2 (issued in 1995, with amendments in 1995 and 1998), and Watersound in Unit CBM–4 and Watercolor in Unit CBM–3 (issued in 2000) in Walton County, Florida, totaling 79 ac (33 ha). These HCPs provide for the conservation of Choctawhatchee beach mice and include activities like habitat protection, enhancement, and restoration; partnership in the implementation and monitoring of beach mouse translocation programs on the property; native landscaping; predator control; and adaptive management to ensure that the conservation effort will be effective. The two HCPs include beach mouse population monitoring (live-trapping several times a year), outdoor lighting guidelines, beach access that minimizes impact beach mouse habitat (elevated dune walkovers), as well as dune revegetation and restoration. The two HCPs include the continued maintenance of the remaining undisturbed beach mouse habitat.

(1) Benefits of Inclusion of the Stallworth Preserve, Watersound and Watercolor HCPs

The principal regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they will not destroy or adversely modify critical habitat. In the *Gifford Pinchot* decision, the 9th Circuit Court of Appeals has ruled that adverse modification evaluations require consideration of impacts on the recovery of species. Conducting section 7 consultations would provide benefits on HCP lands with a Federal nexus by helping to ensure the integrity of these lands is maintained. For example, if a federally funded road project was proposed to impact lands having an operative HCP that were designated as critical habitat, a consultation would need to be conducted to ensure the designated critical habitat was not destroyed or adversely modified.

Designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of the area. This helps focus, prioritize, and revitalize conservation efforts, such as dune restoration projects, or more extensive monitoring of beach mouse populations.

(2) Benefits of Exclusion of the Stallworth Preserve, Watersound, and Watercolor HCPs

We identified four possible benefits of excluding the area covered by the two HCPs from critical habitat designation. (1) To the extent designation would provide any additional protection of beach mice habitat, costs associated with that protection would be avoided. (2) Exclusion would reduce largely redundant administrative costs of section 7 consultation. (3) Exclusion would help to foster an atmosphere of cooperation in the conservation of endangered species. HCPs and other conservation partnership efforts typically provide far greater conservation benefits to species than the limited benefits arising from critical habitat designation. The latter benefits are restricted to actions with a Federal nexus and can require only that the action not adversely modify the habitat. It cannot compel, and in practice may discourage, the type of active management actions that generally are needed to recover listed species. Currently, two of our HCP sites are involved in translocation efforts. With this cooperation, we are able to partner with private landowners in habitat restoration, beach mouse translocations, and population monitoring, thereby facilitating recolonization of previously inhabited areas, encouraging and providing suitable habitat for the long-term persistence of beach mice, obtaining more information on the subspecies, and improving and discovering new techniques and opportunities that will assist in the recovery of several beach mouse subspecies. (4) Exclusion would provide an incentive for participation in the development of new HCPs. The exclusion of HCP lands from critical habitat designations is an important incentive for participation in the HCP program; on the other hand, failure to exclude HCP lands could undermine the conservation benefits provided by the HCP program, and, more generally, the partnerships required to conserve most listed species.

It is possible, although unlikely, that any Federal action will be proposed that would be likely to destroy or adversely modify the habitat proposed as critical within the area governed by these HCPs. Designation of critical habitat provides no benefit because, if such a project was proposed, due to the specific way in which jeopardy and adverse modification are analyzed for the Choctawhatchee beach mouse, it would likely also jeopardize the continued existence of the species. In addition, we expect that the benefit of informing the public of the importance of this area to the Choctawhatchee beach mouse's conservation would be slight because there has already been a designation of critical habitat for beach mice in this area, including public notice and comment, the HCPs themselves underwent public review and comment, and this proposal is undergoing public review and comment. Therefore, we assigned relatively little weight to the benefits of designating this area as critical habitat.

In contrast, although the benefits of encouraging participation in HCPs, particularly large-scale HCPs, and, more broadly, helping to foster cooperative conservation are indirect, enthusiastic HCP participation and an atmosphere of cooperation are crucial to the long-term effectiveness of the endangered species program. Therefore, we assigned great weight to these benefits of exclusion. If there are regulatory benefits of inclusion, associated costs could be avoided by excluding the area from the designation. However, as we expect the regulatory benefits to be slight, we likewise give little weight to avoidance of those associated costs, as well as the additional transaction costs related to section 7 compliance.

(3) Benefits of Exclusion of the Stallworth Preserve, Watersound, and Watercolor HCPs Outweigh the Benefits of Inclusion

We have determined that the benefits of inclusion of the areas covered by these HCPs are small, while the benefits of exclusion are more significant. With the measures identified above, we believe that, for these three sites, the benefits of exclusion outweigh the benefits of inclusion. Because we anticipate that little, if any, conservation benefit to the Choctawhatchee beach mouse will be foregone as a result of excluding these areas, the exclusion will not result in the extinction of the Choctawhatchee beach mouse. Accordingly, we exercise discretion under section 4(b)(2) of the Act to exclude the areas covered by these HCPs from the designation of critical habitat for the Choctawhatchee beach mouse.

(4) Exclusion Will Not Result in Extinction of the Species

Because we anticipate that little, if any, conservation benefit to the Choctawhatchee beach mouse will be foregone as a result of excluding these areas, we do not expect the exclusion to result in the extinction of the Choctawhatchee beach mouse.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to 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.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan that considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A 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 Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: That designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule because these areas were included in the proposed rule as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation of informing State agencies and local governments about areas that would benefit from protection and enhancement of habitat for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice is already well-established among State and local governments, and Federal agencies in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

Economic Analysis

Section 4(b)(2)of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on June 16, 2006 (71 FR 35048). We accepted comments on the draft analysis until July 17, 2006.

The primary purpose of the economic analysis was to estimate the potential economic impacts associated with the designation of critical habitat for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. This information is intended to assist the Secretary in

making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis identifies potential costs of approximately $93.4 to $174.9 million (undiscounted) over a 20-year period from 2006 to 2025, as a result of the proposed critical habitat designation, including those costs coextensive with listing. For the same period, the economic analysis identified potential costs of approximately $89.3 to $170.6 million discounted at three percent ($6.0 to $11.5 million annualized) and approximately $85.8 to $166.7 million discounted at seven percent ($8.1 to $15.7 million annualized).

The analysis measures lost economic efficiency associated with residential and commercial development, and public projects and activities, such as economic impacts on transportation projects, the energy industry, and State and Federal lands. Overall, the residential and commercial development industry is calculated to experience the highest proportion of these costs (95 percent).

We have prepared an economic analysis that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*, and that was available for public review during the comment periods for the proposed rule. A copy of the final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting the Service, Branch of Endangered Species (see **ADDRESSES** section) or by downloading from the Internet at *http://www.fws.gov/panamacity*. Since the critical habitat designation includes no Tribal lands, and includes no areas presently under special management or protection provided by a legally operative plan or agreement for the conservation of these beach mice (other than the HCPS for Stallworth and Watersound that we have already excluded), we believe, other than economics, there are no other relevant impacts to evaluate under section 4(b)(2).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

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

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 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. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. 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 consider the types of activities that might trigger regulatory impacts under this rule, as well as the 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 rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have

any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In our economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse and proposed designation of their critical habitat. This analysis estimated prospective economic impacts due to the implementation of three Florida beach mice conservation efforts in seven categories: private development activities, recreation, tropical storms and hurricanes, dredging and disposal operations, species management and habitat protection activities, road construction and maintenance, and military activities. We determined from our analysis that in six of these seven categories, impacts of the three Florida beach mice conservation efforts are not anticipated to impact small business. The small business entities that may be affected are private development firms. Costs associated with residential and commercial development comprise 95 of the total quantified future impacts. Total costs are expected to be $93.4 million (undiscounted) over the next 20 years ($89.3 million at three percent and $85.8 million at seven percent). Conservation effort costs include land preservation (set-asides), monitoring, and predator control that may be required of new development activity on private land. Approximately 97 percent of developers in the region are considered small; thus, 35 small developers could be impacted each year. For those projects likely to be undertaken by a small entity, beach mouse conservation costs are estimated to be approximately $17,000 per residential housing unit (total costs divided by the number of affected units), or $75,000 per typical developer. Assuming the annual revenues of an average small developer are $18.9 million (see the economic analysis for explanation of assumptions), the average annualized cost per project is roughly 0.4 percent of the typical annual sales. Therefore, we do not believe that the designation of critical habitat for the Perdido Key beach mouse, Choctawhatchee beach mouse, and St. Andrew beach mouse will result in a disproportionate effect to small business entities. Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice and their habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final CHUs, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(6) Activities funded by the EPA, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include Corps permits or permits we may issue under section 10(a)(1)(B) of the Act. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on the information from the economic analysis, this final rule to designate critical habitat for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is 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 *et seq.*), we make 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 two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''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. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, 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) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Florida and Alabama. The designation of critical habitat in areas currently occupied by Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice.

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

This rule does not contain any new collections of information that require

approval by OMB under the Paperwork Reduction Act. This rule 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 Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice. Therefore, designation of critical habitat for Perdido Key beach mice, Choctawhatchee beach mice, and St. Andrew beach mice has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Panama City Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Panama City Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as 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. In § 17.11(h), revise the entry for ''Mouse, St. Andrew beach'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Mouse, St. Andrew beach.	*Peromyscus polionotus peninsularis.*	U.S.A. (FL)	Entire	E	655	17.95(a)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95(a), revise the entries for ''Choctawhatchee Beach Mouse (*Peromyscus polionotus allophrys*)'' and ''Perdido Key Beach Mouse (*Peromyscus polionotus trissyllepsis*),'' and add an entry for ''St. Andrew Beach Mouse (*Peromyscus polionotus peninsularis*)'' in the same alphabetical order that this species appears in the table at § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

Choctawhatcee Beach Mouse (*Peromyscus polionotus allophrys*)

(1) Critical habitat units are depicted for Okaloosa, Walton, and Bay Counties, Florida, on the maps below.

(2) The primary constituent elements of critical habitat for the Choctawhatchee beach mouse are the habitat components that provide:

(i) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites;

(ii) Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators;

(iii) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge;

(iv) Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and re-colonization of locally extirpated areas; and

(v) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

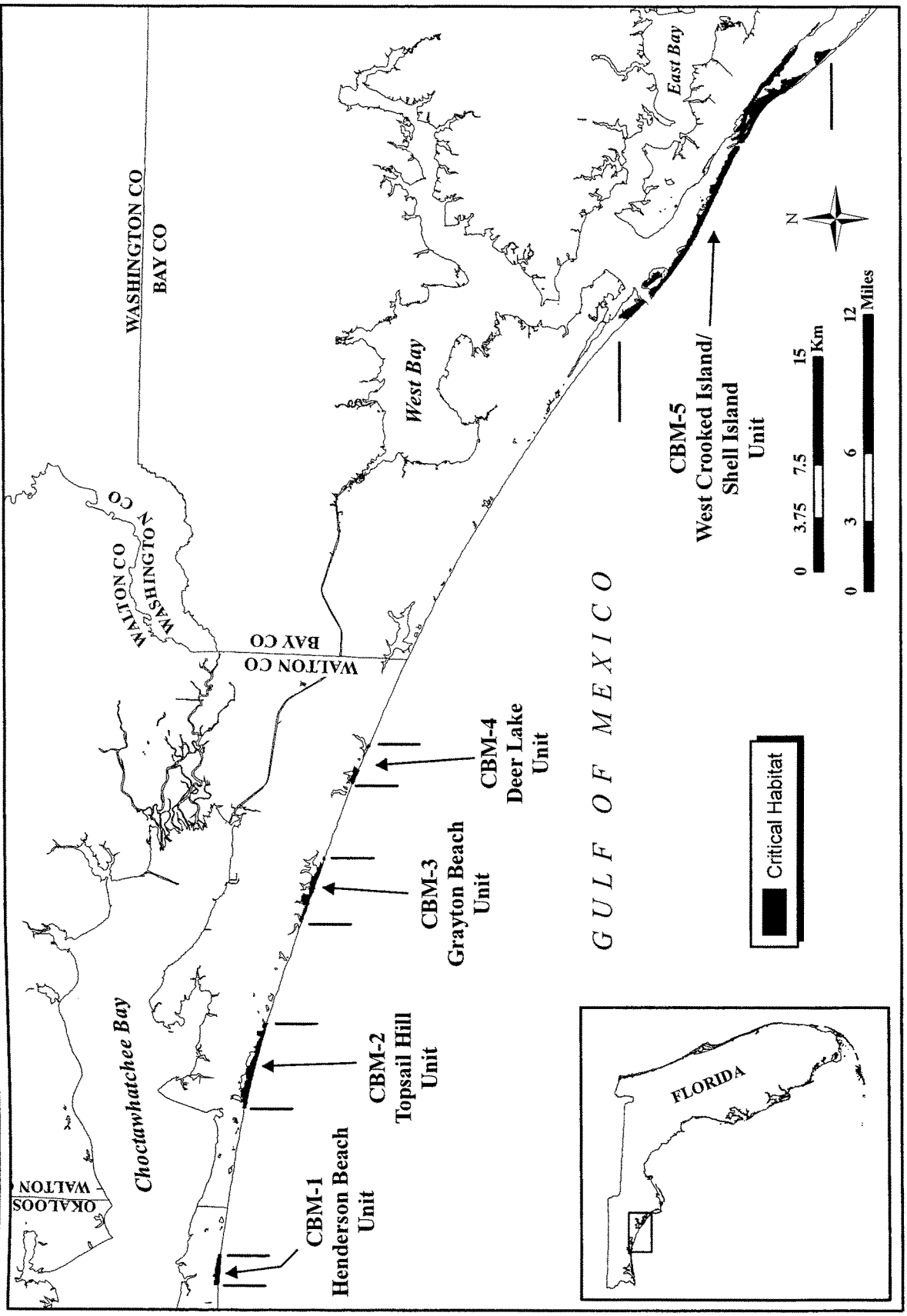
(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, driveways, and roads, and the land on which such structures are located.

(4) *Critical Habitat Map Units.* Data layers defining map units were created by delineating habitats that contained one or more of the primary constituent elements defined in paragraph (2) of this entry over 1999 and 2004 digital ortho photography at a scale of at least 1:4000.

(5) Note: Map 1, Index Map of Critical Habitat Units for the Choctawhatchee beach mouse, follows:

BILLING CODE 4310–55–P

Map 1. Critical Habitat Units for Choctawhatchee Beach Mouse



BILLING CODE 4310–55–C

(6) CBM—Unit 1: Henderson Beach Unit, Okaloosa County, Florida.

(i) *General Description:* This unit encompasses essential features of beach

mouse habitat within the boundary of Henderson Beach State Park from 0.5 mi (0.8 km) east of the intersection of Highway 98 and Scenic Highway 98 to 0.25 mi (0.4 km) west of Matthew Boulevard and the area from the mean high water level (MHWL) north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Destin, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 553127.73, 3361659.70; 553118.25, 3361738.27; 553113.59, 3361734.19; 553108.89, 3361731.30; 553107.43, 3361726.11; 553109.17, 3361720.21; 553113.27, 3361714.76; 553117.31, 3361712.08; 553120.24, 3361706.21; 553125.11, 3361701.97; 553129.54, 3361699.70; 553134.76, 3361697.45; 553141.19, 3361694.44; 553145.30, 3361688.99; 553149.37, 3361685.13; 553154.57, 3361683.67; 553157.20, 3361689.68; 553160.70, 3361692.54; 553166.37, 3361688.32; 553172.09, 3361682.12; 553173.43, 3361676.21; 553168.76, 3361672.13; 553163.31, 3361667.63; 553160.25, 3361662.80; 553153.21, 3361658.26; 553149.32, 3361655.00; 553151.10, 3361647.11; 553152.37, 3361643.97; 553151.71, 3361638.80; 553151.79, 3361635.24; 553155.06, 3361631.75; 553159.13, 3361627.89; 553161.59, 3361624.78; 553162.10, 3361620.03; 553159.37, 3361617.98; 553153.02, 3361617.83; 553145.50, 3361616.85; 553143.50, 3361617.19; 553138.78, 3361615.49; 553134.39, 3361616.18; 553126.77, 3361619.16; 553115.13, 3361623.63; 553107.05, 3361629.38; 553102.11, 3361636.39; 553099.86, 3361647.04; 553098.42, 3361656.91; 553098.17, 3361666.82; 553094.35, 3361692.88; 553091.71, 3361703.13; 553082.59, 3361718.36; 553082.04, 3361724.69; 553082.21, 3361733.81; 553087.65, 3361738.70; 553102.32, 3361739.86; 553118.25, 3361738.27

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(7) CBM—Unit 2: Topsail Hill Unit, Walton County, Florida.

(i) *General Description:* This unit encompasses essential features of beach mouse habitat within the boundary of Topsail Hill Preserve State Park, as well as adjacent private lands from 0.1 mi (0.2 km) east of Gulf Pines 0.6 mi (1 km) west of the inlet of Oyster Lake and the area from the MHWL north to the seaward extent of human development or maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Miramar Beach, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 568237.02, 3359100.24; 565790.59, 3360018.31; 565796.34, 3360020.57; 565803.96, 3360017.20; 565810.66, 3360019.37; 565817.86, 3360017.55; 565818.85, 3360009.64; 565824.39, 3360010.97; 565832.30, 3360012.35; 565838.06, 3360003.81; 565842.44, 3360003.92; 565846.95, 3359998.04; 565849.54, 3360006.03; 565847.76, 3360013.17; 565845.89, 3360024.98; 565839.14, 3360024.82; 565834.08, 3360036.18; 565828.88, 3360037.67; 565826.72, 3360044.73; 565832.24, 3360046.87; 565836.86, 3360052.10; 565836.25, 3360061.20; 565847.92, 3360071.04; 565854.41, 3360065.27; 565860.36, 3360065.79; 565861.85, 3360054.35; 565866.39, 3360047.28; 565872.87, 3360041.95; 565867.78, 3360039.01; 565857.25, 3360047.49; 565852.69, 3360039.01; 565846.27, 3360041.66; 565841.64, 3360051.85; 565839.51, 3360041.87; 565843.74, 3360031.67; 565850.75, 3360021.55; 565857.10, 3360005.85; 565864.71, 3360002.85; 565874.64, 3360003.10; 565885.06, 3359999.80; 565890.85, 3359990.01; 565897.62, 3359989.43; 565906.33, 3359990.83; 565911.61, 3359986.22; 565917.25, 3359983.18; 565929.51, 3359985.42; 565932.65, 3359970.89; 565939.68, 3359975.80; 565947.64, 3359975.19; 565946.99, 3359969.24; 565958.42, 3359973.08; 565963.68, 3359969.22; 565966.15, 3359965.72; 565972.62, 3359961.51; 565975.07, 3359958.45; 565986.16, 3359959.91; 565997.72, 3359958.58; 566005.34, 3359956.02; 566007.50, 3359948.96; 566017.17, 3359943.20; 566010.47, 3359940.66; 566011.06, 3359933.56; 566018.61, 3359932.94; 566022.34, 3359927.10; 566028.95, 3359932.82; 566035.43, 3359927.80; 566041.93, 3359922.40; 566050.50, 3359913.13; 566057.66, 3359916.99; 566066.75, 3359919.21; 566076.94, 3359920.15; 566079.91, 3359912.67; 566077.34, 3359908.73; 566082.12, 3359903.98; 566093.56, 3359906.64; 566104.80, 3359907.04; 566109.70, 3359896.74; 566123.29, 3359893.89; 566127.00, 3359888.49; 566136.57, 3359886.73; 566144.51, 3359887.30; 566144.72, 3359878.57; 566149.95, 3359875.95; 566158.26, 3359877.72; 566167.75, 3359879.14; 566175.93, 3359869.48; 566182.85, 3359863.28; 566189.77, 3359856.71; 566197.51, 3359864.83; 566203.13, 3359862.60; 566207.27, 3359871.81; 566202.28, 3359880.80; 566202.44, 3359890.36; 566194.67, 3359899.28; 566187.28, 3359908.96; 566177.90, 3359918.66;

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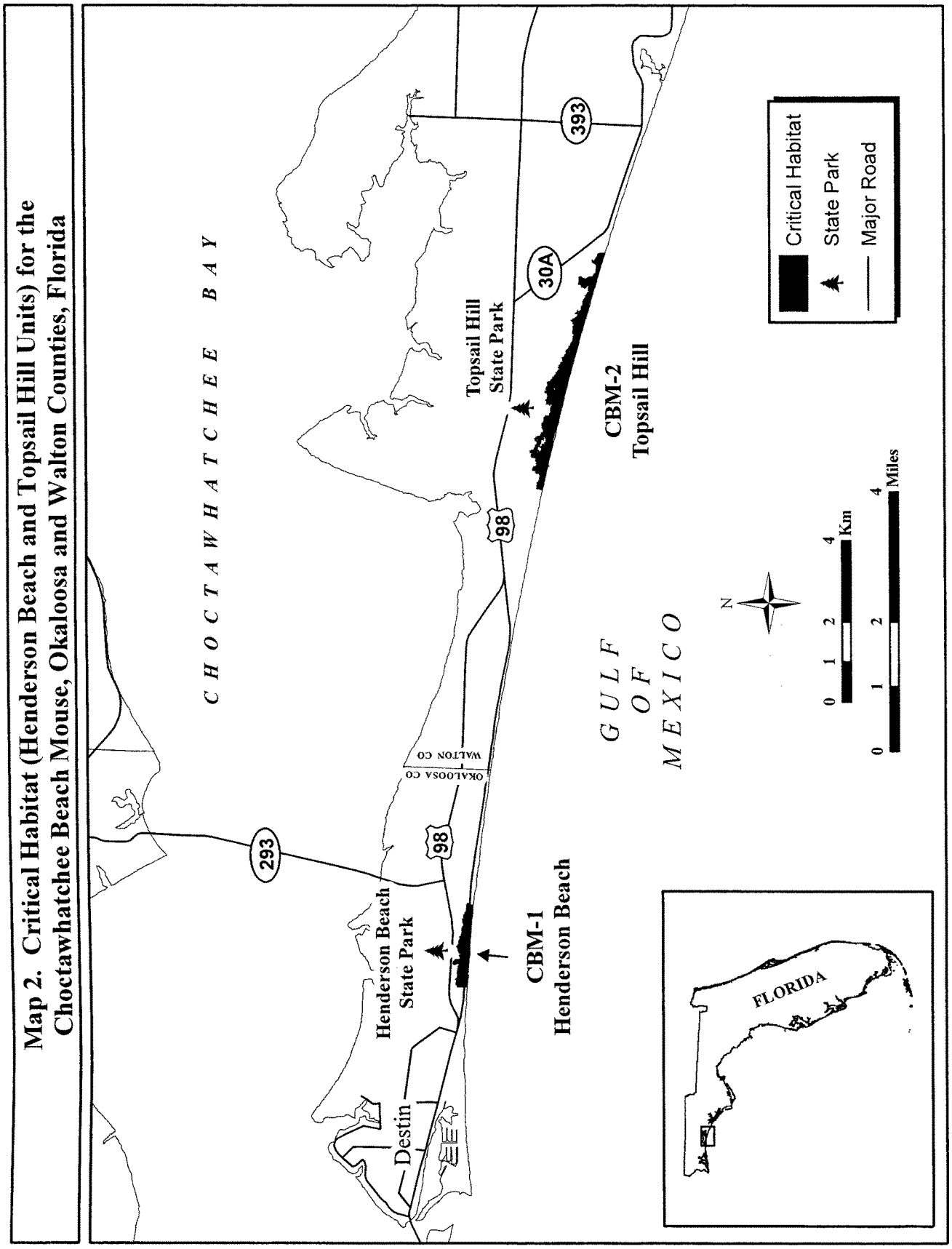
(iii) Note: Map 2, Units 1 and 2 of Choctowhatchee beach mouse, follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(8) CBM—Unit 3: Grayton Beach Unit, Walton County, Florida.

(i) *General Description:* This unit encompasses essential features of beach

mouse habitat within the boundary of Grayton Beach State Park, as well as adjacent private lands and inholdings, from 0.3 mi west of the inlet of Alligator Lake east to 0.8 mi west of Seagrove Beach and the area from the MHWL north to the seaward extent of human development or maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Grayton Beach, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 578136.10, 3356102.15; 578222.77, 3356036.73; 578222.16, 3356000.38; 578077.28, 3356072.88; 578050.50, 3356079.33; 578039.08, 3356101.21; 578064.26, 3356111.33; 578073.84, 3356125.86; 578094.18, 3356138.66; 578138.88, 3356162.31; 578160.71, 3356162.85; 578185.78, 3356145.69; 578197.27, 3356130.86; 578209.61, 3356114.13; 578204.08, 3356113.24; 578206.15, 3356109.73; 578211.73, 3356108.62; 578209.79, 3356091.16; 578207.08, 3356088.34; 578209.49, 3356086.78; 578215.44, 3356087.37; 578218.54, 3356091.00; 578222.89, 3356091.48; 578232.20, 3356084.60; 578226.62, 3356085.65; 578218.40, 3356080.26; 578219.72, 3356076.98; 578223.42, 3356075.39; 578233.12, 3356074.20; 578230.76, 3356069.71; 578226.33, 3356069.10; 578223.25, 3356065.84; 578223.24, 3356065.02; 578222.77, 3356036.73

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(9) CBM—Unit 4: Deer Lake Unit, Walton County, Florida.

(i) *General Description:* This unit encompasses essential features of beach mouse habitat within the boundary of Deer Lake State Park as well as adjacent private lands from approximately 1 mi east of the Camp Creek Lake inlet west to approximately 0.5 mi west of the inlet of Deer Lake and the area from the MHWL north to the seaward extent of maritime forest or human development. The area excluded within this unit is 0.5 mi west of the Camp Creek Lake inlet, to 0.5 mi east of the Camp Creek Lake inlet.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Point Washington, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 587936.95, 3352709.03; 588073.10, 3352728.14; 587973.52, 3352737.87; 587972.96, 3352695.34; 587965.98, 3352695.17; 587954.26, 3352687.32; 587937.81, 3352677.80; 587956.31, 3352684.63; 587965.27, 3352691.59; 587972.94, 3352691.10; 587972.73, 3352623.17; 587921.05, 3352640.80; 587885.12, 3352655.89; 587858.02, 3352670.32; 587833.03, 3352673.19; 587798.42, 3352686.69; 587832.63, 3352716.88; 587832.11, 3352741.78; 587891.48, 3352734.89; 587904.93, 3352734.48; 587907.05, 3352744.83; 587903.48, 3352763.78; 587890.72, 3352765.40; 587889.84, 3352780.55; 587888.20, 3352786.75; 587906.94, 3352784.03; 587924.42, 3352784.47; 587943.15, 3352781.81; 587945.35, 3352773.50; 587944.88, 3352741.40; 587962.39, 3352740.65; 587961.47, 3352777.46; 587970.93, 3352783.25; 587978.85, 3352784.26; 587990.99, 3352775.45; 587992.36, 3352784.60; 587993.06, 3352788.61; 588000.13, 3352791.54; 588000.76, 3352798.29; 587997.66, 3352810.89; 587993.77, 3352823.09; 587999.46, 3352833.91; 587995.02, 3352848.97; 587997.19, 3352857.32; 588011.25, 3352855.61; 588020.79, 3352855.10; 588021.85, 3352812.68; 588019.25, 3352805.87; 588020.50, 3352787.30; 588038.35, 3352788.56; 588037.08, 3352815.87; 588035.92, 3352838.00; 588035.40, 3352855.09; 588044.97, 3352853.39; 588047.17, 3352844.71; 588055.98, 3352842.12; 588067.52, 3352841.66; 588075.49, 3352850.08; 588074.08, 3352768.16; 588073.10, 3352728.14

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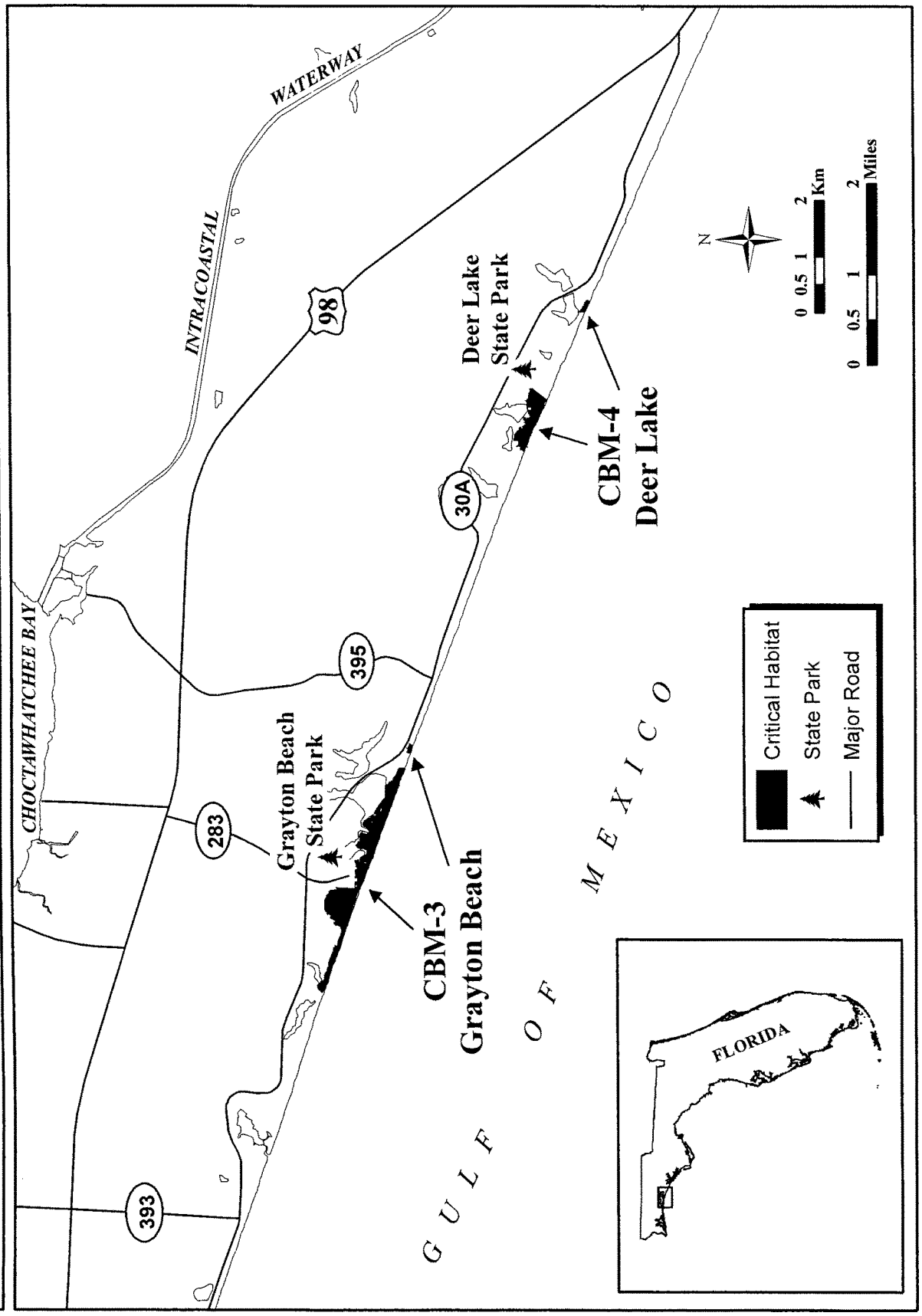
(iii) Note: Map 3, Units 3 and 4 of Choctowhatchee beach mouse, follows:

BILLING CODE 4310–55–P

Map 3. Critical Habitat (Grayton Beach and Deer Lake Units) for the Choctawhatchee Beach Mouse, Walton County, Florida



BILLING CODE 4310–55–C

(10) CBM—Unit 5: West Crooked Island/Shell Island Unit, Bay County, Florida.

(i) *General Description:* This unit encompasses essential features of beach mouse habitat within the boundaries of St. Andrew State Park mainland from 0.1 mi (0.2 km) east of trailer park road east to the entrance channel of St. Andrew Sound, Shell Island east of the entrance of St. Andrew Sound east to East Pass, and West Crooked Island southwest of East Bay and east of the entrance channel of St. Andrew Sound, and areas from the MHWL north to the seaward extent of the maritime forest. Shell Island consists of State lands, Tyndall Air Force Base lands, as well as small private inholdings.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Panama City, Beacon Beach, and Long Point, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 620962.07, 3334745.86; 620978.22, 3334694.43; 620963.77, 3334700.01; 620976.15, 3334719.99; 620956.70, 3334712.88; 620956.66, 3334745.41; 620948.27, 3334763.05; 620928.14, 3334789.51; 620941.26, 3334789.03; 620978.37, 3334767.36; 620984.33, 3334751.28; 620994.82, 3334745.55; 620996.00, 3334720.43; 620977.67, 3334704.34; 620978.22, 3334694.43

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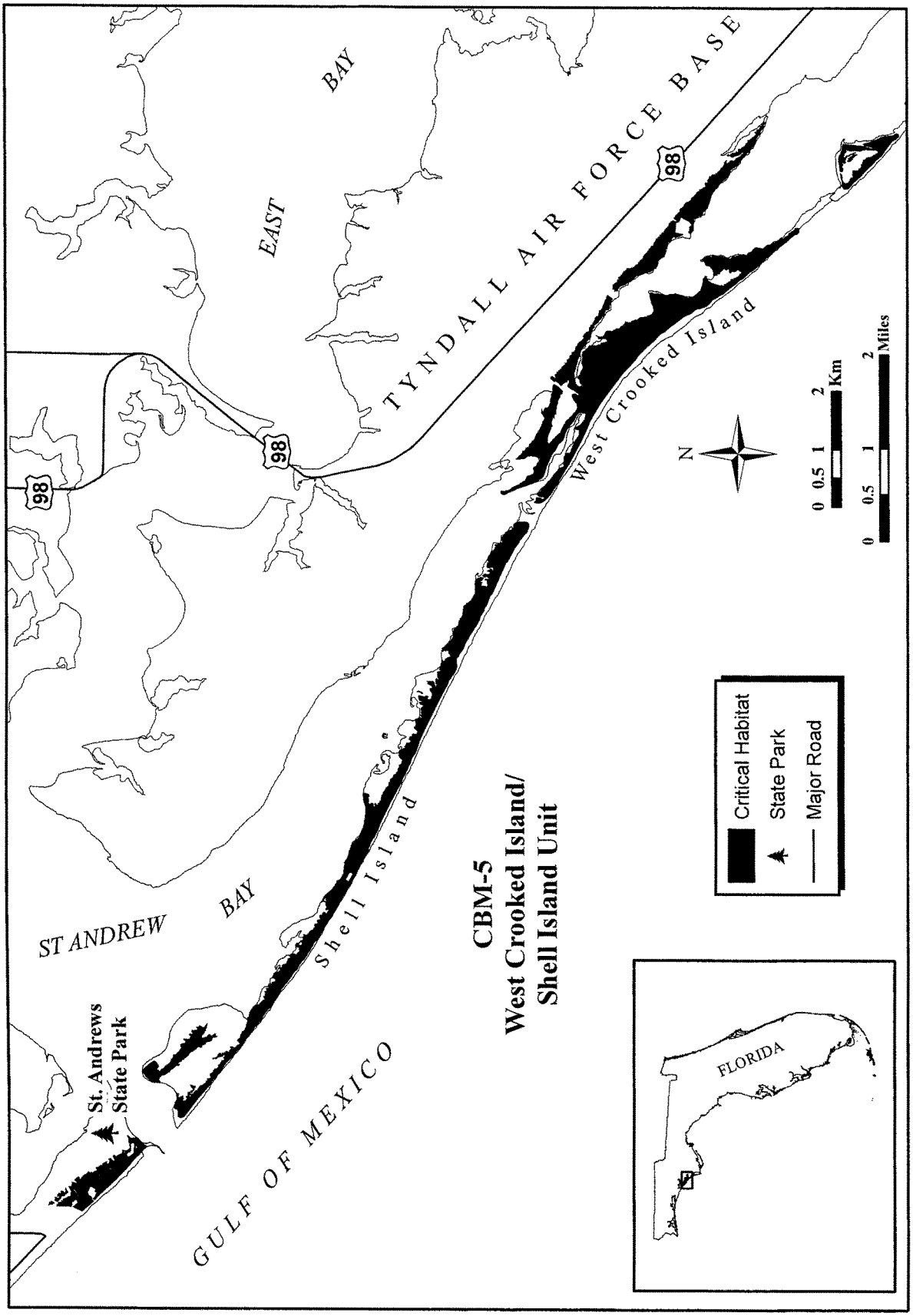
(iii) Note: Map 4, Unit 5 of Choctowhatchee beach mouse, follows:

BILLING CODE 4310–55–P

Map 4. Critical Habitat (West Crooked Island/Shell Island Unit) for the Choctawhatchee Beach Mouse, Bay County, Florida



BILLING CODE 4310–55–C

Perdido Key Beach Mouse (*Peromyscus polionotus trissyllepsis*)

(1) Critical habitat units are depicted for Escambia County, Florida, and Baldwin County, Alabama, on the maps below.

(2) The primary constituent elements of critical habitat for the Perdido Key beach mouse are the habitat components that provide:

(i) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites;

(ii) Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators;

(iii) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge;

(iv) Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and re-colonization of locally extirpated areas; and

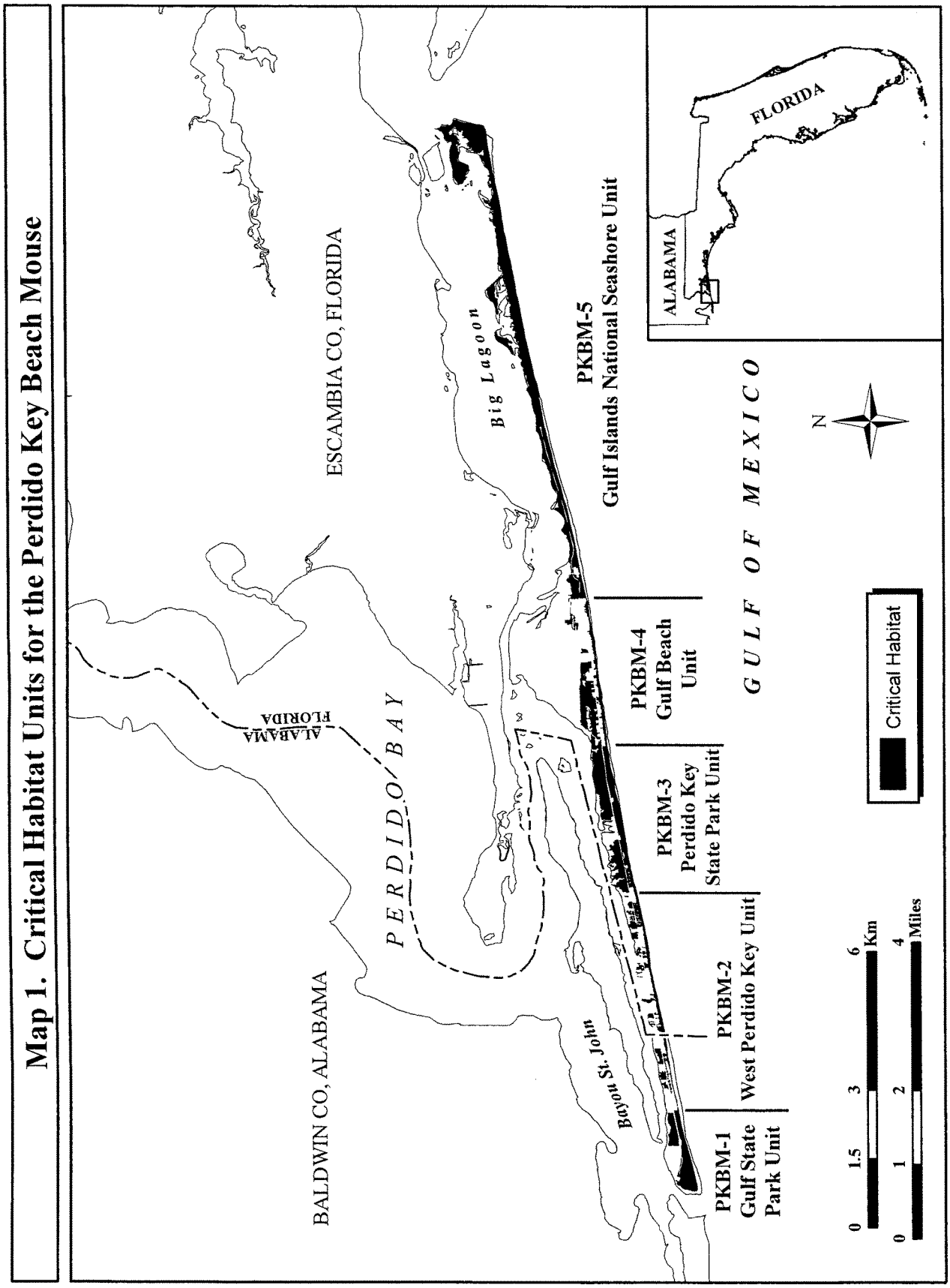
(v) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, driveways, and roads, and the land on which such structures are located.

(4) *Critical Habitat Map Units.* Data layers defining map units were created by delineating habitats that contained one or more of the primary constituent elements defined in paragraph (2) of this entry over 1999 and 2004 digital ortho photography at a scale of at least 1:4000.

(5) Note: Map 1 Index of Critical Habitat Units for the Perdido Key beach mouse, follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(6) PKBM—Unit 1: Gulf State Park Unit, Baldwin County, Alabama.

(i) *General Description:* This unit encompasses essential features of beach

mouse habitat within the boundary of Gulf State Park from the west tip of Perdido Key at Perdido Pass east to approximately 1 mile (mi) (1.6 kilometers (km)) west of where the Alabama-Florida State line bisects Perdido Key and the area from the mean high water line (MHWL) north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Orange Beach, Alabama, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 447646.90, 3349472.01; 447492.27, 3349555.80; 447493.46, 3349550.54; 447492.60, 3349542.06; 447487.33, 3349540.88; 447466.10, 3349542.49; 447426.82, 3349545.78; 447375.87, 3349549.84; 447340.75, 3349556.40; 447277.86, 3349571.81; 447233.09, 3349583.43; 447195.90, 3349587.83; 447123.74, 3349592.44; 447082.29, 3349597.80; 447078.83, 3349609.34; 447082.64, 3349627.40; 447085.56, 3349638.04; 447109.06, 3349630.15; 447163.55, 3349611.36; 447228.62, 3349592.84; 447286.11, 3349581.52; 447357.41, 3349568.43; 447388.22, 3349564.94; 447403.20, 3349558.95; 447426.52, 3349558.45; 447454.05, 3349559.11; 447492.27, 3349555.80; 447753.29, 3349711.25; 447760.77, 3349736.04; 447763.66, 3349748.00; 447753.63, 3349752.12; 447755.48, 3349774.36; 447753.59, 3349787.00; 447754.47, 3349799.71; 447754.38, 3349820.32; 447753.74, 3349830.21; 447759.54, 3349836.69; 447811.82, 3349827.24; 447838.09, 3349825.09; 447856.72, 3349827.12; 447881.09, 3349821.36; 447907.36, 3349819.61; 447927.64, 3349818.91; 447956.65, 3349818.81; 447976.22, 3349830.77; 447992.63, 3349834.16; 448018.40, 3349831.12; 448037.09, 3349811.22; 448055.79, 3349802.71; 448074.40, 3349792.17; 448096.41, 3349792.70; 448114.76, 3349793.13; 448137.03, 3349782.68; 448148.04, 3349782.94; 448177.22, 3349790.96; 448191.45, 3349809.62; 448209.62, 3349817.37; 448223.94, 3349832.37; 448249.45, 3349840.30; 448279.80, 3349846.35; 448291.40, 3349859.70; 448311.29, 3349863.75; 448329.64, 3349864.19; 448368.33, 3349865.90; 448395.77, 3349862.11; 448408.04, 3349866.45; 448418.04, 3349851.65; 448427.89, 3349850.68; 448440.83, 3349857.72; 448448.65, 3349863.06; 448458.22, 3349861.71; 448474.31, 3349870.02; 448470.39, 3349848.77; 448469.37, 3349841.61; 448469.94, 3349834.09; 448470.06, 3349746.49; 448388.10, 3349722.76; 448274.81, 3349701.74; 448066.73, 3349652.82; 447964.62, 3349624.75; 447754.92, 3349599.15; 447753.29, 3349711.25; 446828.18, 3349177.08; 446788.74, 3349181.69; 446769.28, 3349208.86; 446767.28, 3349247.92; 446775.25, 3349280.06; 446782.18, 3349322.24; 446795.01, 3349350.69; 446801.51, 3349377.80; 446802.73, 3349409.54; 446811.99, 3349454.15; 446837.56, 3349514.61; 446896.76, 3349564.39; 446887.98, 3349582.41; 446896.11, 3349607.97; 446929.73, 3349630.57; 446953.02, 3349637.08; 446969.73, 3349626.62; 446984.14, 3349637.95; 446975.34, 3349650.69; 447000.06, 3349663.57; 447022.45, 3349657.76; 446993.88, 3349639.64; 446978.89, 3349585.37; 447068.47, 3349561.35; 447073.43, 3349586.44; 447084.44, 3349589.07; 447091.86, 3349585.59; 447128.34, 3349583.00; 447157.81, 3349580.13; 447188.50, 3349576.11; 447214.39, 3349573.56; 447263.87, 3349564.83; 447299.49, 3349553.79; 447327.56, 3349543.36; 447355.96, 3349535.32; 447401.54, 3349530.72; 447419.98, 3349527.50; 447464.09, 3349524.89; 447482.44, 3349525.33; 447508.12, 3349525.95; 447511.26, 3349547.99; 447515.63, 3349553.80; 447584.64, 3349549.75; 447669.02, 3349551.76; 447727.64, 3349556.83; 447771.68, 3349563.09; 447773.34, 3349543.71; 447819.71, 3349544.38; 447859.81, 3349556.32; 447908.03, 3349560.00; 447904.75, 3349580.93; 448004.65, 3349606.71; 448136.88, 3349636.19; 448391.19, 3349691.65; 448518.76, 3349723.23; 448524.37, 3349644.98; 448526.52, 3349626.07; 448221.97, 3349557.49; 447946.22, 3349481.14; 447525.39, 3349356.93; 447160.19, 3349255.19; 446914.86, 3349191.20; 446828.18, 3349177.08.

(7) PKBM—Unit 2: West Perdido Key Unit, Escambia County, Florida and Baldwin County, Alabama.

(i) *General Description:* This unit encompasses essential features of beach mouse habitat from approximately 1 mi (1.6 km) west of where the Alabama-Florida State line bisects Perdido Key east to 2 mi (3.2 km) east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Orange Beach, Alabama, and Perdido Bay, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 449337.40, 3349820.75; 450150.23, 3349948.99; 450150.07, 3349948.96; 450110.12, 3349941.87; 450036.74, 3349928.41; 449865.78, 3349900.01; 449835.15, 3349896.11; 449690.43, 3349877.85; 449581.98, 3349849.89; 449474.18, 3349830.25; 449291.67, 3349805.96; 449065.07, 3349756.15; 448929.16, 3349724.36; 448875.44, 3349711.41; 448743.75, 3349669.31; 448625.71, 3349643.24; 448526.52, 3349626.07; 448524.37, 3349644.98; 448582.14, 3349648.54; 448616.00, 3349650.40; 448613.50, 3349666.20; 448653.71, 3349668.22; 448707.46, 3349680.07; 448743.29, 3349688.33; 448749.74, 3349684.25; 448769.63, 3349694.24; 448784.54, 3349701.88; 448869.86, 3349722.95; 448909.84, 3349734.47; 448934.12, 3349738.22; 449040.54, 3349762.96; 449044.67, 3349767.29; 449126.91, 3349784.05; 449134.20, 3349789.51; 449165.89, 3349793.44; 449202.65, 3349802.14; 449234.33, 3349810.93; 449243.92, 3349809.05; 449309.24, 3349824.35; 449309.24, 3349824.35; 449309.03, 3349832.80; 449303.36, 3349848.52; 449299.95, 3349857.95; 449300.81, 3349866.43; 449296.47, 3349870.55; 449289.06, 3349870.38; 449288.58, 3349890.45; 449323.34, 3349898.68; 449326.60, 3349895.58; 449326.77, 3349888.19; 449328.04, 3349879.76; 449327.05, 3349876.57; 449322.97, 3349870.13; 449323.12, 3349863.79; 449324.31, 3349858.53; 449326.55, 3349853.30; 449327.79, 3349845.93; 449327.99, 3349837.48; 449328.02, 3349827.71; 449349.32, 3349831.65; 449351.57, 3349826.42; 449405.37, 3349835.22; 449424.38, 3349838.73; 449471.57, 3349851.46; 449471.73, 3349857.40; 449598.16, 3349884.71; 449597.83, 3349942.84; 449467.18, 3349912.24; 449415.42, 3349902.99; 449412.39, 3349896.58; 449407.02, 3349899.62; 449400.21, 3349918.48; 449467.76, 3349932.33; 449630.01, 3349967.31; 449632.67, 3349947.90; 449633.28, 3349922.55; 449635.69, 3349907.20; 449651.69, 3349906.08; 449655.72, 3349914.63; 449657.84, 3349914.68; 449659.22, 3349900.97; 449671.93, 3349901.28; 449704.63, 3349909.34; 449701.77, 3349935.20; 449697.15, 3349950.95; 449693.77, 3349959.32; 449695.36, 3349981.56; 449749.08, 3349994.47; 449749.23, 3349988.13; 449750.02, 3349955.38; 449752.10, 3349914.61; 449752.10, 3349914.61; 449784.74, 3349920.41; 449810.13, 3349923.00; 449829.12, 3349929.34; 449908.19, 3349946.03; 449906.59, 3349965.47; 449916.14, 3349964.64; 449939.36, 3349968.36; 449973.07, 3349976.57; 449987.92, 3349975.87; 449997.55, 3349971.87; 450020.80, 3349974.54; 450046.16, 3349979.98; 450059.87, 3349979.70; 450073.54, 3349984.26; 450083.98, 3349993.57; 450150.23, 3350009.73; 450150.42, 3350009.76; 450150.23, 3349948.99; 449645.50, 3350072.32; 449649.58, 3350078.76; 449664.33, 3350082.29; 449686.52, 3350084.93; 449692.67, 3350093.53; 449689.18, 3350106.13; 449699.78, 3350109.11; 449698.49,

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(8) PKBM—Unit 3: Perdido Key State Park Unit, Escambia County, Florida.

(i) *General Description:* This unit encompasses essential features of beach mouse habitat within the boundary of Perdido Key State Park from approximately 2 mi (3.2 km) east of the Alabama-Florida State line to 4 mi (6.4 km) east of the State line and the area from the MHWL north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Perdido Bay, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 455621.62, 3351458.88; 453257.58, 3350904.44; 453254.26, 3350917.23; 453243.75, 3350913.81; 453240.29, 3350925.36; 453247.80, 3350930.76; 453266.31, 3350945.01; 453287.10, 3350948.75; 453293.56, 3350957.28; 453304.30, 3350951.20; 453307.22, 3350961.84; 453312.72, 3350973.93; 453318.59, 3350973.74; 453318.26, 3350987.47; 453306.46, 3350993.53; 453320.42, 3351005.30; 453354.81, 3351009.49; 453352.19, 3351030.56; 453343.44, 3351041.98; 453350.93, 3351069.98; 453334.30, 3351069.24; 453335.11, 3351079.83; 453352.32, 3351078.33; 453351.11, 3351095.75; 453383.68, 3351130.67; 453392.08, 3351134.05; 453401.76, 3351127.94; 453398.49, 3351117.04; 453399.11, 3351091.42; 453407.07, 3351065.97; 453425.39, 3351063.44; 453442.62, 3351059.15; 453457.24, 3351067.96; 453455.20, 3351048.81; 453459.35, 3351038.88; 453458.55, 3351022.61; 453468.79, 3351028.07; 453479.38, 3351028.32; 453481.65, 3351022.03; 453488.13, 3351016.90; 453496.35, 3351016.84; 453509.90, 3351018.69; 453515.14, 3350998.97; 453518.96, 3350988.78; 453513.14, 3350983.09; 453523.52, 3350964.71; 453521.52, 3350950.06; 453530.87, 3350939.91; 453531.03, 3350916.53; 453541.83, 3350896.97; 453550.25, 3350901.06; 453554.18, 3350913.84; 453550.50, 3350934.89; 453541.67, 3350949.48; 453545.40, 3350970.71; 453555.76, 3350988.96; 453555.40, 3351003.60; 453550.66, 3351016.29; 453543.61, 3351036.28; 453531.06, 3351038.01; 453520.97, 3351061.03; 453519.56, 3351075.79; 453527.61, 3351090.83; 453541.93, 3351105.82; 453530.48, 3351123.86; 453526.55, 3351134.75; 453515.81, 3351123.51; 453508.38, 3351126.99; 453502.88, 3351152.55; 453502.62, 3351163.12; 453509.93, 3351167.52; 453529.60, 3351160.46; 453537.21, 3351149.66; 453541.05, 3351142.42; 453555.99, 3351131.79; 453560.54, 3351133.85; 453567.88, 3351137.20; 453589.10, 3351128.92; 453600.02, 3351132.85; 453599.58, 3351151.15; 453581.16, 3351157.60; 453569.70, 3351172.41; 453595.20, 3351180.34; 453606.30, 3351176.95; 453610.23, 3351166.05; 453610.41, 3351158.73;

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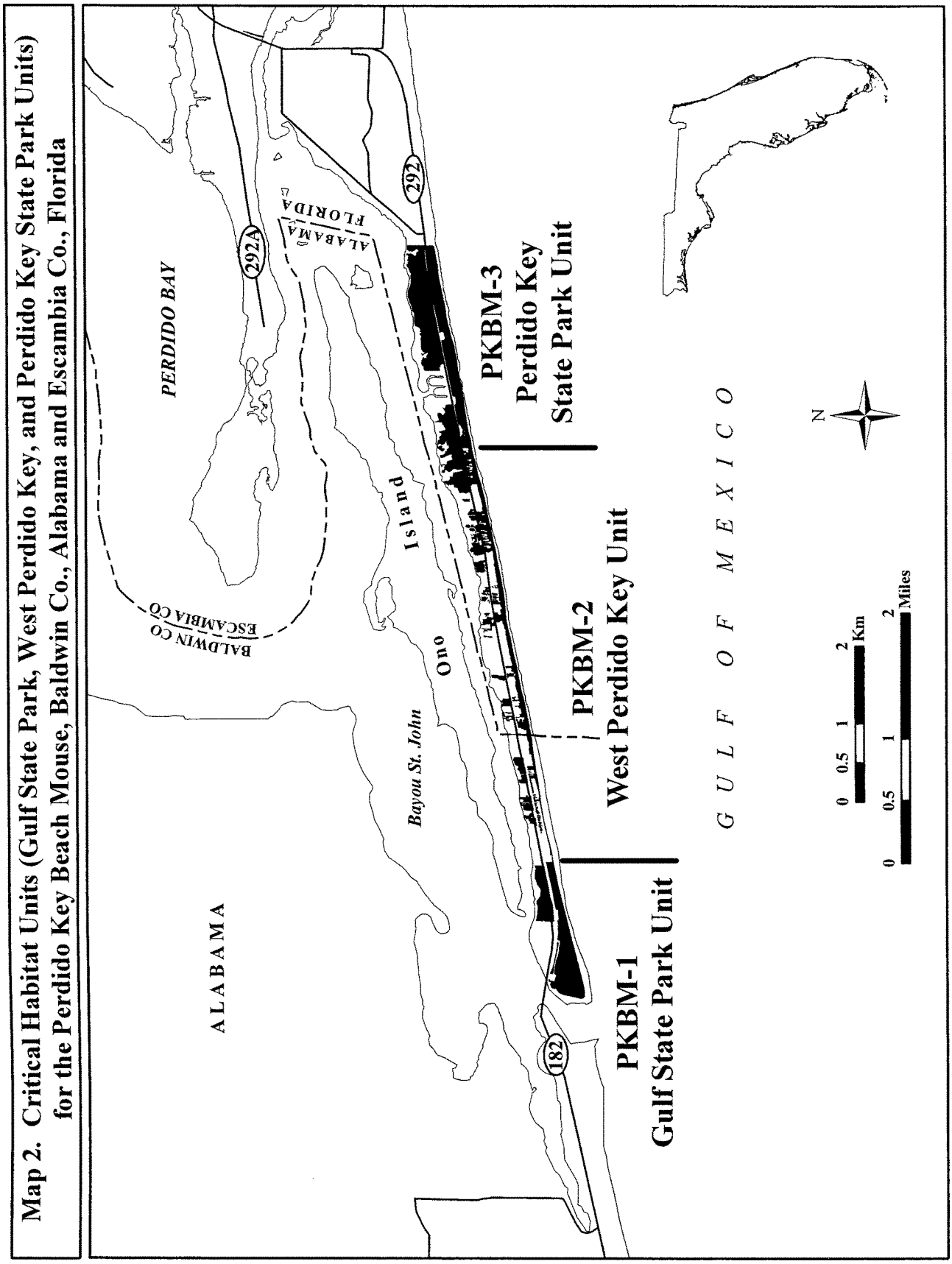
(iii) Note: Map 2, Units 1, 2, and 3 of Perdido Key beach mouse, follows:

BILLING CODE 4310–55–P



Map 2. Critical Habitat Units (Gulf State Park, West Perdido Key, and Perdido Key State Park Units) for the Perdido Key Beach Mouse, Baldwin Co., Alabama and Escambia Co., Florida

BILLING CODE 4310–55–C

(9) PKBM—Unit 4: Gulf Beach Unit, Escambia County, Florida.

(i) *General Description:* This unit includes essential features of beach

mouse habitat between Gulf Islands National Seashore and Perdido Key State Park from approximately 4 mi (3.2 km) east of the Alabama-Florida State line to 6 mi (9.6 km) east of the State line and areas from the MHWL north to the seaward extent of human development or maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Perdido Bay, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 457418.45, 3351766.05; 456424.33, 3351669.24; 456454.09, 3351669.95; 456460.85, 3351674.93; 456491.64, 3351678.43; 456523.29, 3351684.34; 456532.43, 3351694.62; 456550.37, 3351698.07; 456566.16, 3351685.76; 456578.84, 3351687.26; 456601.78, 3351691.77; 456612.31, 3351687.85; 456622.42, 3351676.01; 456635.18, 3351673.94; 456644.26, 3351676.53; 456637.88, 3351682.12; 456636.62, 3351690.54; 456647.33, 3351685.52; 456648.56, 3351695.66; 456653.70, 3351696.98; 456671.96, 3351681.16; 456634.44, 3351637.87; 456593.26, 3351588.26; 456571.55, 3351609.94; 456551.71, 3351597.83; 456536.99, 3351593.25; 456516.87, 3351592.77; 456495.54, 3351598.60; 456490.42, 3351591.08; 456473.22, 3351601.24; 456469.17, 3351593.74; 456464.83, 3351597.87; 456459.69, 3351591.40; 456455.40, 3351593.41; 456439.82, 3351580.36; 456444.21, 3351574.12; 456438.99, 3351570.82; 456444.42, 3351565.67; 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(10) PKBM—Unit 5: Gulf Islands National Seashore, Escambia County, Florida.

(i) *General Description:* This unit encompasses essential features of beach mouse habitat within the boundary of Gulf Islands National Seashore–Perdido Key Area (also referred to as Johnson Beach) from approximately 6 mi (9.6 km) east of the Alabama-Florida State line to the eastern tip of Perdido Key at Pensacola Bay and the area from the MHWL north to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle map Perdido Bay, and Fort Barrancas, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 464806.54, 3353248.09; 460167.32, 3352161.40; 460112.98, 3352141.46; 460076.54, 3352115.69; 460062.15, 3352097.38; 460032.76, 3352041.24; 460015.51, 3352024.29; 459999.54, 3352012.96; 459981.75, 3352007.62; 459961.62, 3352003.59; 459912.92, 3352002.90; 459885.33, 3352003.88; 459852.28, 3352012.60; 459823.72, 3352011.33; 459799.52, 3352004.41; 459708.84, 3352005.84; 459649.57, 3352006.10; 459651.00, 3352185.21; 459662.18, 3352177.93; 459676.32, 3352192.77; 459689.75, 3352206.83; 459690.56, 3352217.42; 459692.37, 3352230.15; 459701.27, 3352237.54; 459706.13, 3352230.01; 459707.87, 3352201.51; 459715.92, 3352173.67; 459726.90, 3352160.16; 459735.50, 3352155.08; 459753.65, 3352157.93; 459766.21, 3352155.82; 459768.17, 3352162.20; 459764.82, 3352169.52; 459771.02, 3352176.01; 459828.76, 3352173.60; 459847.49, 3352187.53; 459859.01, 3352171.16; 459890.74, 3352190.15; 459920.71, 3352199.20; 459961.02, 3352208.09; 459971.68, 3352244.02; 459986.72, 3352263.01; 459997.45, 3352279.12; 460011.09, 3352290.15; 460029.75, 3352290.60; 460041.81, 3352284.94; 460057.73, 3352267.49; 460066.23, 3352260.95; 460062.89, 3352234.71; 460077.34, 3352228.32; 460081.35, 3352243.48; 460099.25, 3352242.72; 460115.14, 3352209.80; 460127.02, 3352244.18; 460142.28, 3352237.41; 460142.29, 3352204.11; 460168.97, 3352186.72; 460167.32, 3352161.40; 464469.51, 3353268.58; 464465.93, 3353285.40; 464478.53, 3353289.94; 464496.58, 3353288.25; 464510.32, 3353289.64; 464517.47, 3353298.91; 464527.19, 3353293.22; 464538.68, 3353299.84; 464546.16, 3353303.93; 464551.08, 3353312.82; 464565.02, 3353310.56; 464583.88, 3353314.66; 464589.59, 3353306.59; 464608.58, 3353309.82; 464615.42, 3353324.93; 464620.04, 3353309.19; 464628.67, 3353300.39; 464636.93, 3353311.71; 464636.67, 3353322.27; 464655.48, 3353333.29; 464659.38, 3353347.13; 464669.74, 3353356.89; 464682.24, 3353365.65; 464695.60, 3353375.33; 464707.71, 3353364.14; 464724.85, 3353364.93; 464739.01, 3353370.82; 464756.44, 3353364.26; 464776.94, 3353348.89; 464801.65, 3353334.69; 464829.75, 3353355.45; 464822.89, 3353376.42; 464829.74, 3353397.97; 464852.31, 3353417.54; 464891.50, 3353430.92; 464926.62, 3353424.36; 464974.63, 3353410.72; 464999.13, 3353408.38; 465012.11, 3353413.85; 465010.83, 3353420.05; 465000.19, 3353421.91; 464993.74, 3353425.98; 464995.65, 3353434.49; 465008.36, 3353434.79; 465021.06, 3353435.10; 465024.37, 3353429.89; 465041.54, 3353420.79; 465063.75, 3353422.38; 465082.96, 3353416.50; 465106.39, 3353425.23; 465141.26, 3353442.20; 465160.15, 3353448.04; 465168.69, 3353447.09; 465177.29, 3353442.01; 465185.03, 3353428.46; 465205.15, 3353428.94; 465204.97, 3353436.33; 465190.44, 3353465.70; 465196.28, 3353470.59; 465200.62, 3353488.14; 465210.45, 3353476.09; 465228.25, 3353481.29; 465248.17, 3353476.99; 465264.92, 3353474.62; 465275.80, 3353483.04; 465282.37, 3353492.08; 465273.30, 3353505.74; 465268.06, 3353517.13; 465275.24, 3353526.82; 465280.25, 3353538.57; 465288.65, 3353541.94; 465301.66, 3353529.57; 465291.53, 3353510.30; 465320.61, 3353504.50; 465337.73, 3353507.58; 465349.22, 3353520.64; 465369.60, 3353515.98; 465371.35, 3353493.03; 465389.63, 3353492.68; 465403.76, 3353478.50; 465410.11, 3353483.66; 465424.43, 3353499.46; 465432.40, 3353517.01; 465421.97, 3353554.02; 465446.44, 3353560.55; 465460.12, 3353553.75; 465473.41, 3353546.14; 465472.56, 3353531.85; 465491.26, 3353530.71; 465488.14, 3353544.91; 465502.26, 3353552.38; 465526.05, 3353554.54; 465528.75, 3353541.35;

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(iii) Note: Map 3, Units 4 and 5 of Perdido Key beach mouse, follows:

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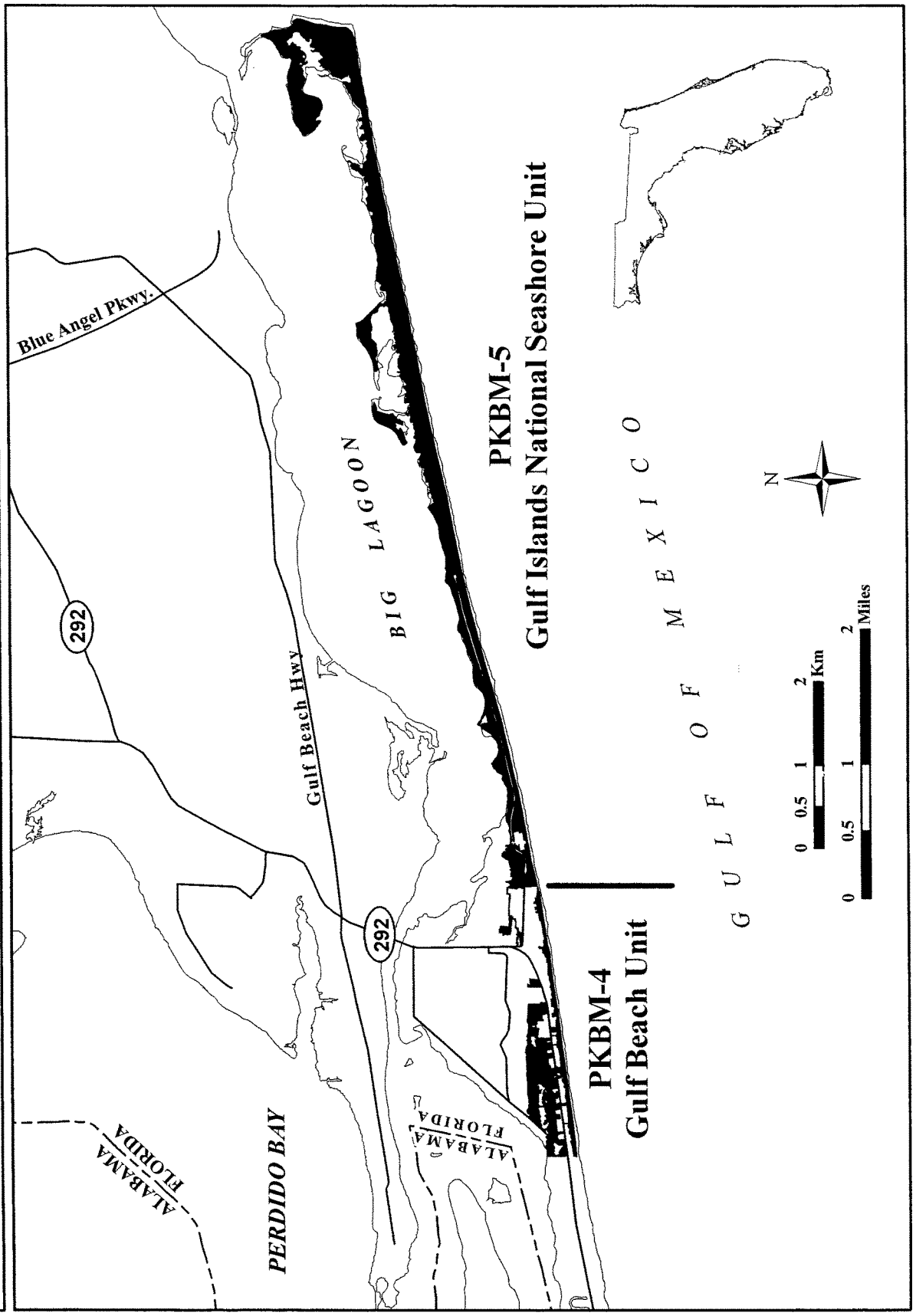
Map 3. Critical Habitat (Gulf Beach and Gulf Islands National Seashore Units) for the Perdido Key Beach Mouse, Escambia Co., Florida



St. Andrew Beach Mouse (*Peromyscus polionotus peninsularis*)

(1) Critical habitat units are depicted for Bay and Gulf Counties, Florida, on the maps below.

(2) The primary constituent elements of critical habitat for the St. Andrew beach mouse are the habitat components that provide:

(i) A contiguous mosaic of primary, secondary, and scrub vegetation and dune structure, with a balanced level of competition and predation and few or no competitive or predaceous nonnative species present, that collectively provide foraging opportunities, cover, and burrow sites;

(ii) Primary and secondary dunes, generally dominated by sea oats (*Uniola paniculata*), that despite occasional temporary impacts and reconfiguration from tropical storms and hurricanes, provide abundant food resources, burrow sites, and protection from predators;

(iii) Scrub dunes, generally dominated by scrub oaks (*Quercus* spp.), that provide food resources and burrow sites, and provide elevated refugia during and after intense flooding due to rainfall and/or hurricane-induced storm surge;

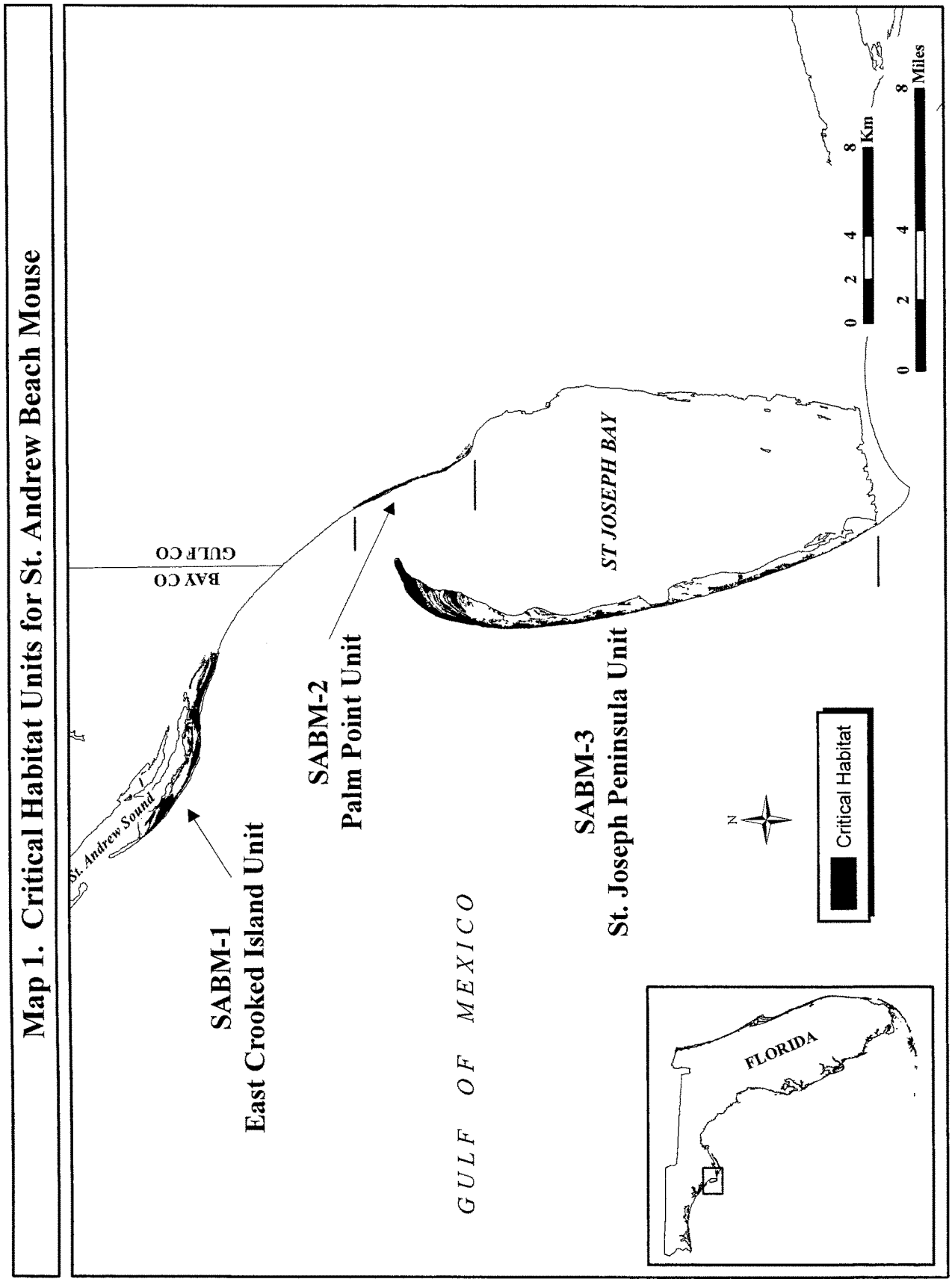
(iv) Functional, unobstructed habitat connections that facilitate genetic exchange, dispersal, natural exploratory movements, and re-colonization of locally extirpated areas; and

(v) A natural light regime within the coastal dune ecosystem, compatible with the nocturnal activity of beach mice, necessary for normal behavior, growth, and viability of all life stages.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, driveways, and roads, and the land on which such structures are located.

(4) *Critical Habitat Map Units*. Data layers defining map units were created by delineating habitats that contained one or more of the primary constituent elements defined in paragraph (2) of this entry over 1999 and 2004 digital ortho photography at a scale of at least 1:4000.

(5) Note: Map 1, Index Map of Critical Habitat Units for the St. Andrew beach mouse, follows:



BILLING CODE 4310–55–C

(6) SABM—Unit 1: East Crooked Island, Gulf County, Florida.

(i) *General Description:* This unit encompasses essential features of beach

mouse habitat on East Crooked Island from the entrance of St. Andrew Sound to 1 mi west of Mexico Beach, not including Raffield Peninsula, and the area from the mean high water level (MHWL) to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Crooked Island, and Beacon Hill, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 646283.88, 3315352.10; 649812.15, 3315231.74; 649817.14, 3315100.29; 649799.94, 3315101.91; 649795.72, 3315085.93; 649795.09, 3315069.00; 649818.11, 3315059.16; 649818.69, 3315059.73; 649828.47, 3314804.48; 649797.82, 3314814.32; 649715.63, 3314857.70; 649616.24, 3314889.55; 649501.16, 3314934.21; 649380.67, 3314961.82; 649351.82, 3314983.87; 649268.63, 3315003.96; 649183.89, 3315022.44; 649126.20, 3315040.01; 649045.29, 3315053.82; 648963.34, 3315066.55; 648874.83, 3315087.57; 648799.32, 3315097.30; 648730.28, 3315089.69; 648462.28, 3315081.88; 648355.01, 3315090.27; 648289.95, 3315084.93; 648245.03, 3315079.56; 648200.14, 3315073.15; 648126.71, 3315063.89; 648082.76, 3315062.26; 647967.79, 3315039.27; 647801.76, 3315044.60; 647745.32, 3315054.80; 647669.58, 3315052.89; 647513.74, 3315032.76; 647362.84, 3315011.12; 647243.51, 3315014.06; 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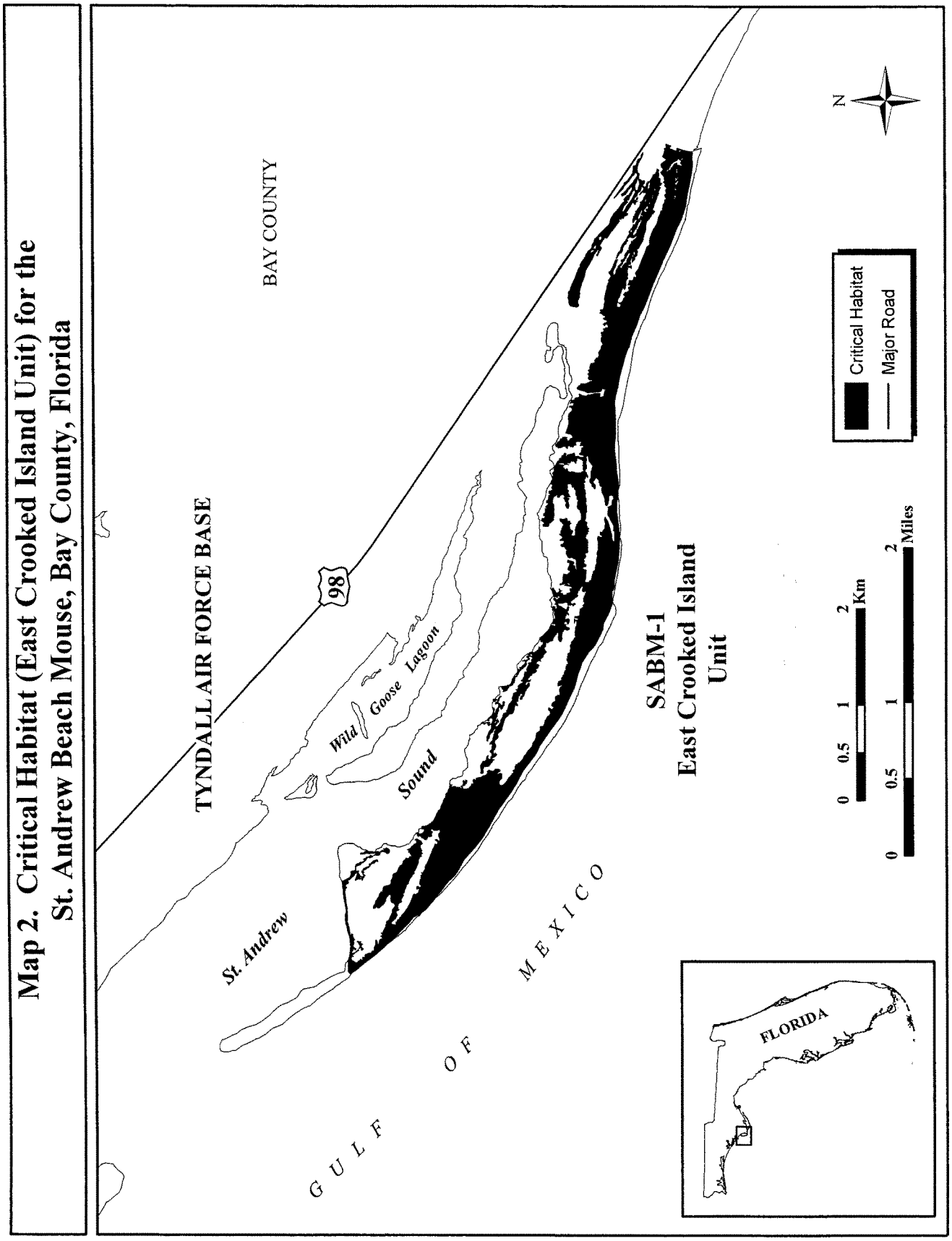
(iii) Note: Map 2, Unit 1 of St. Andrew beach mouse, follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) SABM—Unit 2: Palm Point Unit, Gulf County, Florida.

(i) *General Description:* This unit encompasses habitat from Palm Point

1.25 mi northwest of the inlet of the Gulf County Canal to St. Joe Beach and the area from the MHWL to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Overstreet, and Port St. Joe, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E,N): 659796.42, 3305196.68; 660977.54, 3303039.87; 660962.56, 3303050.59; 660949.61, 3303043.92; 660956.68, 3303031.81; 660969.13, 3303021.38; 660972.15, 3303012.34; 660978.45, 3303014.48; 660996.83, 3303000.32; 661011.71, 3302993.56; 661029.63, 3302976.97; 661040.82, 3302974.48; 661053.42, 3302963.70; 661062.63, 3302961.16; 661080.73, 3302952.89; 661093.77, 3302940.14; 661102.14, 3302939.56; 661128.09, 3302935.06; 661143.07, 3302924.34; 661155.47, 3302921.49; 661164.38, 3302914.97; 661222.28, 3302904.94; 661239.90, 3302899.84; 661258.68, 3302896.35; 661265.47, 3302894.93; 661295.59, 3302898.86; 661299.02, 3302889.04; 661306.92, 3302890.83; 661317.34, 3302887.52; 661326.72, 3302862.79; 661288.04, 3302870.49; 661224.73, 3302886.77; 661147.52, 3302908.95; 661107.38, 3302924.19; 661065.22, 3302940.57; 660989.51, 3302991.02; 660940.64, 3303021.49; 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(8) SABM—Unit 3: St. Joseph Peninsula, Gulf County, Florida.

(i) *General Description:* This unit encompasses essential features of beach mouse habitat within the boundary of St. Joseph Peninsula State Park (Park) as well as south of the Park to the peninsula's constriction north of Cape San Blas (also known as the ''stumphole'' region) and area from the MHWL to the seaward extent of the maritime forest.

(ii) *Coordinates:* From USGS 1:24,000 quadrangle maps Beacon Hill, St. Joseph Point, St. Joseph Peninsula, Cape San Blas, Florida, land bounded by the following UTM 16 NAD 83 coordinates (E, N): 655701.41, 3289444.44; 655573.99, 3289872.46; 655577.86, 3289860.67; 655599.16, 3289867.54; 655630.56, 3289867.94; 655639.95, 3289873.72; 655642.12, 3289882.50; 655646.73, 3289888.96; 655648.92, 3289896.54; 655666.68, 3289901.74; 655684.38, 3289862.16; 655703.42, 3289816.66; 655719.54, 3289776.64; 655758.42, 3289685.27; 655724.83, 3289677.29; 655706.23, 3289673.66; 655707.11, 3289686.36; 655712.46, 3289694.82; 655710.46, 3289705.45; 655703.43, 3289706.09; 655702.37, 3289716.36; 655707.41, 3289721.64; 655707.94, 3289731.96; 655702.12, 3289742.12; 655694.38, 3289749.45; 655707.49, 3289765.64; 655687.78, 3289774.65; 655679.46, 3289789.11; 655668.51, 3289813.41; 655653.23, 3289836.01; 655626.23, 3289819.08; 655644.29, 3289780.69; 655633.94, 3289781.23; 655625.75, 3289775.07; 655624.47, 3289762.76; 655633.87, 3289752.69; 655624.25, 3289739.76; 655630.94, 3289726.85; 655636.00, 3289715.48; 655644.52, 3289708.57; 655643.19, 3289698.23; 655643.89, 3289686.35; 655650.79, 3289680.58; 655650.20, 3289672.64; 655640.92, 3289662.10; 655643.89, 3289654.65; 655648.92, 3289644.47; 655642.66, 3289640.74; 655639.22, 3289635.11; 655597.13, 3289617.01; 655591.32, 3289626.77; 655584.20, 3289625.40; 655582.77, 3289619.02; 655568.40, 3289605.58; 655580.45, 3289584.88; 655597.74, 3289593.24; 655605.88, 3289601.37; 655603.25, 3289610.82; 655636.65, 3289626.72; 655648.97, 3289627.03; 655641.77, 3289612.98; 655635.21, 3289604.89; 655628.46, 3289588.86; 655633.24, 3289572.73; 655653.88, 3289574.05; 655669.73, 3289576.03; 655698.95, 3289584.30; 655709.87, 3289577.04; 655723.50, 3289588.08; 655788.29, 3289620.23; 655820.17, 3289538.60; 655848.15, 3289469.94; 655886.33, 3289390.45; 655894.52, 3289365.29; 655906.16, 3289345.37; 655934.16, 3289322.69; 655935.24, 3289323.27; 655935.76, 3289323.55; 655935.63, 3289310.24; 655935.12, 3289311.23; 655931.91, 3289317.48; 655919.27, 3289314.39; 655935.21, 3289269.88; 655935.20, 3289268.65; 655929.57, 3288719.84; 655929.07, 3288721.61; 655922.07, 3288746.50; 655903.78, 3288794.00; 655868.62, 3288863.66; 655850.75, 3288909.98; 655836.63, 3288965.51; 655831.18, 3288992.32; 655806.89, 3289041.25; 655787.41, 3289088.32; 655773.35, 3289141.08; 655747.87, 3289205.44; 655722.41, 3289253.55; 655707.05, 3289294.78; 655682.75, 3289344.10; 655632.18, 3289457.37; 655604.69, 3289538.33; 655574.82, 3289556.20; 655556.11, 3289604.08; 655539.79, 3289683.73; 655525.21, 3289741.63; 655508.96, 3289770.94; 655485.78, 3289838.53; 655484.05, 3289859.89; 655476.66, 3289885.07; 655467.68, 3289909.81; 655467.06, 3289912.69; 655553.51, 3289913.91; 655563.64, 3289904.30; 655566.88, 3289886.15; 655573.99, 3289872.46

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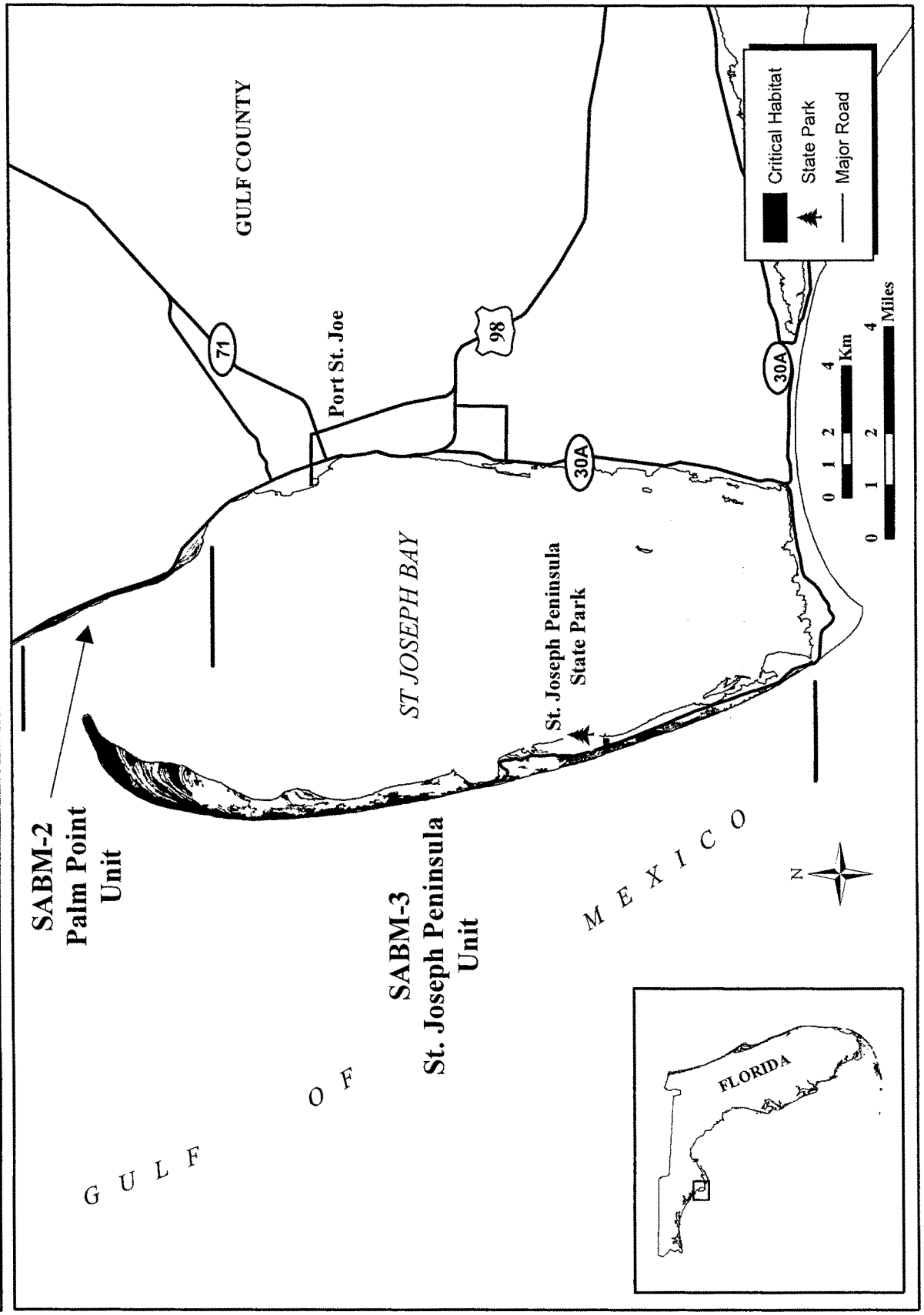
(iii) Note: Map 3, Units 2 and 3 of St. Andrew beach mouse, follows:

BILLING CODE 4310–55–P

Map 3. Critical Habitat (Palm Point and St. Joseph Peninsula Units) for the St. Andrew Beach Mouse, Gulf County, Florida



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Dated: September 25, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–8481 Filed 10–11–06; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
October 12, 2006

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 217 and 218

Railroad Operating Rules: Program of Operational Tests and Inspections; Railroad Operating Practices: Handling Equipment, Switches and Derails; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217 and 218

[Docket No. FRA–2006–25267]

RIN 2130–AB76

Railroad Operating Rules: Program of Operational Tests and Inspections; Railroad Operating Practices: Handling Equipment, Switches and Derails

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Human factors are the leading cause of train accidents, accounting for 38 percent of the total in 2005. Human factors also contribute to employee injuries. The proposed rule would establish greater accountability on the part of railroad management for administration of railroad programs of operational tests and inspections, and greater accountability on the part of railroad supervisors and employees for compliance with those railroad operating rules that are responsible for approximately half of the train accidents related to human factors. Furthermore, this rulemaking is intended to supplant the need for Emergency Order 24, which requires special handling, instruction and testing of railroad operating rules pertaining to hand-operated main track switches in non-signaled territory.

DATES: Written comments must be received by December 11, 2006. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to November 13, 2006, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA 2006–25267, may be submitted by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, 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.
- *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. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to 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: Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6255); or Alan H. Nagler, Senior Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

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VI. List of Subjects

I. Background and Authority

The Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides that, ''[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970''. The Secretary's responsibility under this provision and the balance of the railroad safety laws have been delegated to the Federal Railroad Administrator. 49 CFR 1.49(m). In the field of operating rules and practices, FRA has traditionally pursued a very conservative course of regulation, relying upon the industry to implement suitable railroad operating rules and mandating in the broadest of ways that employees be ''instructed'' in their requirements and that railroads create and administer programs of operational tests and inspections to verify rules compliance. This approach was based on several factors, including a recognition of the strong interest the railroads have in avoiding costly accidents and personal injuries, the limited resources available to FRA to directly enforce railroad operating rules, and the apparent success of management and employees in accomplishing most work in a safe manner.

Over the years, however, it became necessary to ''Federalize'' certain requirements, either to remedy perceived shortcomings in the railroads' rules or to emphasize the importance of compliance and to provide FRA a more direct means of promoting compliance. These actions, which in most cases were preceded or followed by statutory mandates, included adoption of rules governing—

- Blue Signal Protection for employees working on, under or between railroad rolling stock (49 CFR part 218, subpart B);
- Railroad Communications (49 CFR part 220);
- Prohibition of Tampering with Safety Devices (49 CFR part 218, subpart D); and
- Control of Alcohol and Drug Use in Railroad Operations (49 CFR part 219);

In addition, FRA has adopted requirements for Qualification and Certification of Locomotive Engineers (49 CFR part 240) that directly prohibit contravention of certain specified operating rules and practices.

FRA believes these programs of regulation contribute positively to railroad safety, in part because they contribute significantly to good discipline among affected employees.

FRA is not specifically required by statute to issue a regulation on the subjects covered by this proposed rule. However, FRA believes that establishing greater accountability for implementation of sound operating rules is necessary for safety. FRA is initiating this rulemaking because it has recognized that human factor train accidents comprise the largest single category of train accident causes and because existing regulations have proven inadequate to achieve a significant further reduction in their numbers or severity. Moreover, the current situation in the railroad industry, which is characterized by strong market demand, extensive hiring of new employees, and rapid attrition of older employees now becoming eligible for retirement, demands a more substantial framework of regulations to help ensure that operational necessity will not overwhelm systems of safeguards relied upon to maintain good discipline.

The theme of this proposed rule is accountability. It embodies both a broad strategy intended to promote better administration of railroad programs, on the one hand, and a highly targeted strategy designed to improve compliance with railroad operating rules addressing three critical subject matters, on the other. Within this framework, FRA would take responsibility to set out certain requirements heretofore left to private action and for monitoring compliance with those requirements through appropriate inspections and audits. Railroad management would be more accountable for putting in place appropriate rules, instructions, and programs of operational tests. Railroad supervisors would be accountable for doing their part to administer operational tests and establish appropriate expectations with respect to rules compliance. Railroad employees would be accountable for complying with specified operating rules, and they would enjoy a right of challenge should they be instructed to take actions that, in good faith, they believe would violate the rules. It is intended that this framework of accountability promote good discipline, prevent train accidents, and reduce serious injuries to railroad employees.

In this **SUPPLEMENTARY INFORMATION** section, FRA provides a detailed explanation of the growing number of accidents, the severity of some of those accidents, the agency's prior actions, the approach proposed and some discussion of alternatives. In certain instances, FRA specifically requests commenters to offer suggestions or provide information for FRA's consideration prior to a final rule. Of course, FRA would appreciate comments on any aspect of this proposed rule.

II. Proceedings to Date

A. Increase in Human Factor Caused Accidents and Non-compliance

FRA has grown steadily more concerned over the past few years as the frequency of human factor caused accidents has increased. When these accidents are reported, the reporting railroad is required to cite the causes of the accident. In the case of a human factor caused accident, an employee or employees are typically associated with a failure to abide by one or more railroad operating rules. Over the past few years, FRA inspectors have simultaneously observed a substantial increase in non-compliance with those railroad operating rules that are frequently cited as the primary or secondary causes to these types of accidents.

Accidents caused by mishandling of equipment, switches and derails rose from 370 to 640 per year from the years 1997 to 2004—an increase of 42 percent. The greatest causes of these accidents as identified by the railroads were (1) switch improperly lined and (2) absence of employee on, at or ahead of a shoving movement. These two issues alone account for over 60 percent of all accidents caused annually by employees mishandling of equipment, switches and derails.

A grouping of four other causes saw steady increases from 133 per year in 1997 to 213 per year in 2004—a cumulative increase of 37 percent; these causes are (1) failure to control a shoving movement, (2) switch previously run through, (3) cars left foul and (4) failure to apply or remove a derail. Two additional causes of accidents, (1) switch not latched or locked and (2) car(s) shoved out and left out of clear, were the cited cause of only 10 accidents in 1997 and 40 accidents in 2004.

While the accident data shows significant increases in these areas, the data collected by FRA during inspections suggests that the number of accidents could easily increase at an even greater rate. FRA inspection data shows that non-compliance related to mishandling of equipment, switches and derails rose from 319 to 2,954 per year from the years 2000 to 2004—a nine-fold increase. The most common areas of human factor non-compliance were (1) employee failed to observe switch points for obstruction before throwing switch; (2) employee failed to ensure all switches involved with a movement were properly lined; (3) employee failed to ensure switches were latched or locked; (4) employee failed to ensure switches were properly lined before movement began; and (5) employee left equipment fouling adjacent track.

Several other related issues of non-compliance also saw substantial increases, although the overall number of incidents found by FRA was lower than the top five. These additional areas of non-compliance are: (1) Employee left derail improperly lined (on or off); (2) absence of employee on, at, or ahead of shoving movement; (3) employee failed to ensure train or engine was stopped in the clear; (4) employee failed to ensure switches were properly lined after being used; (5) employee failed to reapply hasp before making move over switch (if equipped); (6) employee failed to relock the switch after use; and (7) one or more employees failed to position themselves so that they could constantly look in the direction of movement.

Some non-compliance data applies particularly to human factor mistakes FRA noted during inspections of operations involving remotely controlled locomotives. FRA assigned non-compliance codes to identify the following problems specifically associated with these remote control operations: (1) Employee operated equipment while out of operator's range of vision; (2) employee failed to provide point protection, locomotive leading; and (3) employee failed to provide point protection, car leading. In 2004, the first year that FRA collected data under those codes, FRA inspectors recorded 29 instances of non-compliance with the railroad's operating rules underlying the three codes. In 2005, the number of instances of non-compliance with those same codes recorded by FRA inspectors increased to 92.

B. Accident at Graniteville, SC and Safety Advisory 2005–01

Although the increasing number of human factor caused accidents impacted the railroad industry and its employees, a catastrophic accident that occurred at Graniteville, South Carolina on January 6, 2005, catapulted the issue into the national spotlight. As the National Transportation Safety Board (NTSB) described in its report NTSB/RAR–05/04, PB2005–916304 (Nov. 29, 2005), that accident occurred when Norfolk Southern Railway Company

(NS) freight train 192, while traveling in non-signaled territory at about 47 miles per hour (mph), encountered an improperly lined switch that diverted the train from the main track onto an industry track, where it struck an unoccupied, parked train (NS train P22). The collision derailed both locomotives and 16 of the 42 freight cars of train 192, as well as the locomotive and 1 of the 2 cars of train P22. Among the derailed cars from train 192 were three tank cars containing chlorine, one of which was breached, releasing chlorine gas. The train engineer and eight other people died as a result of chlorine gas inhalation. About 554 people complaining of respiratory difficulties were taken to local hospitals. Of these, 75 were admitted for treatment. Because of the chlorine release, about 5,400 people within a 1-mile radius of the derailment site were evacuated for several days. Total property damages exceeded $6.9 million. The total monetized damages were much higher than that, with one estimate ranging as high as $125 million. NTSB determined that the probable cause of the collision was the failure of the crew of NS train P22 to return a main track switch to the normal position after the crew completed work at an industry.

The crew's failure violated railroad operating rules but did not violate any Federal requirement. NS Operating Rule 104, in effect at the time, placed primary responsibility with the employee handling the switch and other crewmembers were secondarily responsible if they were in place to observe the switch's position. NTSB/RAR–05/04 at 8. In addition, NTSB concluded that NS rules required a job briefing which ''would likely have included a discussion of the switches and specifically who was responsible for ensuring that they were properly positioned [and that] [h]ad such a briefing taken place, the relining of the switch might not have been overlooked.'' *Id.* at 44. FRA concurs that the lack of intra-crew communication regarding the switch's position was particularly significant at the time the crew was preparing to leave the site. *Id.* at 8–9.

Four days after the Graniteville accident (and coincidentally, two days after a similar accident at Bieber, California with serious, but not catastrophic consequences), FRA responded by issuing Safety Advisory 2005–01, ''Position of Switches in Non-Signaled Territory.'' 70 FR 2455 (Jan. 10, 2005). The issuance of a safety advisory is an opportunity for the agency to inform the industry and the general public regarding a safety issue, to articulate agency policy, and to make recommendations. FRA explained in the safety advisory that ''[a] review of FRA's accident/incident data shows that, overall, the safety of rail transportation continues to improve. However, FRA has particular concern that recent accidents on Class I railroads in non-signaled territory were caused, or apparently caused, by the failure of railroad employees to return manual (hand-operated) main track switches to their normal position, i.e., usually lined for the main track, after use. As a result, rather than continuing their intended movement on the main track, trains approaching these switches in a facing-point direction were unexpectedly diverted from the main track onto the diverging route, and consequently derailed.''

Safety Advisory 2005–1 strongly urged all railroads to immediately adopt and comply with five recommendations that were intended to strengthen, clarify and re-emphasize railroad operating rules so as to ensure that all main track switches are returned to their normal position after use. The recommendations emphasized communication both with the dispatcher and other crewmembers. FRA recommended that crewmembers complete and sign a railroad-created Switch Position Awareness Form (SPAF). Proper completion of a SPAF was expected to trigger specific communication relevant to critical elements of the tasks to be performed. Additional training and railroad oversight were also recommended.

C. Emergency Order No. 24

Safety Advisory 2005–1 did not have the long-term effect that FRA hoped it would. The Safety Advisory was intended to allow the industry itself a chance to clamp down on the frequency and severity of one subset of human factor accidents, i.e., those accidents involving hand-operated main track switches in non-signaled territory. FRA credits the Safety Advisory with contributing to a nearly six-month respite from this type of accident, from January 12 through July 6, 2005, but following this respite there was a sharp increase in serious accidents.

Three serious accidents over a 28-day period were the catalyst for FRA issuing an emergency order: Emergency Order No. 24 (EO 24); Docket No. FRA–2005–22796, Notice 1, 70 FR 61496, 61498 (Oct. 24, 2005). The three accidents cited in EO 24 resulted in fatal injuries to one railroad employee, non-fatal injuries to eight railroad employees, an evacuation of civilians, and railroad property damage of approximately two million dollars. Furthermore, each of these accidents could have been far worse, as each had the potential for additional deaths, injuries, property damage or environmental damage. Two of the accidents could have involved catastrophic releases of hazardous materials as these materials were present in at least one of the train consists that collided.

FRA is authorized to issue emergency orders where an unsafe condition or practice ''causes an emergency situation involving a hazard of death or personal injury.'' 49 U.S.C. 20104. These orders may immediately impose ''restrictions and prohibitions * * * that may be necessary to abate the situation.'' *Id.*

EO 24 was necessary because FRA could not secure compliance with these important railroad operating rules without additional action. FRA considered issuing another Safety Advisory, but that might at best only provide another temporary respite. The issuance of EO 24 was ''intended to accomplish what the Safety Advisory could not: Implement safety practices that will abate the emergency until FRA can complete rulemaking''. 70 FR at 61498. FRA further concluded that ''reliance solely on employee compliance with railroad operating rules related to the operation of hand-operated main track switches in non-signaled territory, without a Federal enforcement mechanism, is inadequate to protect the public safety.'' 70 FR at 61499. Thus, EO 24 supplied FRA with such an enforcement mechanism without the delay that is usually incurred through rulemaking.

EO 24 is built on the foundation of FRA's regulations, at 49 CFR part 217, which requires each railroad to instruct its employees on the meaning and application of its code of operating rules, and to periodically test its employees to determine their level of compliance. With regard to hand-operated switches in non-signaled territory, EO 24 requires that each railroad (1) instruct its employees, (2) allow only qualified employees to operate and verify switches, (3) require employees to confirm switch positions with the dispatcher prior to releasing the limits of a main track authority, (4) develop a Switch Position Awareness Form for employees to complete when operating switches, (5) require employees to conduct job briefings at important intervals, (6) require intra-crew communication of switch positions after a switch is operated, (7) enhance its program of operational tests and inspections under 49 CFR part 217, and (8) distribute copies of EO 24, and retain proof of distribution, to all

employees affected. Minor clarifying amendments were made to EO 24 in a second notice, but the overarching requirements remained unchanged from the first notice. 70 FR 71183 (Nov. 25, 2005).

D. FRA's Action Plan for Addressing Critical Railroad Safety Issues

Prior to the Graniteville accident, FRA had developed and implemented procedures to focus agency resources on critical railroad safety issues. Such procedures were appropriate even though the industry's overall safety record had improved over the last decade and most safety trends were moving in the right direction. FRA recognizes that significant train accidents continue to occur, and the train accident rate has not shown substantive improvement in recent years. Several months after the Graniteville accident, an action plan was published. FRA acknowledged in the plan that ''recent train accidents have highlighted specific issues that need prompt government and industry attention''. Action Plan at 1 (published on FRA's Web site at *http://www.fra.dot.gov/*).

In the plan, FRA introduced its basic principles to address critical railroad safety issues. One basic principle is that FRA's safety program is increasingly guided by careful analysis of accident, inspection, and other safety data. Another basic principle is that FRA attempts to direct both its regulatory and compliance efforts toward those areas involving the highest safety risks. The plan is intended to be proactive in that it will target the most frequent, highest risk causes of accidents.

FRA identified ''reducing human factor accidents'' as one of the major areas in which the agency planned initiatives. In fact, the plan discusses this issue first because it constitutes the largest category of train accidents, accounting for 38 percent of all train accidents over the last five years, and human factor accidents are growing in number. Furthermore, FRA's plan takes aim at reducing human factor accidents because in recent years most of the serious events involving train collisions or derailments resulting in release of hazardous materials, or harm to rail passengers, have been caused by human factors or track problems.

FRA's analysis of train accident data has revealed that a small number of particular kinds of human errors are accounting for an inordinate number of human factor accidents. For example, the eight human factor causes involving mishandling equipment, switches and derails that FRA is addressing in this proposed rule accounted for nearly 48 percent of all human factor accidents in 2004; these eight causes, which resulted in accidents causing over $113 million in damages to railroad property from 2001–2005, can be grouped into three basic areas of railroad operations: (1) Operating switches and derails; (2) leaving equipment out to foul; and, (3) the failure to protect shoving or pushing movements. In addition, FRA allows any railroad to identify the cause of an accident in general terms when the railroad is unsure of exactly which of the more specific human factor cause codes apply. Without in-depth analysis of each accident that was reported by railroads using these generic human factor cause codes, it is impossible to know how many of these accidents should be attributable to mistakes involving the operation of switches and derails, leaving equipment out to foul, or the failure to protect shoving or pushing movements; it is likely, however, that some portion of this additional 2.5 percent of all human factor accidents in 2004 are attributable to mistakes involving these three basic areas of railroad operations. Thus, this proposal is geared to address approximately half of all human factor caused accidents on all classes of track.

Of the 118 human factor causes that are tracked, the leading cause was improperly lined switches, which alone accounted for more than 16 percent of human factor accidents in 2004. The next two leading causes were shoving cars without a person on the front of the movement to monitor conditions ahead, i.e., lack of point protection, and shoving cars with point protection but still resulting in a failure to control the movement; these two shoving-related causes together accounted for 17.6 percent of human factor accidents in 2004. The remaining five causes addressed in this proposed rule account for nearly 14 percent of the total number of accident causes; these causes involve leaving cars in a position that fouls an adjacent track, operating over a switch previously run through, a failure to apply or remove a derail, a failure to latch or lock a switch, and a failure to determine before shoving, that the track is clear ahead of the movement. The two catch-all general causes that might be cited when a railroad believes one or more related causes may apply or is unsure of the exact cause are: (1) other general switching rules and; (2) other train operation/human factors.

The human factor causes that FRA is attempting to address with this proposal are of a type that involve non-compliance with established railroad operating rules related to fundamental railroad operations. In each case, compliance can be objectively and conclusively determined. For example, it can be definitively determined whether switches are properly lined, locked, latched or had been previously run through. It can be determined whether a shoving movement was made without point protection or without the signals or instructions necessary to control the movement. Similarly, it can be determined whether a car is left fouling a track such that it is causing an unsafe operating condition, or whether the track is clear ahead for a shoving movement. Finally, it can also be determined with certainty whether there has been a failure to apply or remove a derail.

The top human factor causes that FRA is choosing not to address with this proposal are already regulated, to some extent, or would be significantly more difficult to regulate. For example, several human factor causes relate to the failure to apply a sufficient number of hand brakes; that issue is already covered by regulation at 49 CFR 232.103(n). Speeding issues, including restricted speed, are regulated to discourage clearly excessive speeding by imposing revocation periods or civil penalties for locomotive engineer violators. 49 CFR 240.117(e)(2) and 240.305(a)(2). Establishing a clear rule for regulating a train handling issue, such as a locomotive engineer's improper use of an independent brake or air brakes to prevent excess buff or slack action, can pose difficulties as train handling is an area where locomotive engineers exercise discretion. 58 FR 18982, 18992 (Apr. 9, 1993) (describing in section-by-section analysis why FRA amended the qualification and certification of locomotive engineer's rule to require revocation only when there is a failure to conduct certain brake tests as opposed to the more general, original requirement to revoke for ''failure to adhere to procedures for the safe use of train or engine brakes''. 56 FR 28228, 28259 (June 19, 1991)). Likewise, the operating conditions related to improper coupling are too numerous to easily address through regulation, and determination of responsibility related to train handling and train make-up involves often complex technical issues that are still subject to study. (*See Safe Placement of Train Cars, Report to the Senate Committee on Science, Commerce and Transportation and the House Committee on Transportation and Infrastructure,* June 2005), published at *http://www.fra.dot.gov*).

Developing close call data. As part of its mission to improve railroad safety,

FRA is sponsoring the Confidential Close Call Reporting System Demonstration Project to demonstrate the effectiveness of a confidential close call reporting system for the railroad industry. ''Close calls'' in this context are unsafe events that do not result in a reportable accident but very well could have. 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 regulator) have contributed to major reductions in accidents. In March of 2005, FRA completed an overarching memorandum of understanding with railroad labor organizations and management to develop pilot programs to document close calls. 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 promote a reduction in human factor caused accidents. However, the project has not yet produced sufficient data to consider in this proposed rule.

E. Railroad Safety Advisory Committee (RSAC) Overview

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AAPRCO);
American Association of State Highway & Transportation Officials (AASHTO);
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of American Railroads (AAR);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employees Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
Federal Transit Administration (FTA)*;
High Speed Ground Transportation Association (HSGTA);
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement (LCLAA)*;
League of Railway Industry Women*;
National Association of Railroad Passengers (NARP);
National Association of Railway Business Women*;
National Conference of Firemen & Oilers;
National Railroad Construction and Maintenance Association;
National Railroad Passenger Corporation (Amtrak);
National Transportation Safety Board (NTSB)*;
Railway Supply Institute (RSI);
Safe Travel America (STA);
Secretaria de Comunicaciones y Transporte*;
Sheet Metal Workers International Association (SMWIA);
Tourist Railway Association Inc.;
Transport Canada*;
Transport Workers Union of America (TWU);
Transportation Communications International Union/BRC (TCIU/BRC); and
United Transportation Union (UTU).

*Indicates associate, non-voting membership.

Effective May 2006, the following additional members have been added to the Committee:

Transportation Security Administration;
American Chemistry Council;
American Petroleum Institute;
Chlorine Institute;
Fertilizer Institute; and
Institute of Makers of Explosives.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

F. Establishment of Railroad Operating Rules Working Group

On April 14, 2005, FRA held a Human Factors Workshop which convened members of RSAC for the purpose of developing a task statement to be presented at the next RSAC meeting. FRA explained that current regulations do not address compliance with the relevant operating rules that cause the preponderance of human factor accidents. The agency expressed a desire to standardize and adopt these rules as Federal requirements with greater accountability being the goal. It was also raised that training and qualification programs should be included as part of the task because employee compliance is certainly directly related to how well employees are instructed and tested. FRA suggested that one area of consideration was to improve its regulations (49 CFR part 217) which require each railroad to instruct its employees on the meaning and application of its code of operating rules, and to periodically test its employees to determine their level of compliance. Many participants expressed a preference for non-regulatory action.

On May 18, 2005, the RSAC accepted a task statement and agreed to establish the Railroad Operating Rules Working Group whose overall purpose was to recommend to the full committee how to reduce the number of human factor caused train accidents/incidents and related employee injuries. The working group held eight two-day conferences, one per month from July 2005 through February 2006. The vast majority of the

time at these meetings involved review of an FRA document suggesting language that could form the basis of proposed regulatory text. This exercise was extremely beneficial as participants were able to fully strengthen the proposal.

FRA clearly benefitted from the participation of the working group in detailed review of railroad operating rules and practices; unfortunately, the RSAC participants were unable to reach a consensus for making formal recommendations. Typically, FRA gives great deference to RSAC's recommendations when proposing a rule, although the agency is not bound to adopt such recommendations. Here, where RSAC was unable to make formal recommendations, FRA is, of course, not bound by FRA's proposal within the RSAC working group process. However, FRA has sought to carry forward the elements of the discussion draft that had benefitted from thoughtful comment by Working Group members. FRA developed a greater appreciation for the nuances of each of the railroad operating rules and practices discussed; and, armed with that additional insight, FRA has sought to put forth a reasonable proposal that reflects real world railroading.

G. Development of the NPRM

EO 24 illuminated the problems associated with mishandling of hand-operated main track switches in non-signaled territory. While there may be more than one cause that contributes to non-compliance with the operating rules, accidents could be prevented by strict employee compliance with those rules. Accidents involving this type of switch often occur when the employee operating the switch loses focus on the task at hand. In an effort to refocus the attention of employees who operate switches, EO 24's seven sections can be boiled down to three major components: (1) Instruction, (2) communication and (3) verification through testing. FRA's proposed rule incorporates these three major components but with a broader application.

Instruction. It is fundamental that an employee cannot be expected to properly abide by operating rules without proper instruction, especially when those operating rules have been amended. To that end, EO 24 provides an outline for essential initial instruction and periodic instruction. Likewise, FRA proposes enhanced instruction, training and examination, i.e., qualification, for employees on the relevant operating rules, pertaining to handling equipment, switches and derails.

Communication. FRA agrees with the general principle that mistakes can be prevented or corrected by proper communication. Communication prevents non-compliance and accidents because it generally is how people working together know what each of them is doing. For example, EO 24 stressed the importance of communication by requiring job briefings at certain crucial intervals: Before work is begun, each time a work plan is changed, and at completion of the work. Such regular job briefings ensure that employees working together understand the task they are intending to perform and exactly what role is expected of them and their colleagues. Through proper job briefings, employees can prevent some mishaps and contain others from worsening a bad situation. For these reasons, FRA proposes a job briefing component to this rulemaking.

In the background section of EO 24, FRA described a recurrent scenario of non-compliance where a train crew's mistake in leaving a main track switch lined for movement to an auxiliary track was the last act or omission that resulted in an accident; and yet these types of accidents are preventable through reliable communication of the actual switch position. This scenario ''occurs when a train crew has exclusive authority to occupy a specific track segment until they release it for other movements and [yet] that train crew goes off duty without lining and locking a hand-operated main track switch in its normal position''. 70 FR at 61497. It is unfortunate that FRA has to clarify that the communication be reliable and accurately reflect the switch position, but some accident investigations have revealed employees whose actions implied more of an interest in quitting work for the day than taking the safe route to verify a switch's position and whether it was properly locked. FRA's proposal retains EO 24's emphasis on intra-crew communication or intra-roadway worker group communication. *See* 70 FR at 61499–50 and § 218.103.

Perhaps the most controversial aspect of EO 24 is the requirement that employees operating hand-operated main track switches in non-signaled territory complete a Switch Position Awareness Form (SPAF). The SPAF requirement is controversial because it creates a paperwork burden for employees and railroads. Switches may be lined and locked properly, but a violation of EO 24 may occur for merely failing to fill out a single component on the form. Critics of the form may not appreciate that FRA's intention for requiring a SPAF is to create a contemporaneous communication that reminds the employee of the importance of properly lining and locking such main track switches.

In the case of a train crew, the contemporaneous communication created by the SPAF is twofold: (1) The SPAF itself is a written communication that reminds the employee operating the switch to keep track of the switch's position and (2) another crewmember, typically the locomotive engineer, serves as a secondary reminder to the employee operating the switch because that other crewmember is also required to request information as to the switch's alignment. As FRA clarified in EO 24's second notice, it is immaterial how crewmembers communicate, e.g., whether in-person, by radio, by hand signals, or other effective means, as long as the communication takes place. 70 FR 71186 and 71188. By requiring both the SPAF and the intra-crew communication, FRA is requiring some redundancy, i.e., two communication reminders to properly line and lock such switches in the case of a train.

For purposes of EO 24, the paperwork burden and the redundancy in communication created by the introduction of the SPAF was acceptable. The very sharp increase in collisions, deaths and injuries resulting from improperly lined main track switches required FRA to take decisive action. Prior to EO 24, many railroads had already adopted the use of a SPAF voluntarily as a best practice suggested in Safety Advisory 2005–1. However, the inclusion of a SPAF in EO 24 does not bind the agency to forever require it; and the proposed rulemaking suggests an alternative approach that does not include it.

FRA decided not to propose requiring a SPAF in this proposed rule because the comprehensive communication requirements contained in proposed § 218.103, titled ''Hand-operated Switches and Derails'', creates a direct enforcement mechanism that makes enforcement through a SPAF redundant. For example, the proposal includes a requirement that all crewmembers verbally confirm the position of a hand-operated main track switch that was operated by any crewmember of that train before it leaves the location of the switch. *See* § 218.103(i)(3)(i). Likewise, the proposed rule would require that upon the expiration of exclusive track occupancy authority for roadway workers, roadway workers who operate hand-operated main track switches report the position of any such switches operated to the roadway worker in charge. *See* § 218.103(i)(3)(ii).

NTSB also ''does not believe that * * * the use of forms [such as a SPAF]

is sufficient to prevent recurrences of accidents such as the one at Graniteville.'' NTSB/RAR–05/04 at 45. In support of this position, NTSB cites to the example of railroads that require train crews to record signal indications as they are encountered en route in order to lessen the chance that a traffic control signal will be missed or misinterpreted by a crew. Meanwhile, NTSB states that it ''has investigated a number of accidents in which such forms, although required and used, did not prevent crews from missing signals and causing accidents.'' *Id.*

Although NTSB does not support the use of a SPAF, it did express agreement with the emergency order in two respects. That is, NTSB supported EO 24's requirements directing that job briefings be held at the completion of work and that a train crewmember who repositions a hand-operated main track switch in non-signaled territory communicate with the engineer regarding the switch position. In support of this position, NTSB explains that ''a comprehensive safety briefing was not held before the work at Graniteville [and] [h]ad such a briefing been held before and, more importantly, after the work (as required by the FRA emergency order), the accident might have been avoided.'' *Id.* at 46. As stated previously, FRA proposes to retain these two aspects from the emergency order in its rule.

The EO 24 requirements for employees releasing the limits of a main track authority in non-signaled territory to communicate with the train dispatcher have, for the most part, carried over to this proposed rule and been strengthened. The proposed rule retains the requirement in EO 24 that an employee releasing the limits of a main track authority in non-signaled territory communicate with the train dispatcher that all hand-operated main track switches operated have been restored to their normal position, unless the train dispatcher directs otherwise, but only to the extent that the switches are at the location where the limits are being released. 70 FR at 61499 and § 218.103(c)(2). With the proposed elimination of a SPAF, it would be difficult for an employee to recall the condition of any particular hand-operated main track switch operated and there would likely be a reaction for an employee to believe he or she left all such switches in proper position—without much opportunity to double-check the condition of those faraway switches at that time. As mentioned previously, accidents often occur where the limits are being released and that is why the proposed rule has placed emphasis on addressing the problem prior to departing the train's location. The switches located at the point of release of the limits should be readily accessible for any employee who is unsure of the condition the switch was last left in. The proposed rule also adds the requirement that the employee report that the switch has been locked; locking of the main track switch should prevent easy access to unauthorized users.

Hand-in-hand with the EO 24 requirement that the employee contact the dispatcher to release main track authority in non-signaled territory is the corresponding requirement in EO 24 for train dispatchers; that is, EO 24 requires that the train dispatcher must also confirm the switch positions with the employee releasing the limits before clearing the limits of the authority and confirm that the SPAF was initialed as required. The proposed rule also requires the train dispatcher to verify the switch position information with the employee and the requirement for the dispatcher to confirm that the switch is locked in the intended position by repeating to the employee releasing the limits the report of the switch position and asking whether that is correct. The proposed rule also strengthens the current requirement in EO 24 by requiring that the employee then confirm this information with the train dispatcher.

FRA would appreciate comments that include descriptions of ''close calls'' in which the additional employee/dispatcher communications required in EO 24 prevented hand-operated main track switches from being left improperly lined or unlocked. Any other comments regarding such required communication between employees and dispatchers would be appreciated.

Verification through testing. The third major component of EO 24's requirements involves the verification of compliance through testing. FRA's regulations, at 49 CFR part 217, require each railroad to instruct its employees on the meaning and application of its code of operating rules, and to periodically test its employees to determine their level of compliance. Compliance with railroad operating rules is critical, especially when technology does not provide a fail safe option.

Most railroads have excellent written programs of operational tests and inspections, but FRA has identified weaknesses in the oversight and implementation of nearly all of these programs. For example, some railroad testing officers lack the competency to perform operational tests and inspections. Likewise, some railroads do not perform operational tests that address the root cause of human factor accidents, while others view the requirement as a numbers-generating exercise, and consequently conduct relatively few meaningful tests. That is, while it may be important that employees come to work with the proper equipment (and FRA considers that a basic requirement which, of course, must be satisfied), FRA's concern is that not enough verification testing is occurring on the operating rules most likely to cause accidents, including but not limited to rules addressing handling of switches.

FRA's verification through testing and inspection requirements in EO 24 are narrowly focused on those operating rules involving the operation of hand-operated main track switches in non-signaled territory. The purpose of this narrow focus was to create a special obligation for only those types of rules violations that were causing the emergency situation. FRA still believes compliance with these types of rules should be verified. The proposed rule would replace EO 24's requirements and add requirements for verification of testing on a broader number of operating rules directly related to the root cause of human factor accidents; that is, the proposed rule would require testing of all the rules related to proposed part 218, subpart F, not just those rules related to hand-operated main track switches in non-signaled territory.

The proposed rule would also amend sections 217.4 and 217.9 to require competency of railroad testing officers. In FRA's view, it is unfathomable that railroad testing officers would be allowed to conduct tests and inspections without proper instruction, on-the-job training, and some kind of written examination or observation to determine that the person is qualified to do the testing; however, Federal regulations currently do not require that railroad testing officers be qualified in such a manner. Railroads should already be shouldering this burden without Federal requirements so we do not view this as a substantial burden; instead, we view the qualification of railroad testing officers as a necessary expense of operating a railroad.

Furthermore, railroad officers that test for non-compliance are typically the same officers who are in charge of operations. In that regard, a railroad officer, who is knowledgeable of Federal requirements and the government's enforcement authority over individual officers, should be discouraged from ordering an employee to violate any operating rule inconsistent with

proposed part 218, subpart F. In other words, if all railroad testing officers on a particular railroad are properly qualified, it will be more difficult for railroad officers to accept inconsistency in the application of operating rules.

FRA proposes amending § 217.9 to require railroads to focus programs of operational tests and inspections ''on those operating rules that cause or are likely to cause the most accidents or incidents''. See § 217.9(c)(1). Except for the smallest freight railroads, FRA proposes that each railroad conduct one or more reviews of operational tests and inspections that should help guide each railroad in its implementation of its program. The monthly, quarterly, and six-month reviews for freight railroads, as well as the reviews for passenger railroads, in proposed § 217.9(e) would formalize a best practice from some of the largest and safest railroads nation-wide. The proposed reviews are intended to ensure that each railroad is conducting tests and inspections directed at the causes of human factor train accidents and employee casualties. Each program would be specifically required to include appropriate tests and inspections addressing the rules dealing with handling of switches, leaving equipment in the clear, and protecting the point of the shove. Structured tests or observations permit railroads to find employees that need additional training or who may benefit from a reminder that it is not acceptable to take shortcuts that violate the operating rules.

Furthermore, the proposal to amend the program of operational tests and inspections, by emphasizing its purpose to focus on operating rules violations that cause accidents, should cut down on the disparity between the few instances of non-compliance found by many railroads with the many instances of non-compliance found through FRA inspections on the same railroads (*see* discussion in ''*Increase In Human Factor Caused Accidents and Non-compliance*''). While railroads have universally done an acceptable job of taking corrective action following an accident, railroads have not done as well in consistently testing for the variety of operating rules, at a variety of locations, and at different times of the day, in order to meet FRA's expectations for an effective testing and inspection program. Accidents and incidents of non-compliance should be prevented by the proposed formalization of the process of verification through testing and FRA's proposed ability to inspect each railroad's program of operational tests and inspections, as well as its records.

Finally, FRA emphasizes that it intends to retain an enforcement mechanism, as it did in EO 24, because prior reliance on the railroad to ensure employee compliance with railroad operating rules without a Federal enforcement mechanism has repeatedly proven to be inadequate to protect the public and employee safety. Under current regulations, FRA has been able to effectively intervene in railroad operating rules compliance issues (apart from those already codified as obligations under existing regulations) only indirectly, through use of substantial resources, and in the case of exceptionally pervasive non-compliance. The system of accountability provided for in this proposed rule will, by contrast, encourage railroad management to prevent a lessening of oversight or decline in compliance by reviewing safety performance in detail, assisting individual employees to acquire habits of work that are consistent with safety by permitting them to challenge directions that could cause them to cut corners, and permitting individual FRA inspectors to more persuasively seek corrective action early in the process of deteriorating rules compliance.

While FRA intends to retain an enforcement mechanism, there may be instances where an employee realizes that he or she violated an operating rule but is afraid of the consequences of reporting the error—even when such reporting would have the potential to prevent an accident or injury to other workers or innocent bystanders. NTSB addressed this point in its report on the Graniteville accident when it stated that a ''significant civil penalty may have an unintended impact on safety under some circumstances. That is, an employee who, after leaving a work site, realizes that a switch has been left improperly lined may be made more reluctant than in the past to immediately report the error to train dispatchers. The threat of the severe fine may prompt the employee to attempt a remedy (such as returning later to reline the switch) before the mistake can become known. As happened in the September 2005 fatal collision in Shepherd, Texas, such action on the part of the employee could contribute to an accident that might otherwise have been avoidable.'' NTSB/RAR–05/04 at 46. As FRA would certainly not want a regulation to discourage an employee from reporting or correcting a potentially hazardous situation, we would appreciate any suggestions for processes which could avoid a disincentive to report unsafe conditions. One concept FRA is considering for the final rule is to require each railroad to have a reporting program whereby FRA would agree not to use reports submitted to the railroad under the safety self-reporting program (or information derived therefrom) in any enforcement action except information concerning accidents or criminal offenses which are wholly excluded from the program. This concept is in use by the Federal Aviation Administration (FAA) for providing relief from penalties for pilots who report unsafe actions or conditions through the Aviation Safety Action Program, described in Advisory Circular 120–66B, and the Aviation Safety Reporting Program described in Advisory Circular 00–46D—Aviation Safety Reporting Program and referred to in 14 CFR 91.25. FRA would like comment on whether programs similar to the two FAA programs could be adopted by FRA to avoid adverse incentives.

III. Remote Control Operations

A. Background

Remote control devices have been used to operate locomotives at various locations in the United States for many years, primarily within certain industrial sites. Railroads in Canada have made extensive use of remote control locomotives for more than a decade. FRA began investigating remote control operations in 1994 and held its first public hearing on the subject in February 1995 to gather information and examine the safety issues relating to this new technology. On July 19, 2000, FRA held a technical conference in which all interested parties, including rail unions, remote control systems suppliers, and railroad industry representatives, shared their views and described their experiences with remote control operations. This meeting was extremely beneficial to FRA in developing its subsequent Safety Advisory.

On February 14, 2001, the FRA published recommended guidelines for conducting remote control locomotive operations. *See* 66 FR 10340, Notice of Safety Advisory 2001–01, Docket No. FRA–2000–7325. By issuing these recommendations, FRA sought to identify a set of ''best practices'' to guide the rail industry when implementing this technology. As this is an emerging technology, FRA believes this approach serves the railroad industry by providing flexibility to both manufacturers designing the equipment and to railroads in their different operations, while reinforcing the importance of complying with all existing railroad safety regulations. All

of the major railroads have adopted these recommendations, with only slight modifications to suit their individual requirements.

Regarding the enforcement of Federal regulations as they apply to remote control locomotive operations, the Safety Advisory explains that: ''although compliance with this Safety Advisory is voluntary, nothing in this Safety Advisory is meant to relieve a railroad from compliance with all existing railroad safety regulations [and] [t]herefore, when procedures required by regulation are cited in this Safety Advisory, compliance is mandatory''. *Id.* at 10343. For example, the Safety Advisory clearly states that ''each person operating an RCL [remote control locomotive] must be certified and qualified in accordance with 49 CFR part 240 [FRA's locomotive engineer rule] if conventional operation of a locomotive under the same circumstances would require certification under that regulation''. *Id.* at 10344.

In November 2001, all six major railroads submitted to FRA their training programs for remote control operators as required by part 240. Since that initial filing, several railroads have made changes to their remote control training programs at FRA's request. FRA is closely monitoring this training and making additional suggestions for improvement on individual railroads as they become necessary. These training programs currently require a minimum of two weeks classroom and hands-on training for railroad workers who were previously qualified on the railroad's operating and safety rules. Federal regulations require that locomotive engineers be trained and certified to perform the most demanding type of service they will be called upon to perform. Thus, a remote control operator who will only be called upon to perform switching duties using a remote control locomotive would not need to be trained to operate a locomotive on main track from the control stand of the cab.

In addition to the required training, the regulations require railroads to conduct skills performance testing of remote control operators that is comparable to the testing required of any other locomotive engineer performing the same type of work. Federal regulations also hold remote control operators responsible for compliance with the same types of railroad operating rules and practices that other locomotive engineers are required to comply with in order to retain certification. *See* 49 CFR 240.117. Any alleged non-compliance triggers an investigation and review process. If a violation is found, the remote control operator will be prohibited from operating a locomotive on any railroad in the United States for a minimum of 15 days to a maximum of three years. The length of the prohibition (or revocation of the certificate) depends on whether the person was found to have committed other violations within the previous three years and whether the railroad, using its discretion, determined that the person had completed any necessary remedial training.

Furthermore, FRA addressed the current Federal locomotive inspection requirements and the application of those requirements to remote control locomotive technology. For example, the Safety Advisory states that the remote control locomotive ''system *must* be included as part of the calendar day inspection required by 49 CFR 229.21, since this equipment becomes an appurtenance to the locomotive''. *Id.* at 10344 (emphasis added). Another example of a mandatory requirement mentioned in the Safety Advisory is that the remote control locomotive ''system components that interface with the mechanical devices of the locomotive, e.g., air pressure monitoring devices, pressure switches, speed sensors, etc., should be inspected and calibrated as often as necessary, *but not less than* the locomotive's periodic (92-day) inspection''. *Id.* (emphasis added); see 49 CFR 229.23. Thus, the Safety Advisory reiterated that existing Federal regulations require inspection of the remote control locomotive equipment.

Although some aspects of this proposed rule pertains to main track operations where remote control locomotive operations rarely occur, most of the problems this proposal is intended to address are found equally in conventional and remote control locomotive yard switching operations. As FRA reported to Congress earlier this year, ''RCL [i.e., remote control locomotive] and conventional train accident rates were virtually identical for those major railroads that made extensive use of both types of operations''. ''Final Report—Safety of Remote Control Locomotive Operations'' (''Final Report'') (March 2006) (published on FRA's Web site at *http://www.fra.dot.gov/*). The current remote control locomotive technology is best used for yard switching operations and is primarily used for that purpose. *See* Final Report at 15–17.

The proposed rule would continue FRA's policy of implementing minimum requirements for safe remote control locomotive operations within the confines of railroad operating rules having broad applicability. As previously explained, FRA has found existing rules adequate to accommodate safe remote control locomotive operations without the need to draft a rule narrowly focused on remote control locomotive operations. *See* Docket No. FRA–2000–8422 (found at *http://dms.dot.gov/*) (denying a request for initiation of a rulemaking to solely address remote control locomotive issues). That said, after identifying certain characteristics of remote control locomotive shoving or pushing operations, FRA is proposing one requirement that pertains to remote control locomotive operations; that requirement addresses the problem of lack of situational awareness. *See* § 218.99(c). FRA also recognizes the relatively new use of permanently installed cameras in yards or at grade crossings which permit an employee to provide point protection without being physically present. Although it is possible for this technology to be used in conventional operations, e.g., by a yardmaster for a train crew, we believe it is more often used for remote control locomotive operations. *See* § 218.99(b)(2). The following background on these two issues should illuminate them further.

B. Situational Awareness

In FRA's recent report to Congress, the agency identified the potential for a reduction in a remote control operator's situational awareness as one of four human factor issues that warrant close attention as remote control locomotive technology continues to evolve. *See* Final Report at 24–26. A locomotive engineer, including a remote control operator, who is located in the cab of a controlling locomotive has a greater situational awareness than a remote control operator located on the ground. A remote control operator located on the ground may also be more easily distracted by conflicting movements or other physical dangers caused by continuously moving about the yard than a person located in a locomotive cab. Also, a remote control operator on the ground may forget, or may not know, the locomotive orientation (i.e., the particular direction the remote control locomotive is heading) due to his or her location away from the remote control locomotive, and thus may initiate a movement in the wrong direction. Similarly, a defective or misaligned switch could cause a movement to diverge onto a connecting track unintentionally and go unnoticed if the remote control crewmembers are not observing the direction of

movement. Apparently, the latter is what happened on December 7, 2003, on the Union Pacific Railroad in San Antonio, Texas, when a remote control locomotive operator, while switching, was struck and killed by his locomotive at the west end of UP's East yard. The employee had reversed one end of a crossover switch and was walking toward the other end of the crossover switch to line it when he was struck from behind by the remote control locomotive. The employee had started the remote control locomotive moving as he was walking toward the other end of the crossover. *See* Final Report at 90. This move was initiated after the employee pushed a button to realign a power-assisted switch, but likely did not wait at the switch machine to confirm visually that the points had moved to the correct position. NTSB/RAB–06/02 at 9. In addition to lack of adequate railroad oversight of the misaligned power-assisted switch, NTSB concluded that the probable cause of this accident was the employee's ''inattentiveness to the location of the locomotives and the switch position''. NTSB/RAB–06/02 at 11. Certainly, this inattentiveness is another way to describe a lack of situational awareness.

As many railroads were not eager to invest in remote control technology until after FRA issued its Safety Advisory 2001–01, there is limited data and few studies completed detailing the safety implications of remote control operations; however, among the few studies that have been completed, situational awareness has arisen as a recurring theme. For example, in a study funded by FRA, an independently conducted root cause analysis of six remote control locomotive-involved accidents/incidents that occurred in 2006, found that the loss of situational awareness was a major factor in five of the accidents/incidents analyzed. Human Factors Root Cause Analysis of Accidents/Incidents Involving Remote Control Locomotive Operations (May 2006) (DOT/FRA/ORD–06/05) (published on FRA's Web site at *http://www.fra.dot.gov/downloads/Research/ord0605.pdf*). Further analysis suggests that remote control locomotive technology facilitated this loss of awareness in four of these five accidents/incidents by enabling remote control operators to control their cuts of cars away (i.e., remotely) from the point of movement. Additionally, four probable contributing factors were related to one or more remote control operator's control of a movement from a physical location away from the remote control locomotive and/or cut of cars. Consequently, the independent contractor who performed the root cause analysis identified the loss of remote control operator situational awareness as one of only four critical safety issues identified. *See* Final Report at 85–90.

FRA also sponsored the same independent contractor to undertake a study based on focus group sessions with remote control operators. These sessions provided a forum to gather information about operator experiences with remote control locomotive operations, to identify safety issues, lessons learned, and best practices from those who are most familiar with remote control locomotive operations and equipment. Focus groups also provided a means to solicit suggestions on how to improve remote control locomotive operations. One of the themes identified was that situational awareness can be lost when the remote control operator is not in the immediate vicinity of the remote control locomotive. Among the recommended practices from the focus groups were the suggestions to standardize operating practices and to require remote control operators to protect the point at all times. *See* Final Report at 79–85.

The Brotherhood of Locomotive Engineers and Trainmen (BLET) sponsored a study by Dr. Frederick C. Gamst, a private consultant specializing in railroading, and Mr. George A. Gavalla, a private consultant and former FRA Associate Administrator for Safety. ''Hazard Survey of Remote Control Locomotive Operations on the General System of Railroads in the United States'' (''BLET Study'') (The BLET Study is available in the docket for this NPRM). The BLET Study is based on anecdotal information supplied by railroad workers and officers who voluntarily self-reported their thoughts and experiences concerning their interactions with remote control operations. All of the self-reporting was done in writing and mainly via the Internet in its various forms of communication (*i.e.*, e-mails, bulletin-boards, weblog, etc.). The study catalogues the myriad experiences, complaints, and ideas that were recorded by Dr. Gamst over three years beginning in January 2002. The anecdotal information collected by Dr. Gamst reflects the same general themes identified in the focus group study sponsored by FRA and described in the preceding paragraph. As in FRA's sponsored focus group study, the information Dr. Gamst collected is not statistically sampled to be representative of all remote control operators in the U.S. or Canada. While the main drawback to these types of studies is that the researchers do not attempt to validate any statements made by employees, as participation is often premised on the condition that employees remain anonymous, the collection of individual opinions and perceptions taken as a whole are useful in identifying problems associated with remote control operations. Like the FRA's sponsored studies, the BLET's sponsored study also identified perceived problems associated with a remote control crew not observing the direction of movement. Specifically, the BLET study raised the issue as the reason why a remote control operator might keep shoving or pulling after a movement derailed or collided with an obstruction. *Id.* at 60–62.

C. Technology Aided Point Protection

Although railroading is now one of the nation's older forms of mechanized transportation, equipment, components and operations all have evolved through new and improved technologies. Installing cameras in yards so that a location could be remotely monitored from somewhere else has become a railroading reality as cameras have become smaller, less expensive, and have increased resolution. It is possible to set up these cameras and monitors so that they provide at least an equivalent level of safety to that of an employee protecting the point. The proposed rule would permit such an operation to substitute for an employee's direct visual determination where the technology provides an equivalent level of protection to that of a direct visual determination. *See* § 218.99(b)(2)(i).

The substitution of such technology for a direct visual determination is dependent on many factors. Each particular situation will have its own particular factual circumstances that must be considered in determining whether an equivalent level of safety can be met. For instance, with regard to the basic camera set-up, a railroad will need to consider whether an operator must see in color (largely a necessity if viewing signals), the width of the angle of view, the size and location of the monitor, whether the technology is for day-time use only, and whether its use should be limited to fair weather conditions. However, under all circumstances, the monitor must display sufficient information to enable the viewer to make a determination that the track ahead of the move is clear and properly lined.

There is also the consideration of whether the person viewing the monitor is the locomotive engineer, remote control operator, other crewmember or

other person, such as a yardmaster. If the monitor is not being viewed by the operator who is controlling the movement, then, there must be a clear understanding and channel of communication between the operator and the employee who is viewing the monitor—as the latter would be protecting the movement. Providing an equivalent level of protection to that of a direct visual determination requires a thorough job briefing in which there is an understanding of who is observing the movement, what is the observer's range of vision, at what locomotive speed can the observation be made and how information will be conveyed to the operator/engineer, if that person is not the one viewing the monitor. These camera/monitor set-ups will require railroads to implement attendant procedures and qualify each employee who will be utilizing the technology. These issues are further developed in the section-by-section analysis for § 218.99(b)(2)(i).

The issue of reliance on non-crewmembers to carry out some remote control locomotive operator crew functions was raised in the focus group study sponsored by FRA and summarized in the Final Report. The remote control operators that made up the focus groups had indicated that there were occasions in which a non-crewmember, generally a yardmaster, would provide point protection, line switches, or check the status of a derail for a remote control crew. When this was allowed, several potential problems could result. First, there is great potential for an error in communication or a misunderstanding between the non-crewmember and the crewmembers regarding the activity or status of equipment. Further, a yardmaster who is occupied with his or her other responsibilities might not give the task the attention it deserves, or could be distracted and give an incorrect answer to a question by a remote control crewmember (e.g., ''is the move lined?''). The result could be that the task does not get completed or there is an error in task execution. Further, the remote control crew might not have any alternative way of determining that there is a problem with the point protection provided by the non-crewmember until it is too late. *See* Final Report at 82. Similar issues were raised in the BLET Study. BLET Study at 44.

In FRA's Final Report, the agency addressed the issue of utilizing remote cameras for remote control locomotive operations to protect the point at highway-rail grade crossings in lieu of direct visual determinations. *See* Final Report at 13–15. Railroad operating rules currently permit a movement to travel over a crossing without the physical presence of a crewmember if a crossing is equipped with gates, if it can be determined that the gates are in the fully lowered position, and if the crossing is clear of vehicles and pedestrians. One major railroad has begun using a remote camera system at several crossings to make the required determinations. The railroad believes that crossing protection rules can be observed using this system. The conditions FRA presented in its report to Congress are repeated here as FRA would appreciate comments addressing whether these conditions should remain permissive or should be made mandatory.

FRA believes the use of remote camera protection at highway-rail grade crossings offers an equivalent means of safety provided the following recommendations are adopted:

1. Before camera-assisted remote control locomotive operations are permitted at highway-rail grade crossings, a Crossing Diagnostic Team should evaluate the crossing. The diagnostic team should have representatives from the railroad, FRA, the State department of transportation (or another State agency having jurisdiction over the highway-rail grade crossing), and local government authorities. The diagnostic team should evaluate the suitability of each crossing for remote camera operations. Among the factors it should consider are the following: the average daily traffic counts; the number of highway lanes; highway speed limits; the number of railroad tracks; the volume of school bus, transit bus, emergency vehicle, large truck, and hazardous materials traffic over the crossing; the minimum remote control locomotive operator sight distances of roadway approaches to the crossing; and other relevant factors that could affect the safety of the crossing. The diagnostic team should also consider the appropriate number of cameras and appropriate camera angles needed to provide for the remote operation of remote control locomotives over the crossing.

2. Remote cameras should only be used at crossings equipped with warning lights, gates, and constant warning and motion sensor devices.

3. The cameras should be arranged to give the remote control locomotive operator a view of the rail approaches to the crossing from each direction to accurately judge the locomotive's proximity to the crossing.

4. The cameras should be arranged to give the remote control locomotive operator a clear view to determine the speed and driver behavior (e.g., driving erratically) of any approaching motor vehicles.

5. Either the camera resolution should be sufficient to determine whether the flashing lights and gates are working as intended or the crossing should be equipped with a remote health monitoring system that is capable of notifying the remote control locomotive operators immediately if the flashing lights and gates are not working as intended.

6. The railroad should notify local FRA offices when this type of protection has been installed and activated at a crossing to ensure that FRA grade crossing specialists and signal inspectors can monitor these operations.

Final Report at 14–15

It is possible that not all of the above recommendations would be necessary at highway-rail grade crossings equipped with supplemental safety devices that prevent motorists from driving around lowered gates. A diagnostic team, however, should make such determinations. FRA also recognizes that camera-assisted remote operation of remote control locomotives may not be a viable alternative at all highway-rail grade crossings.

IV. Section-by-Section Analysis

PART 217—[AMENDED]

Section 217.2 Preemptive Effect

This section informs the public of FRA's intention and views on the preemptive effect of the rule. The preemptive effect of this rule is broad, as its purpose is to create a uniform national standard. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. Exceptions would be rare. In general, 49 U.S.C. 20106 will preempt any State law—whether statutory or common law—and any State regulation, rule, or order, that concerns the same subject matter as the regulations in this rule.

Section 217.4 Definitions

FRA proposes to add a definition of *Associate Administrator for Safety* to this section that is consistent with other definitions of this term in this chapter.

The purpose of including this definition is to identify a proposed official who would have the authority to require amendments to programs of operational tests and inspections.

FRA proposes to add a definition of *qualified* to this section. The need for this definition arose from the proposed new requirements for railroad testing officers in § 217.9. As further explained in the analysis for that section, it is not acceptable for a railroad testing officer to be monitoring or instructing employees without being instructed, trained and examined, i.e., qualified, on the railroad's operating rules and the tests the officer is expected to perform; thus, FRA proposes to require such qualification. It is proposed that a person cannot be qualified unless he or she has successfully completed all ''instruction, training and examination'' programs required by both the railroad and this part.

The definition is modeled after the definition used in § 240.7 in this chapter and should have the same meaning despite some slight differences. The phrase ''training and testing'' has been replaced by ''instruction, training and examination'' to more thoroughly reflect the educational aspects of the requirements for a qualified person. The proposed definition does not contain the word ''appropriate'' prior to the educational aspects so as to emphasize that the educational aspects of qualifying a person are mandatory, not discretionary. A word choice was made to substitute the term ''successfully completed'' for the word ''passed''. The definition proposed for part 217 is the same definition proposed for part 218, subpart F.

Section 217.9 Program of Operational Tests and Inspections; Recordkeeping

FRA is amending and adding paragraphs to this section. Although not every existing paragraph is being amended, FRA is reprinting the entire section to make it easier for readers to follow.

FRA is proposing an amendment to paragraph (a) which would clarify that the requirement to conduct operational tests and inspections specifically include tests and inspections sufficient to verify compliance with the requirements of subpart F of part 218 of this chapter. In this NPRM, FRA has identified certain operating rules with which non-compliance has led to an increase in human factor caused accidents. Proposed subpart F of part 218 requires that each railroad have in effect certain operating rules and that each railroad officer, supervisor and employee uphold and comply with those rules. As the operating rules identified in proposed subpart F of part 218 are designed to address the most frequently caused human factor accidents, FRA's proposed amendment to paragraph (a) addresses that railroads will specifically need to test and inspect for these proposed requirements in order to be in compliance with this section. The program's increased focus on human factor caused accident prevention should direct awareness to the related operating rules and correlate with a decrease in such accidents.

Paragraph (b) would be added to this section to establish new responsibilities for both railroads and those officers on the railroads who conduct operational tests and inspections, i.e., railroad testing officers. FRA inspections and investigations have revealed railroad testing officers who lack the fundamental knowledge to perform adequate tests and inspections. In order for these officers to be able to do a proper job, they must know the railroad's operating rules, how the tests they will conduct fit into the railroad's testing program, and how to conduct a proper test. Experience helps and field training can substitute for the lack of experience if needed to achieve proficiency. Of course, not every railroad testing officer has experience conducting every type of test, or needs to; however, a railroad testing officer should not be conducting a test on a rule the officer is unfamiliar with or without having been trained on how to conduct a proper test for the rule to be tested. A test that is incompetently executed should not count towards compliance with a railroad's program of operational tests and inspections. Finally, this paragraph requires written records documenting that each railroad testing officer was properly qualified and that such records be made available to FRA upon request.

FRA proposes to move current paragraph (b) to (c), add two new requirements and make a few minor amendments to remove obsolete dates. Regarding the two new requirements, FRA proposes a scheme that will require each railroad, to which this part applies, to amend the existing program of operational tests and inspections with the intended purpose of requiring railroads to do a better job of focusing their tests and inspections on those types of operating rules that either cause the most human factor caused accidents nation-wide or are identified as problematic on the particular railroad's division or system. At a minimum, FRA expects railroads to test and inspect for those operating rules identified as problematic in the quarterly or six month reviews, i.e., those operating rules violations that have recently caused accidents or incidents on the division or system-wide. We also expect railroads to regularly spot-check for compliance with those operating rules that lead to accidents and incidents nation-wide, even if the railroad has not specifically encountered any recent incidents. As mentioned in the **SUPPLEMENTARY INFORMATION** section under ''Development of the NPRM'', the verification through testing process does not always work well because during some periods of disruption related to organizational or personnel changes, some railroads do not perform operational tests that address the root cause of human factor accidents. At worst, administration of the program may be reduced to a numbers-generating exercise, and consequently on portions of the railroad officers may conduct relatively few meaningful tests. Clearly, FRA intends for the program of operational tests and inspections to be meaningful and the proposed amendments are intended to forcefully move lagging railroads to produce more meaningful tests and inspections.

Proposed paragraph (c)(1) would require that not only shall railroads ''provide for operational testing and inspection under the various operating conditions on the railroad'', as is currently required, but that such tests and inspections place ''particular emphasis on those operating rules that cause or are likely to cause the most accidents or incidents, such as those accidents or incidents identified in the quarterly reviews, six month reviews, and the annual summaries as required under paragraphs (e) and (f), as applicable''. Thus, if the proposal were finalized, FRA would expect that each railroad would conduct a significant number of tests and inspections directed at addressing localized problems with compliance, such as those identified on a division, problems identified on a system-wide basis, and leading causes of human factor caused accidents nation-wide, such as those identified through this proposed rule.

In order to gain some specificity in each railroad's program, paragraph (c)(1) also proposes ''a minimum number of tests per year that cover the requirements of part 218, subpart F of this chapter''. FRA is reluctant to state a percentage or specific number per number of employee work hours as each railroad may have particular operating rules it wishes to emphasize to a greater degree than the next; however, the objective in including this language is to encourage sufficient testing in these critical areas to verify good compliance

by railroad operating employees and to help establish the expectation that there will be compliance with those rules. FRA would be critical of a program that placed the majority of its emphasis on enforcing operating rules that are not leading causes of accidents/incidents. The proposed requirement for a specific minimum number of such tests per year follows from such a requirement imposed in EO 24, albeit EO 24 covered a smaller subset of the operating rules FRA is proposing to cover in part 218, subpart F.

Paragraph (c)(5) proposes a new requirement that the program show the railroad's designation of an officer to manage the program at each level of responsibility (division or system, as applicable). The officer may be designated either by name or job title, as long as the designation clearly identifies a responsible person that FRA can contact in case FRA wishes to audit the program. It is proposed that the officer should also have oversight responsibility to ensure that the program is being implemented properly across each division and system-wide. FRA's expectation is that this officer will at least manage the program to ensure that the overall direction of the program is sound. This designated officer would be expected to take an active role in ensuring that divisions and the entire system are meeting program requirements and ordering changes when expectations are not met. To the degree that a system-level officer can identify a division or a specific railroad testing officer that is failing to appropriately direct efforts, the designated officer would be expected to take corrective action. The designated officer should be making adjustments to the implementation of the program based on any reviews that might be required in proposed paragraph (e), as well as the annual summary produced in accordance with current paragraph (d), which is now proposed paragraph (f).

Additionally, current paragraph (b), which is proposed paragraph (c), would be amended by removing all references to ''[o]n or after November 21, 1994'' as this date is now obsolete. Current paragraph (b)(6) would be moved to proposed paragraph (c)(7) without any amendments. Current paragraph (c) would be moved to paragraph (d) but without any revisions to the text.

Proposed paragraph (e) would add requirements for periodic reviews for any railroad with at least 400,000 total employee work hours annually. FRA has decided to exclude freight railroads that have less than 400,000 total employee work hours annually because only 135 smaller railroads that meet this criterion reported any human factor caused rail accidents, and of those 135 that reported such accidents, only 20 railroads reported five (5) or more human factor caused rail accidents during the years 2002 through 2005. During this four year period, these 135 smaller railroads experienced 334 human factor caused rail accidents amounting to 7 percent of all human factor caused rail accidents. It should also be considered that there are almost 600 smaller railroads that fit this criterion and yet only 135 reported any human factor caused rail accidents at all. On that basis, FRA proposes excepting the smallest railroads, based on the less than 400,000 employee work hours threshold, from the monthly and quarterly reviews. Of course, if FRA accumulates evidence to suggest that railroads with less than 400,000 employee work hours are experiencing a significant number of human factor caused accidents, FRA will reconsider its position.

Similarly, Amtrak and the railroads providing commuter service in a metropolitan or suburban area also experience a relatively low number of human factor caused rail accidents compared to the freight railroads with greater than 400,000 employee work hours annually. During the years 2002–2004, Amtrak and the commuter railroads experienced a total of 270 accidents attributed to human factor causes. At a meeting held with members of the American Public Transportation Association (APTA) on April 27, 2006, (notes of this meeting are in the docket of this proceeding) APTA explained that many of its member railroads do not keep accident/incident data and/or operational testing data electronically and, thus, conducting periodic reviews greater than annually would create a substantial burden for those railroads that couldn't simply run a report from a computer. In addition, APTA members reminded FRA that a commuter railroad's budget is dependant on the generosity of local and State governments, which may not want to upgrade computers and software which would permit quicker and more efficient accident/incident reviews. Passenger railroads are generally more stable in their organizations and experience greater continuity with respect to staffing at the line officer level (where many problems often develop).

With regard to six month reviews, however, there is a definite benefit for Amtrak and the commuter railroads to conduct a thorough system level review to achieve some degree of accountability. Meaningful reviews should help drive proper implementation of the program of operational tests and inspections—thus driving down the number of accidents/incidents attributable to human factors. However, we would appreciate comments directed toward perceived weaknesses in this proposed rule and any alternatives for achieving similar accountability. The APTA delegation also raised the issue of time required for implementation; and FRA requests comment on that issue in light of the consolidated six month review proposed. FRA is not inclined to except even the smallest commuter railroads from the requirement that reviews be conducted, because in FRA's experience no railroad is free from the risk that good discipline will erode over time, and the consequences of a passenger train accident can be very serious indeed.

For the major freight railroads, the proposed monthly review and quarterly review would be developed and conducted at the division level unless no division headquarters, or its equivalent, exists. Most larger railroads have created division headquarters (see existing definition in § 217.4 of this part) to manage portions of the railroad and, certainly, railroads that have divisions do so because it is more efficient. That is, it is easier for an officer at a division headquarters to know what safety issues are problematic in his or her division than an officer of a large railroad at the system level.

In paragraph (e)(1)(i), a monthly review is proposed for each division or system depending on whether the freight railroad is large enough to maintain divisions. The proposed monthly review is not expected to be an onerous task. It is merely a quick written tally of the number of tests performed by each railroad testing officer, including the railroad operating rules tested for, and a determination made whether the monthly tally shows adherence to the written program of operational tests and inspections. When monthly reviews reveal non-compliance with the program, FRA expects railroads to take corrective action to regain compliance. The designated railroad officer in paragraph (c)(5) may or may not be the officer who performs the monthly review, but this designated railroad officer would be required to ensure that the monthly review is properly completed.

The quarterly review proposed for freight railroads in paragraph (e)(1)(ii) is expected to be considerably more comprehensive than the proposed monthly review. It should include all the information collected in the

monthly reviews as well as the types of information specified in the paragraph, i.e., ''review of the [railroad's] accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for that division or system to identify the relevant operating rules related to those accidents/incidents that occurred during the quarter''. The focus of the quarterly review is to identify those operating rules which pose the greatest risk of being violated—which should then be targeted for regular tests and inspections. That is why FRA proposes that based upon the results of the quarterly review, the designated officer shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period. The proposed quarterly review must be in writing and include the data upon which any conclusions are based.

FRA expects that in order to conduct a meaningful quarterly review, each railroad will review accident/incident data, operational test data, and other pertinent data. For example, a railroad should identify the relevant facts for each category of data. The relevant facts are usually covered if a railroad can answer the questions signifying who, what, where, when, why, and how often. For accident/incident data, these questions would involve identifying all the employees involved in the accident/incident, a description of the accident/incident, the location where it occurred, the time it occurred, the root cause and any secondary causes, and whether the division or system has suffered this type of accident/incident often, sometimes or never. For operational test data, the issues include identifying the railroad testing officer(s) responsible for the particular location, whether the testing officers are testing for the operating rules responsible for any recent accidents/incidents, whether the testing officers conducted any tests where any recent accidents/incidents occurred, whether the testing officers are testing during the hours of highest incident rates, whether any railroad officers are briefing the employees as to the root or secondary causes and the fact that the railroad will be testing for compliance, and how often the officers are conducting any follow-up testing and job briefings.

FRA believes there are at least five other types of pertinent safety data that should be included in a proper quarterly review. One, if FRA has conducted any recent inspections, the railroad should check whether its officers' tests reflect FRA's findings. Two, if an employee is involved in an accident/incident, the employee's safety record may provide insight. Three, the railroad should determine if there is any correlation between the training or experience of the local railroad testing officers and the locations where accidents/incidents have occurred. Four, a railroad should similarly consider the extent to which employee experience plays a part in any given accident/incident. Fifth, a railroad's review should consider whether any operational conditions have recently changed that increased the likelihood of either non-compliance with the operating rules or accidents/incidents. Special attention to all these details in the quarterly or six month review, as applicable, should lead a railroad to meaningful application of its written program of operational tests and inspections with a greater potential for driving down the frequency and severity of accidents/incidents.

Although it would be best if quarterly reviews were completed immediately following the end of each quarter, FRA proposes that 30 days should be a sufficient period in which to require its completion. FRA originally considered requiring the quarterly review in half that time but railroads participating at a Railroad Operating Rules Working Group meeting suggested that additional time would be needed for those railroads that do not maintain their safety data electronically. For those railroads that keep records electronically, FRA expects quarterly reviews to take place contemporaneously with the conclusion of the quarter—although the proposed requirement will be a generous 30 days post-quarter. Regardless of how long it takes to complete the quarterly review, each division or system should be prepared to redirect its railroad testing officers in order to appropriately react to any accidents/incidents of non-compliance during the previous quarter. Even where a division or system has had a particularly safe quarter, railroad testing officers should be instructed to adjust the way in which they are conducting their tests so that employees cannot easily anticipate the types of tests to be conducted, nor the dates and locations of such tests.

In proposed paragraph (e)(1)(iii) and (e)(2), six month reviews are only proposed for each Class I railroad, the National Railroad Passenger Corporation (commonly known as ''Amtrak''), and each railroad providing commuter service in a metropolitan or suburban area. The basis for the proposal is that the identified freight railroads are so large that each would benefit from an officer, likely at the system headquarters, who is identifiable by name or job title, who will oversee whether each division, line or segment is complying with the program of operational tests and inspections. It is expected that such an officer would have the authority to intervene in division, line or segment operations to the extent that this officer could order changes to the way divisions are implementing the program. The purpose for such intervention would be to require certain types of operational tests or inspections based on observations made system-wide that may not be apparent to each designated division officer armed only with data from his or her own division.

In the case of Amtrak and the commuter railroads, the requirements in paragraph (e)(2), demand reviews equivalent to those for the freight railroads in paragraph (e)(1), but require all the reviews to take place at least every six months. Of course, these are proposed minimum requirements and passenger railroads are free to initiate more frequent reviews. For example, proposed paragraph (e)(2)(i) describes a review that is equivalent to the proposed review for freight railroads on a monthly basis and certainly passenger railroads may perform that review on a monthly basis as well. Proposed paragraph (e)(2)(ii) describes a review that is equivalent to the proposed review for freight railroads on a quarterly basis, yet, again, passenger railroads would be required to perform that review at least every six months. Proposed paragraph (e)(2)(iii) describes a review that is to be completed at least once every six months and is the equivalent of the six month review proposed for freight railroads. As it is proposed that the passenger railroads conduct the same reviews as the freight railroad with the exception of the timing of those reviews, the prior section-by-section analysis description for each review is applicable here.

Because FRA needs to be assured that each railroad is complying with any required reviews, the proposal requires that the reviews be retained for one year after the end of the calendar year to which they relate and shall be made available to FRA upon request. FRA's proposal also encourages railroads to store these records electronically as long as they can be produced upon request.

FRA questions whether current paragraph (d), which we propose to move to paragraph (f), would add any additional benefit given the proposed new requirements. That is, FRA would expect that the quarterly and six month reviews proposed in paragraph (e) would require greater analysis than the current data collection exercise that is described by the paragraph requiring the

annual summary. Thus, FRA is considering whether to incorporate the data collection requirements from the annual summary into the six month report and do away with the annual summary as a separate exercise altogether. FRA would appreciate comments on this issue.

Current paragraph (d) is proposed to move to paragraph (f) and contains two amendments. One amendment is merely to change the term ''manhours'' to ''employee work hours'' as the latter is gender neutral. The second amendment would clarify that this requirement does not apply to ''a railroad with less than 400,000 total'' employee work hours *annually,* as the current rule accidentally fails to include the qualification of the time period.

Current paragraph (e) is proposed to move to paragraph (g) with one amendment. The current rule specifies that the railroad maintain a ''desk-top'' computer upon which the railroad can retrieve data. As laptop and notebook computers have become more common, and their computing abilities now rival desk-top models, there is no reason to restrict railroads from using any computer to retrieve records for FRA under this section.

Proposed paragraph (h) would clarify that railroads and individuals can be liable for falsifying or deliberately mutilating records required by this section. FRA would have civil penalty authority, and the Federal government could prosecute these types of acts under criminal statutes, whether or not this paragraph is included in a final rule. *See,* e.g., 49 U.S.C. 21311. However, at this juncture, FRA has decided to include this paragraph as a reminder to railroads and individuals, and as a placeholder for the addition of penalties in Appendix A to part 217—Schedule of Civil Penalties.

Paragraph (i) proposes that FRA have some specific oversight mechanism for disapproving a railroad's program of operational tests and inspections. It also proposes minimum procedures and structure for the review process. The proposal would require that the Associate Administrator for Safety only disapprove programs required by this section for cause stated. As the disapproval decision is made for cause, it is significant for the railroad to understand exactly why FRA is disapproving the program; thus, FRA proposes that its notification of such disapproval be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program, it is proposed that the railroad be provided an opportunity of not less than 30 days to respond and to provide written and/or oral submissions in support of the program. It will be up to the Associate Administrator for Safety to grant additional time to respond in the rare instances that the railroad requests more than 30 days. The Associate Administrator for Safety shall render a final decision in writing and the railroad shall be provided not less than 30 days to amend the program in accordance with the Associate Administrator for Safety's decision. Again, on a case-by-case basis, it is proposed that the Associate Administrator for Safety may provide a railroad with additional time to correct a disapproved program. Although enforcement action is always discretionary, FRA believes that enforcement action is warranted when a railroad fails to appropriately and timely amend its program.

The approach in proposed paragraph (i) recognizes that FRA will want to review such written programs during audits or investigations and that FRA should have the authority to request changes to the program if it does not meet the minimum requirements of this rule. The oversight authority vests with the Associate Administrator for Safety. Although FRA would have authority to review in detail each railroad's program, FRA does not intend to have each railroad submit its program for review and explicit approval. Rather, FRA intends to review the programs of the major railroads over a multi-year cycle to determine if they are effective. Please note that the proposal is for the Associate Administrator for Safety to render a final decision in writing. FRA solicits comments regarding the need for further appeals within FRA.

Although not contained in this proposal, FRA solicits comments as to whether the final rule should require each railroad to instruct its employees on operating rules at least once every three years. FRA has decided to propose a requirement that only requires such periodic instruction as it applies to those operating rules that would be required by part 218, subpart F instead of all railroad operating rules. *See* § 218.95(a)(5). As periodic training of operating rules is already occurring on the vast majority of railroads, FRA's proposal in part 218, subpart F is focused on those operating rules that cause the most accidents. Adding a more general requirement would likely improve safety for railroads which conduct few operating rules classes and we would appreciate comments regarding the costs and benefits of such a minimum requirement.

PART 218—[AMENDED]

Section 218.4 Preemptive Effect

This section informs the public of FRA's intention and views on the preemptive effect of the rule. The preemptive effect of this rule is broad, as its purpose is to create a uniform national standard. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. Exceptions would be rare. In general, 49 U.S.C. 20106 will preempt any State law—whether statutory or common law—and any State regulation, rule, or order, that concerns the same subject matter as the regulations in this rule.

Section 218.5 Definitions

FRA is proposing an amendment to the definition of *flagman's signals* in order to eliminate a reference to ''torpedoes''. Torpedoes are antiquated signaling devices which have fallen into disuse in the industry. Likewise, we are proposing amendments to § 218.37 which refers to this definition and the placing of torpedoes when providing flag protection.

Section 218.37 Flag Protection

FRA is proposing to eliminate references to ''torpedoes'' as these are antiquated signaling devices which have fallen into disuse in the industry. The current rule requires each railroad to have in effect an operating rule which complies with this section, and thus contains references to the use of torpedoes, even though the railroad could meet other flagging requirements without ever needing to carry or use torpedoes. In this section, there are two paragraphs that reference torpedoes. Paragraph (a)(1)(iii) currently states, in part, that ''[w]hen a train stops on main track, flag protection against following trains on the same track must be provided as follows: A crew member with flagman's signals must immediately go back at least the distance prescribed by timetable or other instructions for the territory, *place at least two torpedoes on the rail at least 100 feet apart* and display one lighted fusee''. The language in italics is proposed for deletion. Paragraph (a)(1)(iv) currently states that ''[w]hen required by the railroad's operating

rules, a forward crew member with flagman's signals must protect the front of his train against opposing movements by immediately going forward at least the distance prescribed by timetable or other instructions for the territory *placing at least two torpedoes on the rail at least 100 feet apart,* displaying one lighted fusee, and remaining at that location until recalled''. Again, the language in italics is proposed for deletion. Elimination of the references to torpedoes does not eliminate the requirement that each railroad have in effect an operating rule that complies with the requirements in this section.

Subpart F—Handling Equipment, Switches and Derails

Section 218.91 Purpose and Scope

As previously explained in the **SUPPLEMENTARY INFORMATION**, FRA has identified that non-compliance with a small number of railroad operating rules has caused an inordinate percentage of total human factor caused accidents. FRA's purpose is first to establish clear and unambiguous procedures that will provide for the safety of railroad employees and the public. In the RSAC Working Group discussions that preceded the preparation of this proposed rule, FRA noted significant variation in basic safety procedures followed on participating railroads. Although some variation is necessary to address local conditions, the presence of extensive joint operations in the railroad industry makes it essential that certain common procedures apply. Joint operations are not new to the railroad industry, as evidenced by the historic role of terminal companies. However, the practice has more recently expanded through mergers and consequent awards of trackage rights and through the creation of hundreds of small railroads that are often provided access to larger railroad's facilities to facilitate efficient interchange of cars.

In order to support compliance with operating rules, it is essential that they be consistent, commonly understood, and applied in a predictable manner. Further, it must be understood that the rules may not be circumvented at the whim of a supervisor or employee to hasten completion of the work. The rules in this proposed subpart are intended to support these purposes.

In addition, making these rules mandatory from a Federal standpoint implies an enforcement mechanism to discourage non-compliance.

FRA proposes to standardize this small number of railroad operating rules by establishing minimum requirements. The minimum requirements proposed are based on accepted best practices and rules currently in use. Of course, railroads may choose to prescribe additional or more stringent requirements.

Section 218.93 Definitions

The definitions proposed in this section only have applicability to this subpart so it should be easier for the reader to locate each definition in this section rather than in subpart A—General, § 218.5.

FRA proposes several definitions that are consistent with other definitions of these terms in this chapter. These terms are *Associate Administrator for Safety, controlled siding, employee, highway-rail grade crossing, locomotive, pedestrian crossing, qualified,* and *roadway worker.* In an effort to be as clear as possible, FRA is including definitions of these terms in this subpart for the benefit of anyone unfamiliar with these terms.

FRA proposes adding a definition for *clearance point* because this term is necessary to describe an important concept that is used several times in this subpart. The definition of ''clearance point'' means the location near a turnout beyond which it is unsafe for passage by equipment or a person riding the side of a car on an adjacent track. While clearance points may be identified by marks on the rail, signs, or other visible identifiers, these points are often referring to an approximate location that will need to be deduced by an employee. FRA proposes that railroads implement procedures for identifying such approximate locations and for waiting to line hand-operated switches away until equipment that has entered the track has passed this point. *See* §§ 218.101(c) and 218.103(e). Without a definition of clearance point, it would be difficult to define what is meant by ''foul or fouling a track''. Through the proper identification of clearance points, employees can avoid collisions and personal injury to other employees riding the sides of cars.

FRA proposes a definition for *correspondence of crossover switches* that should be familiar to people working in the railroad industry. When straight tracks are connected so that rolling equipment may travel or ''cross over'' from one straight track to another, the equipment must pass over switches that control movement into the crossover track; these are the crossover switches. When both crossover switches are lined for the crossover, the crossover switches are in correspondence because the rolling equipment may cross over from one parallel track to another without running through either of the crossover switches. However, if one crossover switch is lined for the crossover and the other is lined for the straight track, the latter switch is lined against a train movement exiting the crossover track and thus is deemed out of correspondence. Similarly, if both crossover switches are lined for the straight track, the switches are considered in correspondence because no trains on the straight tracks should be diverted through a misaligned switch and potentially into another train or other rolling equipment.

FRA proposes adding a definition for *foul or fouling a track* because this term is necessary to describe an important concept that is used several times in this subpart. *Foul or fouling a track* means rolling equipment or on-track maintenance-of-way equipment is located such that any part of the equipment is between the clearance point and the switch point leading to the track on which the equipment is standing. In other words, when equipment is left standing on a track in such a manner that a movement on an adjacent track would collide with it, i.e., ''fouling a track,'' the potential for an accident is great. Equipment, or a person riding a side of a car, on adjacent track could strike the fouling equipment. This type of accident is usually a side-swipe type accident and the severity of the accident depends on the factors involved; e.g., the factors determining severity include, but are not limited to, the speed of the moving equipment, the type of equipment struck, the contents of the cars struck, whether a person was riding a car and whether an occupied locomotive struck the equipment. The issue of foul or fouling a track is addressed in § 218.101, where it is proposed that certain scenarios of fouling are avoidable and thus should be prohibited.

FRA proposes a broad definition for *hand-operated switch* to identify any type of switch when operated by manual manipulation, including when operated by a push button or radio control, when such switch is not protected by distant switch indicators, switch point indicators or other visual or audio verification that the switch points are lined for the intended route and fit properly. The definition includes all switches which are normally operated by manual manipulation of the switch lever. In this proposed rule, FRA has used the term ''hand-operated'' to characterize the types of switches normally operated by conductors, brakemen and switchmen whether or not there is some electronic aspect to the operation of the switch. Maintenance-of-way and mechanical

employees also have occasion to operate these switches. For lack of better terminology, we are characterizing these other types of switches as ''hand-operated'' even though a push button or radio control may be used to throw the switch; for these types of switches, the ''manual manipulation'' aspect is that the employee is required to throw the switch and the electronic aspect of the switch manipulation is primarily an option for avoiding personal injuries due to the throwing of a switch lever. FRA reserves the right to include provisions in the final rule to address these and related issues concerning power-assisted switches. FRA does not intend to address issues related to power-assisted switches operated from central consoles, whether within or outside of signaled territory, when so operated. Finally, the proposed requirements set forth for hand-operated switches in § 218.103 are unnecessary when an employee can verify that the switch points are lined for the intended route and fit properly, which can be accomplished without observing the switch points in the case where the switch is protected by distant switch indicators, switch point indicators or other visual or audio verification. For example, the two types of indicators provide a visual indication of the switch alignment and other electronic advancements are capable of sending a message to a receiver indicating the switch's alignment such that a visual check by an employee to determine that the switch is properly aligned would be redundant after receiving an electronic message that has already served that purpose.

FRA proposes adding a definition of *qualified* which is identical to the definition proposed for 49 CFR 217.4 in this notice. It is proposed that a person cannot be qualified unless he or she has successfully completed all ''instruction, training and examination'' programs required by both the railroad and this subpart. Where FRA specifies that a qualified employee is to do the work, it is because we want some assurance that the person either has actual knowledge, or may reasonably be expected to have knowledge, such that there is no question the person should be able to do the work in accordance with the railroad's operating rules. It is imperative that only employees who have been qualified should do such work that the proposed rule restricts to qualified employees because a railroad that allows unqualified employees to do such work is increasing the likelihood of an accident/incident.

FRA proposes a definition for *remote control operator* merely to aid in the clarification of shoving or pushing movement requirements involving remote control operations versus the requirements for conventional operations. Remote control operators are ''locomotive engineers'' per FRA's regulations found at 49 CFR part 240. Traditional engineers, i.e., those persons qualified to operate conventional locomotives, may be trained on remote control equipment—and are thus qualified for remote control operations; in that situation, the term remote control operator applies to the conventional engineer. Hence, the term ''remote control operator'' is not limited to those persons who only are certified to operate remote control locomotives but to anyone certified to operate such locomotives. The industry uses the shorthanded term ''remote control operator'' to refer to ''remote control locomotive operators;'' unless FRA receives comments to the contrary, we trust that no one is confused by the dropping of the reference to ''locomotives'' in the terminology.

FRA proposes a definition for *remote control zone* in order to permit a shoving or pushing operation that is safe and yet protected differently from conventional shoving or pushing operations. This zone is a term adopted by railroads that designate one or more segments of track, typically in a yard, where remote control operations can safely switch cars without point protection. Point protection is unnecessary because other safeguards are put in place. Although the location for a remote control zone may be permanent, the proposed regulation would require certain conditions to be met each time a zone is used for its intended purpose of allowing an operation without an employee assigned to protect the leading end in the direction of movement, i.e., the pull-out end, of the remote control movement. *See* § 218.99(d).

FRA has noticed some confusion over the ''remote control zone'' terminology, and that it might help to distinguish it from a ''remote control area.'' A ''zone'' is an integral part of remote control operations, whereas an ''area'' describes for informational purposes only a location within which remote control operations occur and does not directly affect such operations. The ''area'' is usually created by putting up signs to warn employees working in the vicinity that moving locomotives may be unmanned. The ''area'' is typically larger than the ''zone'' as it covers anywhere the remote control operation could take place. It is important to create these areas so that employees are warned to use care in moving around the yard with the knowledge that using hand signals to convey a message to a moving locomotive may be in vain as there may not be an engineer in the cab to see them. Thus, these terms do not mean the same thing and should not be used interchangeably.

FRA proposes a definition for *roadway maintenance activity* to distinguish between those duties prescribed for roadway workers, including movement of on-track maintenance-of-way equipment other than locomotives, and other types of duties that a roadway worker may perform which are not so limited. In other words, a person designated a ''roadway worker'' may engage in an activity that is not a ''roadway maintenance activity.'' This term is used to describe an exception to the general shoving and pushing requirements. Incidentally, FRA proposes using the term ''on-track maintenance-of-way equipment'' to distinguish between other types of maintenance-of-way equipment that may be left adjacent to a track—as opposed to ''on-track.''

FRA proposes a definition for *roadway worker in charge* in order to provide a generic title to the roadway worker who is in charge of a roadway work group. The designation of such a worker enables FRA to propose leaving main track switches in such a person's charge as well as being the conduit for switch alignment information when other workers in the group have operated switches. The communication among group members is similar in importance to the communication that is required between train crewmembers. FRA intends this term to have the same general usage as in subpart C of 49 CFR part 214.

FRA proposes a definition for *switchtender* because a few railroads still utilize a worker with responsibilities for lining specific switches for trains and a person with this position is not a crewmember. FRA proposes a definition for this term because we want to acknowledge that this type of worker may be qualified to operate switches, so switches can be safely left in a switchtender's charge. FRA has not defined ''switchtender'' in order to suggest that railroads create such positions or that there is any sort of requirement to employ switchtenders.

FRA proposes a definition for the term *track is clear* to describe a checklist of conditions which must be visually determined before a shoving or pushing movement may be initiated or continue. The visual determination must be made by a qualified employee who is typically a crewmember. If the four conditions for determining that the

track is clear are met, then if an accident occurs, it is unlikely to be the fault of the person making the determination. That is, when the portion of the track to be used is clear there should not be any rolling equipment, on-track maintenance-of-way equipment or conflicting movements that could collide with the shoving or pushing movement; there should be no intervening motor-vehicles or pedestrians to strike as all highway-rail grade crossings should be protected; there should be no intervening switches or derails to run through or over as they should all be properly lined for the intended movement; and, the shoving or pushing movement should not accidentally place cars on a connecting track if the portion of the track has sufficient room to contain the equipment being shoved or pushed.

Within the definition of track is clear are the proposed conditions for determining that intervening highway-rail grade crossings and pedestrian crossings are protected. As shoving or pushing movements typically occur without a locomotive engineer in a locomotive leading the movement, it is vital to protect crossings to prevent easily avoidable accidents. The proposed rule considers the crossing protected if a crossing has working crossing gates and the gates are in the fully lowered position. Whether or not there are working gates, a crossing may be protected by stationing a designated and qualified employee at the crossing who has the ability to communicate with trains. A third proposed option for protecting a crossing would only be available when crossings are equipped only with flashing lights or passive warning devices; in that situation, it is proposed that the crossing would be considered protected when it is clearly seen that no traffic is approaching or stopped at the crossing and the leading end of the movement over the crossing does not exceed 15 miles per hour.

Section 218.95 Instruction, Training and Examination

In paragraph (a), FRA proposes that each railroad maintain a written program that will qualify its employees for compliance with operating rules implementing the requirements of this subpart to the extent these requirements are pertinent to the employee's duties. Thus, the pool of employees that would need to be covered by the proposed program are those employees involved in shoving or pushing operations, remote control operations, and any operation where equipment might be left fouling a connecting track—as well as any employee that may be required to operate hand-operated switches and derails. The written program may be a stand-alone program or consolidated with the program of instruction required under § 217.11 of this chapter. FRA anticipates that most railroads would choose to consolidate this program with the part 217 requirement. Although FRA encourages the efficiencies consolidation is sure to bring, FRA's expectation is that, if the proposed rule is implemented, the consolidated written program will sufficiently stress the requirements of this subpart.

Proposed paragraphs (a)(1) and (a)(2) provide more details regarding what should be included in the written program. Paragraph (a)(1) would require that the program include instruction on consequences of non-compliance, i.e., that FRA can take enforcement action through civil penalties or disqualification from safety sensitive service. *See* 49 CFR part 209, subpart D—Disqualification Procedures. Paragraph (a)(2) proposes that the written program address the need to qualify employees on all aspects of the technology the employees will be utilizing when complying with the operating rules that would be required by this subpart. For example, employees may be expected to operate a variety of hand-operated switches and must be taught how to properly operate them as well as what to do if a malfunction or deviation is detected.

Paragraphs (a)(3) and (a)(4) address the implementation schedule for this subpart. Paragraph (a)(3) states that after 12 months from the publication date of the final rule, employees performing duties subject to these requirements shall be qualified per the minimum requirements in this subpart. However, it is further proposed under paragraph (a)(3) that employees who are hired during the 12 months following the publication date of the final rule would not be provided such a grace period; instead, it would be expected that new hires would receive the proper qualification training before being allowed to perform duties subject to the requirements of this subpart. Furthermore, under proposed paragraph (a)(4), after 12 months from the publication date of the final rule, FRA proposes no further grace period and that employees receive recurrence training at least every three years; FRA proposes this three year window because it is a standard industry practice to re-qualify employees on operating rules at least every three years. Finally, pursuant to paragraph (a)(5), FRA proposes that the record for each employee shall document qualification of employees under this subpart by including any records of required instruction, examination and training.

This section does not make specific reference to qualification of employees on the territory where they will be working, but it is implicit that this must be done where necessary to provide the knowledge required to comply with the subject rules. During the RSAC discussions, labor representatives asked for a more explicit recognition of this requirement. However, it was not immediately obvious to FRA personnel how this concept should be applied in the subpart F context. Unfortunately, time available to develop this issue in the RSAC Working Group was limited. Accordingly, FRA requests any further comment that is appropriate to develop this issue and reserves the right to include appropriate language in the final rule.

In paragraph (b), FRA proposes that qualification records required by this subpart be retained at a railroad's system headquarters and at the division headquarters, if any, where the employee is assigned. This will enable FRA to quickly obtain such qualification records upon request. FRA has not proposed a retention schedule for these records as we believe the proposed section mandates that at a minimum: (1) Records must be kept for each employee qualified and (2) when an employee is requalified, there is no longer a need for a railroad to retain the old record as it has been superceded by the new one.

Proposed paragraph (c) provides a mechanism for FRA to review and disapprove of a railroad's written program required under paragraph (a). It also proposes minimum procedures and structure to the review process. The proposal would require that the Associate Administrator for Safety only disapprove programs of instruction, training and examination required by this section for cause stated. As the disapproval decision is made for cause, it is significant for the railroad to understand exactly why FRA is disapproving the program; thus, FRA proposes that its notification of such disapproval be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program, it is proposed that the railroad be provided an opportunity of not less than 30 days to respond and to provide written and/or oral submissions in support of the program. It will be up to the Associate Administrator for Safety to grant additional time to respond in the rare instances that the railroad requests more than 30 days. The Associate Administrator for Safety shall render a

final decision in writing and the railroad shall be provided not less than 30 days to amend the program in accordance with the Associate Administrator for Safety's decision. Again, on a case-by-case basis, it is proposed that the Associate Administrator for Safety may provide a railroad with additional time to correct a disapproved program. Although enforcement action is always discretionary, FRA believes that enforcement action is warranted when a railroad fails to appropriately and timely amend its program.

The approach in proposed paragraph (c) recognizes that FRA will want to review such written programs during audits or investigations and that FRA should have the authority to request changes to the program if it does not meet the minimum requirements of this rule. The oversight authority vests with the Associate Administrator for Safety. Although FRA would have authority to review in detail each railroad's program, FRA does not intend to have each railroad submit its program for review and explicit approval. Rather, FRA intends to review the qualification programs of the major railroads over a multi-year cycle, in connection with review of the overall program of operating rules, to determine if they are effective. Among the factors that would be considered would be the extent to which the program was founded on appropriate task analysis, the completeness of the curriculum, the types of instructional methods, appropriateness of written and other tests, criteria for successful completion, and—most importantly—the ability of employees said to be qualified to apply the rules in practical situations.

The proposal is for the Associate Administrator for Safety to render a final decision in writing. FRA solicits comments regarding the need for further appeals within FRA. Finally, FRA solicits comments regarding whether proposed paragraph (c) should instead be moved to § 217.11 of this chapter in order to give the Associate Administrator for Safety explicit review over a railroad's entire program of instruction on operating rules.

Section 218.97 Good Faith Challenge Procedures

The main purpose of requiring that each railroad establish operating rules containing certain minimum requirements under this subpart is to ensure safe handling requirements of certain operations by employees where human factor caused accidents have historically occurred. Codifying these requirements will enable FRA to take enforcement action when necessary, and will therefore discourage non-compliance with these important safety rules. FRA is convinced that human factor caused accident rates and incidents of non-compliance would be significantly lower if each railroad were properly qualifying employees and consistently enforcing its own operating rules. FRA's perception is that on occasion some railroad officers are permissive in allowing occasional violations of operating rules in order to achieve short-term perceived efficiencies. For example, a railroad officer may order an employee to shove blind, i.e., without ensuring that the track is clear for the movement, in an effort to finish a job quickly and get a train out of the yard. If the move originated from a direct order by a railroad official, the employee might fear challenging the railroad official on the order or might have complied with so many similar orders in the past as to not perceive the danger in occasionally violating an operating rule. Another example could occur when an employee is told he or she may leave work early as soon as a particular assignment is complete. Rather than taking the longer but safer route to determine that a switch was left properly lined, the employee assumes the switch was left properly lined, even though some time has passed since the employee last observed it. This proposed rule is intended to check emergence of the culture that sometimes accepts some degree of non-compliance with a railroad's operating rules.

One essential aspect of changing this undesirable culture of complacency with some non-compliance is to establish better lines of communication between employees and railroad officers. An employee who is well trained and qualified to do the work, as FRA is proposing by requiring railroads to have a written program in section 218.95, should readily recognize when a railroad officer has given the employee an order that does not comply with the railroad's own operating rules. In order to address this issue, FRA is proposing good faith challenge procedures.

The good faith challenge procedures are about establishing dialogues between employees and railroad officials. A good faith challenge is initiated by an employee who believes that if he or she obeys a particular order issued by a railroad official, the employee would violate one or more of the operating rules required by this proposed subpart. At its core, the good faith challenge and its attendant procedures should force a railroad official to listen to an employee's concern regarding such an order and to reconsider the validity of the order. FRA has created a mechanism for appealing the first official's order to a second official in the situation where dialogue and compromise do not resolve the discrepancy. FRA refers to the challenge as the ''good faith'' challenge because we do not intend for employees to abuse it. For example, if several experienced employees in a particular yard were all to initiate separate challenges where no real dispute could be articulated, this concerted effort to create a work stoppage or slowdown would be in bad faith and would not shield the employees from the proposed protections required in each railroad's written procedures. Meanwhile, we expect bad faith challenges to never or rarely occur and for the challenge to provide, in part, for a dialogue between employee and supervisor that railroads should be permitting and encouraging without being prompted by regulation. Of course, if the good faith challenge is implemented and found to be regularly abused, FRA would consider amending or abolishing the challenge.

FRA's proposal to institute minimum good faith challenge procedures is not without precedent. FRA's current regulations require employers of roadway workers to ''have in place a written procedure to achieve prompt and equitable resolution of challenges''. 49 CFR 214.311 and 214.313. In FRA's experience, and in anecdotal information received by union representatives, the roadway worker good faith challenge has been a great success. To FRA's knowledge, all challenges by roadway workers have been immediately resolved between the roadway worker and the railroad official who issued the order. FRA originally considered a proposal that would mirror the roadway worker good faith challenge approach, and we certainly encourage interested parties to comment on whether that approach should be applied here.

FRA has proposed good faith challenge procedures that are more detailed than those established for roadway workers because the officer/employee relationship dynamic is different for roadway work versus operations work. That is, the strict chain of command is more prevalent in operations than roadway work. Thus, a supervisor of roadway work may be more accepting of a challenge than an operations supervisor, e.g., a yardmaster.

Paragraph (a) proposes general procedures for implementing a good faith challenge specific to the requirements of this subpart; railroads

or employers of railroad employees subject to this subpart, of course, are free to implement a good faith challenge in areas not subject to this subpart. Paragraph (a) proposes that each employer be responsible for the training and compliance by its employees with the requirements of this subpart. Obviously, railroads will have to instruct employees on all aspects of the good faith challenge or it will have no effect. FRA intends to take enforcement action where a railroad fails to properly instruct employees or a railroad's officers fail to comply with implementation of the good faith challenge procedures.

Paragraph (a)(1) proposes that each employer guarantee each employee the right to challenge in good faith as to whether the procedures that will be applied to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. Thus, the proposal's applicability would only be for a challenge to any order that violates a requirement in proposed subpart F. Paragraph (a)(1) of the proposed rule would require a railroad to adopt and implement written procedures as the mechanism for instituting the good faith challenge. Such written procedures should not lead to protracted arguments that are unusually disruptive to operations as FRA proposes that each railroad's procedures provide for ''prompt'' challenges. FRA's expectations are that such challenges should be resolved in a matter of minutes, certainly not an hour or more. It is within this context that FRA also specified the concept that a railroad's written procedures provide for ''equitable resolution of challenges;'' by proposing this requirement, FRA meant for a railroad officer to give deference to an employee's challenge if the employee has suggested a safe way to do the work that is in compliance with the relevant operating rules. Follow-up to clarify the correct application of the rule leading to the challenge can be done at a later time or date so that a definitive answer may be provided by the railroad to the railroad officer and employee involved; e.g., a railroad's manager of operating rules may want to issue a bulletin generically outlining the challenge and the proper application of the rule. As a good practice, a railroad should take this extra step to clarify a definitive answer even if the employee does not request such a review, as provided for in proposed paragraph (c)(4), as it may be used as a learning experience for other employees.

Proposed paragraph (a)(2) requires that a railroad's good faith procedures indicate that the challenge is not intended to supplant any rights or remedies available to the employee under a collective bargaining agreement or under the statute providing for employee protections found at 49 U.S.C. 20109. The statutory provision permits an employee to file a complaint and testify against a railroad, as well as refuse to work because of hazardous conditions, without fear that a railroad will discriminate, discharge or otherwise take retribution against the employee. Additionally, the statute provides a mechanism for dispute resolution under the Railway Labor Act if the employee wishes to file a dispute, grievance or claim arising under the statutory protection provisions. In other words, an employee who makes a good faith challenge, but is ordered to do the work pursuant to proposed paragraph (c), may still refuse to work because of hazardous conditions and seek the protection prescribed in 49 U.S.C. 20109. While it is proposed that railroads indicate that the good faith written procedures are not intended to abridge these other rights and remedies, the proposed rule does not require that railroads must educate their employees on these other protections, because those protections are generally applicable to all aspects of railroad operations—not merely to the three areas of concern addressed by the subpart. Employees may want to take this opportunity to self-educate or unions may want to take this opportunity to remind their members of the other employee protections available that are separate from this rule.

Paragraph (a)(3) proposes that a railroad instruct affected employees on the good faith challenge procedures contemporaneously with the training railroads are required to provide under 49 CFR 217.11. The idea is that an employee's chance of understanding the proper application of the good faith challenge should be greatest at the time the employee is receiving instruction on the relevant operating rule(s). Of course, FRA does not expect a railroad to instruct an employee whose duties do not involve handling equipment, switches and derails. If an employee's duties change to include these activities, the railroad will have to provide the instruction prior to assigning the new duties.

The good faith challenge procedures are a critical component of FRA's proposal, which is narrowly tailored with the intention to drive down the number of accidents caused by human factors. Employees learn in the classroom but there are often so many topics covered in an operating rules class that it could be difficult for an employee to retain everything taught. To compensate, railroads traditionally provide operating rule books not only to put employees on notice that compliance with these rules is expected, but also, as a reference so that each employee can check the rules and be reminded of their requirements. In similar fashion, FRA proposes a requirement in paragraph (a)(4) that each railroad provide a copy of its written good faith procedures to each affected employee, as well as any amendments to its written procedures prior to the effective date of the amendments. Also, like any other record FRA requires, a railroad would need to make the written procedures available for inspection by FRA.

Paragraph (b) proposes additional procedures for each railroad to include in its written good faith procedures. Each of these more specific requirements lays the framework for what FRA envisions as a respectful dialogue between two individuals with differences of opinion on an operations issue with a safety component; the two individuals are, of course, an employee and a railroad officer.

Paragraph (b)(1) proposes granting each employee the right to challenge any directive which, based on the employee's good faith determination, would cause the employee to violate any requirement of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. The good faith challenge procedures should eliminate any stigma employees have regarding challenging railroad officers on safety issues pertaining to handling equipment, switches and derails. Likewise, standardization of the challenge should cause railroad officers to truly reflect on the orders issued and whether any aspect of an order would result in non-compliance with the relevant railroad operating rules.

Paragraph (b)(2) specifies a proposed requirement that each railroad's good faith challenge procedures shall include a provision stating that the railroad will not seek retribution against an employee who makes a challenge in good faith. A properly instructed employee, exercising the right as specified in paragraph (b)(1), should feel confident that he or she will not be discharged, demoted, or otherwise discriminated against for making a legitimate challenge. Employees should be aware that this process will not protect the employee if the employee is proven to abuse the challenge. Meanwhile, merely being proven wrong regarding the

application of an operating rule does not prove abuse of the challenge. A challenge may be made in ''good faith'' if the employee is unsure of the correct application of the rule and seeks clarification. Similarly, if the employee misunderstands the rule or its application, that does not equate with raising a challenge in bad faith. If FRA's roadway worker good faith challenge is any indication of future compliance, we look forward to all challenges being made in good faith.

Paragraph (b)(3) proposes a requirement that the good faith written procedures state ''that no work is to be performed with respect to the challenged task until the challenge is resolved.'' This is similar to the roadway worker requirement that the employer's procedures allow the challenging employee ''to remain clear of the track until the challenge is resolved.'' 49 CFR 214.311(b). However, while this requirement has posed no problems for employers of roadway workers, FRA has added additional clarification and procedures to the proposal to make absolutely certain that we are not advocating a work stoppage or slowdown. As previously stated, the procedures are to be drafted so that they provide for a ''prompt'' resolution of challenges as provided in paragraph (a)(1).

The proposed regulation identifies four ways that a challenge may be ''resolved.'' One, we expect that some railroad officers when challenged will realize they made a mistake and will defer to the employee's suggested alternative method of operation that should be in compliance with the operating rules. Two, after making a challenge and receiving an explanation or recitation of the rule from the officer, an employee may likewise realize his or her mistake and quickly defer to the officer's directive. Three, in some situations, the challenge may lead to a discussion of options on how the task can be performed in compliance with the operating rules. That discussion may lead to a realization either that both persons were only partially correct or there is another option not previously asserted. Under those circumstances, an amicable resolution would be the advancement of a third option that was reached through communication and compromise, and is therefore satisfactory to both parties. The fourth way a challenge may be ''resolved'' is with a direct order to proceed with the work as initially ordered. A direct order should be a last resort and FRA requests comments regarding whether the rule should require that the written program indicate a preference that railroad officers always attempt to resolve good faith challenges amicably before seeking further review by a second railroad officer as proposed in paragraph (c).

For the direct order to proceed with the work as initially ordered, FRA proposes additional requirements for each railroad's written procedures that are intended to encourage a rational approach to the disputed issue. The written procedures shall provide for further review any time a challenge is resolved by issuing a direct order that is unacceptable to the challenging employee. FRA intends this further review be made by a railroad officer who cannot be unduly influenced by the officer who issued the initial order; we hope to accomplish that by requiring that the reviewing officer be a different officer who is not a subordinate of the officer who issued the initial order. As this review is envisioned as just a quick check with another officer, the employee shall not be required to do the work as ordered until the second, reviewing officer has made a decision. FRA requests comments regarding whether some smaller railroads may have difficulty complying with this proposed requirement and, if so, suggestions regarding alternative options for providing fair review would be appreciated. FRA also requests comments regarding whether the review should always be made directly to officers in the railroad's operating rules department, as improved communications has made the final railroad decision-makers more easily accessible for providing on-the-spot interpretative guidance.

The proposed written procedures shall also provide the employee with the right to document any protest and provide that the employee be advised that completing the work under protest and as ordered will not subject the employee to Federal civil penalties. These additional requirements are not just prudent but reflect existing statutory requirements. 49 U.S.C. 21304. These procedures do not supercede the statutory requirements nor do they exceed them. Thus, the time needed to document a protest should not pose a new burden on railroads.

The direct order procedures shall also provide the employee with the right to one more review by a railroad officer designated by name or title in the written procedures who will make the final interpretation of the applicable operating rule. It is not expected that this review be immediate but that the written procedures will specify a reasonable period after the incident in which the railroad will get back to the employee with a formal interpretation of the issue in question. This review can be as simple as a call from a railroad's manager of operating rules to the employee with an explanation. However, a call will not be sufficient if the employee requests that verification decision in writing.

During the RSAC Railroad Operating Rules Working Group meetings, AAR and APTA voiced opposition to the idea of the promulgation of a good faith challenge. Both associations were concerned that implementation of such a challenge would pose numerous logistical difficulties as well as a perceived high potential for abuse by employees. One concern raised was that on-time performance could easily be compromised if an employee raised a challenge and a quick compromise solution could not be reached. FRA does not believe it needs to address this issue as it is one that would need to be addressed by each individual railroad by setting up effective protocols for supervisors to follow when issuing direct orders to proceed; *i.e.*, each yardmaster or other supervisor who may need to issue a direct order to proceed should know who to contact in the event that an immediate review is requested. For example, a railroad may wish to provide contact lists to each supervisor of other supervisors so that each supervisor has multiple people to contact in the event a challenge needs immediate review. FRA welcomes suggestions on how to address this issue on smaller railroads with few supervisors available to conduct such immediate reviews.

Another perceived concern that arose from an FRA draft proposal before the RSAC's Railroad Operating Rules Working Group was that train delays could result from finding a second officer to provide the immediate review prior to execution of a direct order. Additional time delays would result if an employee had the right to immediately document the challenge before returning to work. FRA has addressed this issue by proposing in paragraph (c)(2) that the employee be afforded an opportunity to document the protest electronically (e.g., by radio transmission to be recorded) or in writing any time ''before the tour of duty is complete.''

AAR also asserted that FRA did not have the authority to promulgate such a challenge as a statutory provision vested employee protections under the Railway Labor Act. *See* 49 U.S.C. 20109(c). FRA respectfully disagrees. The statutory provision provides that ''a dispute, grievance, or claim arising under this section [§ 20109] is subject to resolution under section 3 of the Railway Labor

Act (45 U.S.C. 153)'' but does not preclude FRA from promulgating other employee protections when the underlying basis is to promote safer railroading. AAR also points to the legislative history in which the House of Representatives Committee on Interstate and Foreign Commerce commented that ''[t]he Committee intends * * * [the Railway Labor Act] to be the exclusive means for enforcing this section [and] * * * does not intend for FRA to be involved in this area.'' H.R. Rep. No. 96–1025, at 16 (1980). FRA agrees that it does not have any authority to resolve employee protection disputes under § 20109 and we have no intent to do so. FRA's proposal to institute good faith challenge procedures is not an attempt to vest FRA with the authority to resolve labor disputes but instead is an attempt to provide employees with a formal process by which they may, in good faith, challenge orders that they believe will require them to violate certain railroad operating rules. The good faith procedures do not amount to a refusal to work and do not supplant or supercede the statutory protections. Instead, FRA proposes to instill compliance with the good faith procedures through its well-defined enforcement policy (*see* 49 CFR part 209, app. A) and not by usurping the National Railroad Adjustment Board's authority to resolve labor disputes, grievances or claims.

Section 218.99 Shoving or Pushing Movements

Generally, in conventional operations, shoving or pushing movements occur when the controlling locomotive is not leading the movement because the locomotive engineer is not in a position to have an unobstructed view of the track in the direction of the shoving movement. However, in remote control operations, there may be an issue with respect to point protection in either direction of movement. The terms ''shoving'' and ''pushing'' have the same meaning but FRA uses both terms because our nation's railroads have split in the usage of each term. Proposed paragraph (a) would require that each railroad have in effect an operating rule that complies with the requirements in paragraphs (b) through (d) and that each railroad officer, supervisor, and employee shall uphold and comply with that rule. The purpose for proposing that each railroad officer, supervisor, and employee shall uphold and comply with that rule is so that all effected employees will be required to follow the operating rules FRA proposes that each railroad maintain as opposed to merely requiring that each railroad have in effect such a rule.

As specified in paragraphs (b) through (d), shoving or pushing movements can be made safely if precautions are taken. This proposed section states those minimum precautions and requires that each railroad have in effect specific operating rules incorporating the precautions. The precautions proposed take direct aim at those human factor causes that have been identified as causing the increasing trend of non-compliance and accidents. As specified in paragraph (e), there are other movements that could be considered shoving or pushing movements but FRA believes these other movements can be treated differently as they are safe if certain operating conditions are met.

Paragraph (b)(1) proposes that prior to rolling equipment being shoved or pushed, the locomotive engineer and the employee directing the move should be required to participate in a job briefing which will cover the means of communication to be used and how protection will be provided. The job briefing requirement in this proposed paragraph would require that the engineer (conventional or remote control operator) shall have a job briefing detailing the method of communication used to relay information, e.g., radio, hand signals, or pitch and catch. If the employee providing protection is not part of the crew, the job briefing shall include how that qualified employee will provide that protection; for example, if a yardmaster is the qualified employee, the conductor directing the move would explain in the briefing that the yardmaster intends to provide point protection by viewing a monitor that provides a real-time image of the track from a camera set up in the yard. Under this scenario, the yardmaster would be performing covered service under the hours of service laws.

Paragraph (b)(2) proposes requirements for establishing point protection during shoving or pushing movements. The proposal would require that only a crewmember or other qualified employee shall provide point protection. In this context, crewmembers or qualified employees include remote control operators working together, members of other train crews, and other employees, regardless of job title, who are qualified to perform the job (*see* definitions of ''employee'' and ''qualified'' in this proposed subpart). The requirements of this proposed section mandate work that is ''covered service'' under the hours of service laws. 49 U.S.C. 21101, *et seq.* Thus, to be a qualified employee, the employee will need to receive instruction and testing, be subject to Federal regulations controlling alcohol and drug use and hours of service recordkeeping provided for, respectively, in parts 217, 219 and 228 of this chapter. The purpose of requiring a qualified employee, as opposed to any employee, is to prevent persons that may not be qualified (e.g., taxi drivers, crane operators, or clerks) from making safety sensitive operating decisions without the proper instruction and safeguards in place. Incidently, if an unqualified person were to perform this work in violation of the proposed rule, the person would still have to be accounted for under the hours of service laws or the railroad would incur additional liability.

Paragraph (b)(2)(i) proposes a requirement that the employee providing point protection visually determine, for the duration of the shoving or pushing movement, that the track is clear within the range of vision or for the complete distance to be shoved or pushed. Shoving accidents often occur because a train crew makes a shoving movement without determining that the track is clear in the direction of movement. This proposed paragraph would address this problem by requiring an operating rule that keeps a qualified employee observing the track to make sure it is clear and remains clear. A definition of ''track is clear'' is proposed in § 218.93. Each railroad will need to incorporate this definition in its operating rules so that operating employees will be instructed on the proper way of making the determination that the track is clear. If the requirements for track is clear are met, there should be a drastic reduction in the number of shoving movement accidents.

Paragraph (b)(2)(i) proposes that a crewmember or other qualified employee shall visually determine, for the duration of the shoving or pushing movement, that the track is clear, either within the range of vision or for the complete distance to be shoved or pushed. This means that if the crewmember or other qualified employee responsible for controlling the shoving or pushing movement can directly and continuously observe the track for the entire movement to be shoved or pushed, the employee may initiate and continue the movement for the full distance of the movement. For example, if a shoving movement of less than 100 car lengths is to be made onto track that is capable of holding 100 cars and a crewmember or other qualified employee observes that the track is clear for the entire length of the track, the

employee may initiate movement onto or down the track; as the shoving movement continues, the employee will provide updates to the locomotive engineer, as necessary, until the entire movement is complete. Meanwhile, if the employee providing the visual determination can only see part of the way down the track to be shoved or pushed, the employee will only be permitted to initiate movement for the distance that the employee can directly and continuously observe. In this second example, the facts are the same except that there is curvature in the track that does not allow the observing employee to see more than 20 car lengths at a time; in this situation, the employee may initiate movement onto or down the track but must have either continuous visual contact with the engineer or be in radio communication with the engineer, so as to provide distance instruction on how far the engineer may safely shove, until the shoving or pushing movement is complete.

FRA notes that, inherent to the success of this procedure is compliance with restricted speed requirements, which limit movements within yard limits and on yard tracks to a speed that permits stopping within one-half the range of vision but not more than a stated speed (normally 15 or 20 miles per hour). Compliance with restricted speed is mandatory under subpart C of Part 218 for main track operations within yard limits, but the rule is silent with respect to yard and industry tracks. Commenters are asked to address whether, in order to effectively implement the protection for shoving moves embodied in this proposal, FRA should expressly incorporate restricted speed requirements.

FRA intended to provide railroads and qualified employees with the option of making the visual determination required in proposed paragraph (b)(2)(i) with the aid of monitored cameras or other technological means, provided that the technological means and attendant procedures provide an equivalent level of protection to that of a direct visual determination. Some concerns are that any monitored camera must have sufficient resolution and real time coverage to provide protection equal to direct visual determination. Concerning attendant procedures, one such procedure may be for an employee viewing a monitor to communicate updates to the locomotive engineer or controlling crewmember at appropriate intervals. Another attendant procedure may be the need to limit the monitoring employee so that ancillary duties would not greatly distract from the employee's ability to provide continuous visual determinations and communication. Other technological means may include, but are not limited to, real-time satellite imaging of sufficient resolution, a completely circuited track indicating track occupancy, and electronic switch position indicators.

The requirements listed in paragraph (b)(2)(ii) propose that a crewmember or other qualified employee give signals or instructions necessary to control the movement. Such signals or instructions may be made verbally, *i.e.*, either via face-to-face or radio communication. However, any effective method of communication is acceptable. For example, some acceptable forms of communication include, but are not limited to, hand signals, whistle signals, and electronic signals utilizing remote control technology.

In paragraph (c), FRA proposes to treat all remote control movements as shoving or pushing movements, except when the remote control operation is being conducted like a conventional pulling operation such that the operator controlling the movement is riding the leading locomotive in a position to observe conditions ahead in the direction of movement. FRA suggests that this treatment is necessary because the safe application of remote control operations warrants it. Those who are familiar with remote control switching operations should find these proposed requirements compatible with most current operating rules. Thus, FRA's intention is to require those rules which reflect best practices.

Paragraph (c) also proposes an additional requirement for remote control operations during shoving or pushing movements. This additional requirement is necessary so that the remote control operator, either directly or indirectly, can confirm that the movement is observed moving in the direction intended. If the remote control operator does not confirm or receive confirmation that the equipment is traveling in the intended direction, the operator must immediately stop the movement. Accident reports indicate that remote control operators who have forgotten which way the controlling locomotive is headed may unintentionally make a reverse movement when a forward movement was intended, or vice versa; had these operators been abiding by this proposed rule, the accidents would have been avoidable. FRA previously elaborated on this issue in the **SUPPLEMENTARY INFORMATION** section titled ''Situational Awareness.''

In paragraph (d), FRA recognizes that many railroads utilizing remote control technology will create a designated area of track, controlled by a remote control operator, that can make a remote control operation more efficient; this area is called a remote control zone and it is defined in this subpart. When a remote control zone is activated, a designated remote control operator has the authority to deny other movements entry into the tracks designated as within the zone. However, it is not until the remote control crewmembers determine that a particular segment meets the definition of ''track is clear'' that the operation may shove, push, or pull cars into the cleared track segment of the zone without providing point protection as proposed in paragraph (b)(2). The act of determining that the segment of track is clear is commonly referred to as ''conditioning the track'' or ''a conditioning run.''

Paragraph (d) proposes that the point protection required by proposed paragraph (b)(2) may be avoided for a remote control operation that is shoving within an activated remote control zone, as long as the movement will take place on the pull-out end, the track is clear for the movement, and the zone is not jointly occupied and has not been jointly occupied since the last determination that the track is clear. If conditions change, such that the track is no longer clear, point protection must either be provided or a new conditioning run conducted by the remote control operator(s). For example, each time that a remote control operator allows equipment, unrelated to the operator's remote control movements, to enter the activated zone, *i.e.*, the zone has been jointly occupied, the remote control crewmembers cannot be certain that the track segment into which a shove is planned is clear until another conditioning run is completed. FRA does not believe it is sufficient to rely on a communication from a member of another train crew in determining the track is clear as this situation has led to previous accidents.

Paragraph (d)(1) specifies that the remote control zone exception to the point protection requirements in paragraph (b)(2) are proposed only for remote control movements that are operated from a controlling locomotive on the leading end in the direction of movement. This describes a movement that is typically referred to as a remote control movement occurring on the pull-out end. When the controlling remote control locomotive is not located on the leading end in the direction of movement, it is proposed that the operation shall establish point protection as prescribed in paragraph (b)(2) regardless of whether the

operation is to take place within the remote control zone.

In paragraph (d)(2), FRA proposes to provide an acceptable method for one remote control crew to pass onto a relieving remote control crew an activated zone that meets the definition of track is clear. Some railroads currently allow for this transfer for efficiency purposes; otherwise, any relieving crew would need to do its own conditioning run prior to making shoving moves on the pull-out end of a remote control zone without point protection. As remote control crews must take their own safety into account when conditioning a zone and making sure the track remains clear, the transferring of a zone is likely to continue to be a safe practice. If FRA develops any accident data to suggest that this is an unsafe practice, we will reconsider this allowance and likely require that the relieving crew conduct its own conditioning run.

Paragraph (d)(3) proposes a determination that the zone may not be jointly occupied and has not been jointly occupied since the last determination that the track is clear. The second condition of that determination is arguably redundant given the first condition that the track is clear. However, FRA is rephrasing this extremely important requirement because we do not want railroads or employees to believe that it is acceptable to establish a zone, allow a train into the zone, and fail to recondition the track based on previous determinations. Even if another crew jointly occupied the zone and communicated to the remote control crew the position of each relevant switch and that the track in the zone is clear, this second-hand information has proven less reliable than information conveyed by remote control crews—so an exception is not justified here.

As specified in paragraph (e), shoving or pushing movements are safe under certain operating conditions and, thus, FRA proposes to exempt these listed operations from the requirements in paragraphs (b) through (d) under the specified conditions. One, proposed paragraph (e)(1) is a recommendation to exempt push-pull operations when operated from the leading end in the direction of movement because, if a cab control car is on the leading end of a movement and a locomotive engineer is operating the cab control car from the leading end, the operation is as safe as a conventional locomotive operation that does not involve shoving or pushing. Two, paragraph (e)(2) also describes a situation where a locomotive engineer is operating from the leading, controlling locomotive and it is only manned helper locomotives or distributed power, i.e., unmanned locomotives, that are shoving or pushing.

Pursuant to proposed paragraph (e)(3), the third operational exception to the proposed shoving or pushing minimum requirements set out in paragraphs (b) through (d) of this section is the allowance of the performance of roadway maintenance activity under the direct control of a roadway worker performing work in accordance with railroad operating rules specific to roadway workers. In other words, a crewmember or qualified employee is not required when a train crew is working under the direct control of a roadway worker and that roadway worker can provide adequate point protection. For example, if a ballast or work train is operated by a train crew, a roadway worker may direct the ballast or work train crew to move the train in order to perform the maintenance activity. To the contrary, this proposed exception would not permit a railroad to have an operating rule allowing a roadway worker to direct a train crew on logistical or revenue moves and such action would violate proposed paragraph (c) of this section.

Proposed paragraph (e)(4) permits an exception from the proposed shoving and pushing rules because few of the shoving or pushing accidents have occurred on main track. From 2002 through 2005, only about 5 percent of shoving or pushing accidents occurred on main track. However, in order to make this exemption work, a long list of conditions apply that would provide an equivalent level of safety to that of the proposed requirements found in paragraphs (b) through (d) of this section. The requirements should look familiar to the industry as the requirements follow commonly used railroad operating rules. *See* General Code of Operating Rules (GCOR) 5th Edition (effective Apr. 3, 2005), GCOR 6.5, 6.6, and 6.32 and, Northeast Operating Rules Advisory Committee (NORAC) 138c. The following clarification is provided for a few of the requirements that may not be quite as evident as the others. Paragraph (e)(4)(i)(A) proposes that if another movement or work authority is in effect within the same or overlapping limits, the shoving or pushing movement shall not be initiated until the leading end of the movement is protected by a qualified employee. Paragraph (e)(4)(ii) proposes that movement is limited to the train's authority because the danger of an accident increases substantially when a train shoves beyond the limits of its current authority. The proposed requirement in paragraph (e)(4)(iv) is met by meeting either (A), (B) or (C), as meeting any one of these three requirements should ensure safe movement into and over a highway-rail grade crossing or pedestrian crossing as those terms are defined in the definitions section of this subpart. To meet the requirement of proposed paragraph (e)(4)(iv)(B), a designated and qualified ''employee,'' as defined in this subpart, must be stationed at the crossing and have the capability to communicate with trains in sufficient time to inform the train of the condition of the crossing; the proposed rule does not specify the method of communication as the key issue is that the communication be effective. In paragraph (e)(4)(v), FRA uses the undefined terms ''interlocking limits'' or ''controlled point limits'' although FRA does refer to these terms elsewhere in this chapter; FRA did not define these terms because we believe the railroad industry is familiar with what we mean by these terms. They are commonly understood terms of art. *See* 49 CFR 236.753. In paragraph (e)(4)(v)(C), a crewmember is in a position to determine that the train's movement has occupied the circuit controlling a signal such that the crewmember has the ability to determine that it is the leading wheels of his or her own movement that has activated the signal circuit.

FRA is concerned that technology used to contain remote control operations within zones, where remote control operators cannot directly observe the far end of the pull-out movement, be sufficiently secure to prevent incursions into other rail operations. Although the rule text does not contain language on this point, FRA requests comment on whether such technology should be required to fail safe in design or at least include redundant safeguards. Should such technology be made subject to 49 CFR part 236, subpart H (the ''processor-based rule'')? FRA reserves the right to include appropriate restrictions on such technology in the final rule.

Section 218.101 Leaving Equipment in the Clear

In paragraph (a), FRA proposes that each railroad shall have in effect an operating rule which establishes minimum requirements for preventing equipment from fouling connecting tracks unsafely, and that each railroad implement procedures that will enable employees to identify when the equipment is fouling. In addition, each railroad officer, supervisor and employee shall uphold and comply with

that rule. The purpose for proposing that each railroad officer, supervisor, and employee shall uphold and comply with that rule is so that all effected employees will be required to follow the operating rules FRA proposes that each railroad maintain as opposed to merely requiring that each railroad have in effect such a rule. In order to fully understand FRA's intent, one must consider FRA's definitions of ''clearance point'' and ''foul or fouling a track'' in proposed section 218.93.

In paragraph (b), FRA proposes the general rule that equipment shall not be left where it will foul a connecting track or adjacent track but raises two exceptions. The exceptions are necessary because railroad operations would be nearly impossible without them. Safe operations permit some fouling of track under the conditions described in paragraphs (b)(1) and (b)(2). These exceptions are proposed considering that basic railroad operating rules and safety procedures, if properly applied, should be sufficient to prevent accidents under the two exceptions.

Paragraph (b)(1) proposes that it is permissible for equipment on a main track or siding to foul the main track or siding switch as long as the switch is lined for the track upon which the equipment is standing. For example, it is permissible under the proposal for a train on the main track to be stopped at an absolute signal with the rear of the train fouling a siding switch lined for the main track upon which the train is standing. Additionally, this would prohibit the switch that is being fouled from being thrown underneath the train while it is fouling the switch. Signal systems and main track authority rules should protect such movements from approaching trains.

Paragraph (b)(2) proposes that it is permissible for equipment that is standing on a yard or industry lead track (commonly referred to as a lead track, switching lead, or ladder track) to foul a yard or industry track if the switch is lined for the yard or industry track upon which the equipment is standing. Conversely, it is not permissible for equipment to be standing on a yard or industry track and foul the lead track, irregardless of the position of the switch on which the equipment is standing (fouling). Paragraph (b)(2) applies to industry sidings while paragraph (b)(1) does not. In simple terms, it is permissible to occupy a lead track and foul a track connected to it, but it is not permissible to occupy the connected track in a manner that fouls the lead track.

Paragraph (c) proposes that each railroad, whether at the system, division, or terminal level, shall implement procedures for instructing employees who handle equipment so that the employees can identify clearance points and avoid leaving equipment out to foul. One way to implement such procedures is to show employees that there are readily observable clearance points on or near the track, e.g., marks on the rails or ties indicating a clearance point. When clearance points are not identified on or near the track, railroads must institute procedures for instructing employees on how to calculate clearance points; e.g., a railroad may choose to implement a procedure requiring employees to stand next to the rail and extend an arm to simulate the width of equipment. Great care should be used in instituting procedures for determining clearance points so that the margin of error is appropriate where employees are permitted to ride the side of a car and as the clearance point would be bigger for employees with bigger or longer bodies than the average person. This proposed section is not intended to apply to close clearance as it relates to buildings, loading docks, or doorways, although a railroad may choose to provide procedures for implementing safe operations under such circumstances.

Section 218.103 Hand-Operated Switches and Derails

Paragraph (a) proposes that each railroad shall have in effect an operating rule which meets the minimum requirements set forth in this section. In addition, each railroad officer, supervisor and employee shall uphold and comply with that rule. The proposal contains some provisions that apply to all hand-operated switches and derails, some that apply only to hand-operated main track switches, some that apply only to hand-operated crossover switches and some that apply only to hand-operated derails. This represents a departure from FRA's current enforcement scheme which is limited to hand-operated switches in non-signaled territory as specified in EO 24.

Paragraph (b) proposes certain general rules for employees who operate or verify the position of a hand-operated switch or derail. For instance, paragraph (b)(1) proposes a fundamental requirement that an employee operating or verifying a hand-operated switch or derail's position shall be ''qualified,'' as that term is defined in this subpart; conversely, it would be easy for an unqualified person to make a mistake in switch alignment or fail to recognize a defective switch or derail because, unlike a qualified employee, the unqualified person is not trained on proper switch and derail operation or on how to detect a defective switch or derail. It is exactly these types of defective conditions that cause accidents and may be preventable by promulgating this proposed rule.

Paragraph (b)(2) proposes a requirement that each railroad have an operating rule warning employees that each person who operates or verifies the position of a hand-operated switch or derail is individually responsible for the position of the switch or derail in use. The purpose of this paragraph is to remind an employee that FRA may take enforcement action against the employee personally for a willful violation. FRA hopes that the personal liability aspect of this rule will reinforce among employees the critical importance of ensuring that hand-operated switches and derails are left properly lined before leaving a work site.

Paragraphs (b)(3) and (b)(4) contain proposals that would require employees to make certain observations. The requirements to ''visually ensure'' that hand-operated switches and derails are properly lined for the intended route and that the points fit properly and the target, if so equipped, corresponds with the switch's position specifies the need for the operating/verifying employee to take a good hard look at the switch or derail. For example, a proper observation would deduce whether the switch points fit properly against the stock rail, i.e. no gaps. The operating/verifying employee should certainly not be relying on second-hand knowledge of the switch or derail's position in verifying its position.

Paragraphs (b)(5) through (b)(8) propose that the operating/verifying employee make certain other firsthand assurances that are fundamental to safe railroading. These additional assurances require observation and physical testing to ensure the hand-operated switch or derail is properly secured. Paragraph (b)(5) proposes a requirement that if the switch or derail is equipped with a lock, hook or latch, it must be in the hasp, before making movements in either direction over the switch; this requirement should reduce accidental misalignments of hand-operated switches after initiating a movement and also permit the switch points from moving under the equipment. Proposed paragraph (b)(6) refers to physically testing a hand-operated switch or derail's lock to ensure it is secured; thus, the testing may be, but not limited to, pulling on the lock to ensure it is properly secured, ensuring the hook or latch securely fits into the hasp, and

that the switch or derail will not move unintentionally. This regulation does not require switches to be equipped with locks, hooks or latches. Paragraph (b)(7) proposes a requirement for an operating/verifying employee to ensure that switches are not operated while equipment is standing or moving over a switch. Operating a switch under a moving train or while equipment is standing over it is an obvious recipe for disaster but apparently occurs with enough frequency that we propose it be included in each railroad's operating rules. Under paragraph (b)(8), it would be a violation of this proposed rule for an employee to fail to lock, hook, or latch a switch, if so equipped, after the employee is finished using the switch. This means that if the switch is equipped with a latch or hook, it must be applied and secured. For locks, this means the lock is in the hasp, and the lock is locked. If it is a latch or hook, the latch or hook must be in the hasp. For purposes of this section, ''not in use'' means that there is either no crew or equipment in the vicinity of the switch or there is a crew in the vicinity of the switch but the crew has no intention of using the switch. Therefore, it must be locked, hooked, or latched, if so equipped.

Paragraph (c)(1) would provide regulatory authority over the hand-operated main track switches so that FRA regulates the positioning of all such switches; in contrast, FRA only prescribes requirements for hand-operated main track switches in non-signaled territory in EO 24. It is proposed that each railroad will retain discretion regarding the normal position of a hand-operated main track switch. Generally, railroad operating rules pertaining to the operation of switches provide that the normal position for a main track switch is lined and locked for movement on the main track when not in use; the purpose of this rule is so that trains traveling on main track will not be inadvertently diverted onto another track. (Of course, this can be avoided if all trains were required to approach all main track switches prepared to stop, but that requirement would impose a substantial burden on railroads under most circumstances and would also introduce other safety concerns.) FRA proposes to permit railroads to designate a different position as normal, as some operations may be more efficient with a hand-operated main track switch's ''normal'' position designated in what would otherwise be referred to as the ''reverse'' position. No matter what position a railroad designates as the normal position of each hand-operated main track switch, the proposal is for such designations to be made in writing. The railroad may designate the normal position of the switch in its operating rules, system special instructions, timetables, general orders, or any other written documentation that will provide adequate notice to employees operating and verifying hand-operated main track switches.

FRA is unaware of any railroads that do not require locking of main track switches as a safeguard against unauthorized use. Paragraph (c)(1) proposes that employees operating and verifying hand-operated main track switches should pay careful attention to ensure that these switches, when not in use, are lined and locked in that position except under two circumstances. The first circumstance under which it is proposed that the employee does not need to return the switch to the designated normal position is when the train dispatcher directs otherwise; thus, the train dispatcher, with movement control over that main track segment, directs the crew using the switch to leave the switch in other than the normal position. The dispatcher would then be responsible for the switch and must follow railroad operating procedures for the necessary protection of the switch. Such ''necessary protection'' entails that the dispatcher take steps to ensure that the next train crew approaching the switch has a track warrant informing that the switch has been left reversed. In some instances, the dispatcher will need to make a note in a log of train movements or other similar document to ensure that subsequent dispatchers have access to the reversed switch information. The second circumstance under which it is proposed that the employee does not need to return the switch to the designated normal position is when the switch is left in the charge of a crewmember of another train, a switchtender, or a roadway worker in charge. The reason this proposal should be an alternative safe procedure is because these other employees will likewise be individually responsible for the safe and proper operation of that hand-operated main track switch; the employees performing these jobs shall be qualified on operating switches and verifying switch position according to this proposal, so there should be no inherent problems with the transfer of responsibility for the switch. Regardless of the position of the switch when the train dispatcher directs otherwise or the switch is left in the charge of another qualified employee, it must still be locked, hooked or latched, if so equipped, when not in use, per proposed paragraph (b)(5).

Proposed paragraph (c)(2) requires that in non-signaled territory, before a train or engine service employee releases the limits of a main track authority and a hand-operated switch is used to clear the main track, and, prior to departing the train's location, certain conditions are required. This introductory sentence in proposed paragraph (c)(2) makes clear that it does not apply to maintenance-of-way employees who may be releasing the limits of a main track authority. It also proposes certain conditions on the employee releasing the limits prior to departing the train's location such that the employee should not be releasing the limits at another location; this proposed requirement is intended to prevent an employee from releasing the limits while located in the yard office or while traveling away from the train's location in a taxi. The purpose of requiring the employee releasing the limits to be located near the train is so that an employee who has any question about the condition of the switch has access to verifying its condition.

In paragraph (c)(2)(i), the first proposed condition that must be met is that the employee releasing the limits, after conducting a job briefing in accordance with paragraph (i)(3)(i) of this section, report to the train dispatcher that the hand-operated main track switch has been restored to its normal position and locked, unless the train dispatcher directs that the hand-operated main track switch be left lined and locked in the reverse position. The reference to another proposed paragraph in this section is intended to remind the employee releasing the limits that before a train or a train crew leaves the location where any hand-operated main track switch was operated, all crewmembers have a verbal communication to confirm the position of the switch. Soon after this job briefing, it is time to call the dispatcher and confirm the same information that should have been included in the train crew's job briefing. If the train dispatcher wants the employee to leave the switch in the reverse position, this communication is the train dispatcher's opportunity to inform the employee of such a request. It is proposed that the employee and dispatcher confirm with each other the switch position and that the switch is locked so that there is little chance that any trespasser without a key or bolt cutters could misalign the switch. As in proposed paragraph (c)(1)(i), a train dispatcher who directs that the switch be left in the reverse

position must take the protection necessary to ensure that the subsequent train crew that will approach the switch has a track warrant informing them of the switch's reverse position. Again, such ''necessary protection'' entails that the dispatcher take steps to ensure that the next train crew approaching the switch has a track warrant informing that the switch has been left reversed. In some instances, the dispatcher will need to make a note in a log of train movements or other similar document to ensure that subsequent dispatchers have access to the reversed switch information.

Paragraph (c)(2)(ii) and (iii) detail two more proposed conditions that must be met when main track authority limits are being prepared for release. The second proposed condition is that if the train crewmember's report of the switch position is correct, i.e., matches the operating rule or dispatchers direction, the train dispatcher shall repeat the reported switch position information to the employee releasing the limits and ask whether the repeated information is correct. Typically, railroad procedures require the train dispatcher to ask whether ''that is correct'' with regard to confirming this type of information, so the proposed regulation is intended to reflect those commonly used procedures. The third proposed condition is that the employee releasing the limits then confirm that this information is correct with the train dispatcher. Railroads and employees who currently release such limits should recognize that these requirements follow the traditional rules of such release. The purpose of the dispatcher and employee repeating the switch's condition is so that both employees can confirm that the other is repeating the correct information regarding the position of the switch and that it is locked.

The proposed rule retains the requirement in EO 24 that an employee releasing the limits of a main track authority in non-signaled territory communicate with the train dispatcher that all hand-operated main track switches operated have been restored to their normal position, unless the train dispatcher directs otherwise, but only to the extent that the switches are at the location where the limits are being released. With the proposed elimination of a SPAF, it would be difficult for an employee to recall the condition of any particular hand-operated main track switch operated and there would likely be a reaction for an employee to believe he or she left all such switches in proper position—without much opportunity to double-check the condition of those faraway switches at that time. As mentioned previously, accidents often occur where the limits are being released and that is why the proposed rule has placed emphasis on addressing the problem at those locations. The switches located at the point of release of the limits should be readily accessible for any employee who is unsure of the condition the switch was last left in. The proposed rule also adds the requirement that the employee report that the switch has been locked; locking of the main track switch should prevent easy access to unauthorized users.

The proposed requirements in paragraph (c)(2) carry over certain employee/dispatcher communication requirements from EO 24 that provide additional checks to ensure that hand-operated main track switches are left properly lined and locked. The proposed requirement is carefully tailored to address the switches at the location being released because FRA has determined that many of the accidents are occurring at that location. As several comments were received in response to EO 24 regarding an equivalent requirement carried over in proposed paragraph (c)(2), it should be helpful to describe what FRA means by the term ''releasing the limits of a main track authority.'' The term means releasing all or a portion of the limits (i.e., rolling up the limits) of an existing main track authority.

Paragraph (d) proposes that when rolling or on-track maintenance-of-way equipment is approaching a hand-operated switch or derail not lined for its intended movement, it shall not foul a track (see definition of ''foul or fouling a track'' in this subpart) until the switch or derail is properly lined for the intended movement. If the switch is intended to be trailed through, such as with a spring switch, or a yard type switch commonly referred to as a ''rubber switch'' or a ''run-through switch,'' movement shall not trail through the switch until the route is seen to be clear or the equipment has been granted movement authority by the employee in charge of that track segment or switch. Additionally, if a train, rolling equipment or on-track maintenance-of-way equipment is closely approaching a switch and an employee observes a conflicting movement also closely approaching the switch, the track with the approaching conflicting movement shall not be fouled.

In paragraph (e), FRA proposes a requirement that when equipment enters a track, the hand-operated switch to that track shall not be lined away from the track until that equipment has passed the ''clearance point'' (as defined in this subpart) of that track. If complied with, this proposed requirement will prevent an employee from operating a switch while equipment is fouling it, directly on it, or in close proximity to it. The purpose of this proposed requirement is to prevent injuries and accidents caused by improper operation of switches. Injuries should be reduced by this requirement because when switches are operated with equipment fouling a switch, or directly on a switch, a switch can be hard to operate or may be put under tension such that when an employee begins to operate the switch handle, it may move unexpectedly; thus, back injuries and other muscle strains may be reduced. In addition, accidents may be reduced as employees will not be allowed to operate switches under tension, i.e., when cars are on a switch.

Paragraph (f) also attempts to prevent accidents and injuries due to last minute misalignments of switches. Generally, after an employee lines a hand-operated switch to or from the main track, the safest position for the employee is away from the switch until the movement is complete. Some railroads specify a distance, e.g., that the employee shall stand at least 20 feet from that switch; FRA has proposed the 20 feet away requirement but requests comments on whether a distance should be specified. The key here is that each employee operating such a switch is far enough away that the employee could not operate the switch at the last moment, or even underneath the movement, if the employee remains a safe distance from the switch until the movement is complete. This rule does not apply during continuous switching operations and thus, this proposed requirement is not meant to apply to an employee who is switching a cut of cars into classification tracks.

Paragraph (g)(1) proposes the general rule that both hand-operated switches of a crossover shall be properly lined before equipment begins a crossover movement. Properly lined means that switches at both ends of the crossover are lined either for the crossover movement or both are lined for straight track. As train crews expect crossover switches to be properly lined, i.e., in correspondence (see definition of ''correspondence of crossover switches''), an accident can easily occur when crossover switches are out of correspondence. A related concern that is addressed in the proposal is what to do when equipment is traversing a crossover; the proposal would require that all equipment be clear of both ends

of the crossover before restoring the switches to the normal position. If employees apply a railroad operating rule that matches this proposal, the requirement should prevent the unintentional running through of crossover switches or unintentional movements onto another track that could potentially strike other rolling equipment. FRA recognizes that a safe operation is probable during continuous switching operations where only one crew is using both tracks connected by the crossover, so FRA has proposed an exception for that situation.

Paragraph (g)(2) identifies three exceptions to the general rule that hand-operated crossover switches should be in correspondence. The reason for the exceptions is that each operation is safe or safer with the crossover switches out of correspondence than in correspondence. That is, each exception identifies a situation in which employees on the track are protected by diverting trains and equipment without slowing down operations.

FRA is aware that some configurations of crossover switches are quite complicated, typically due to the location of adjacent or adjoining track and other attendant switches. Railroads should address these complicated configurations of crossover switches when employees are trained on the physical characteristics of the territory. Without proper training on how to apply a railroad's operating rule for correspondence of crossover switches, it will be difficult to hold employees accountable. However, railroads can be held accountable if employees do not properly apply such an operating rule and lack of training is one of the causes. Of course, if a railroad provided training but a violation was committed due to the complexities of the crossover configuration, FRA will exercise discretion regarding whether any enforcement action is necessary.

Paragraph (g)(2)(i)(A) proposes allowing mechanical department workers to line one end of a crossover away from the track under blue signal protection to allow workers on, under, or between rolling equipment on main track. *See* 49 CFR 218.27. Similarly, paragraph (g)(2)(i)(B) proposes allowing providing track protection for roadway workers on track that is considered ''inaccessible'' under § 214.327 of this chapter. FRA proposes paragraph (g)(2)(i)(C) to permit those railroads that have the technology, in centralized traffic control (CTC) territory to allow a signal maintainer to perform maintenance, testing or inspection of the switch at only one end of a crossover while continuing to operate trains over the other crossover switch. FRA does not have any evidence to suggest this exception is an unsafe practice. Finally, proposed paragraph (g)(2)(ii) states the obvious need for immediate restoration of the crossover switches to correspondence after the protection afforded by paragraph (g)(2)(i)(A), (B) or (C) is no longer necessary.

Paragraph (h) proposes the general rules for hand-operated derails. Paragraph (h)(1) proposes that the normal position of fixed derails is in the derailing position; but, a railroad may specify in its operating rules or special instructions that the normal position of a fixed derail is in the non-derailing position. Furthermore, fixed derails must remain in the derailing position until changed to allow movement onto the protected track; consequently, the proposed rule requires that the fixed derails shall be returned to the normal position once the movement is complete. If fixed derails are being used for protection of workers using blue signals, these proposed rules would not be applicable as FRA already has other regulations governing derails in that circumstance. *See* 49 CFR part 218, subpart B.

The entire purpose of a derail, whether fixed or portable, is to protect something or someone. Derails are typically used to prevent unauthorized equipment from rolling out onto main tracks in front of trains. They are also used to protect workers who are on a track to repair track or equipment. Derails may be placed in addition to warnings provided by signs, flags, gates, and notices in timetables and special instructions; thus, derails protect employees when other employees operating equipment or a train fail to heed these other warnings, or unattended equipment rolls freely. Although a properly applied derail that stops equipment or a train has done its job, FRA proposes in paragraph (h)(2) that enforcement action may be necessary when a railroad or person causes a movement to be made over a derail in the derailing position. As the typical situation involving movement over a derail occurs at low speeds and does not result in serious injuries or excessive damage to railroad property, the industry has accepted, in FRA's view, too much tolerance for this type of incident. Consequently, while FRA plans to use its enforcement discretion, the purpose of proposing this requirement is to reverse the permissive culture of the railroad industry that has accepted running over a derail. This proposed requirement is not intended to discourage the use of derails in protecting workers; thus, to the extent that railroads may try to mandate that employees stop using derails, to avoid the potential liability of FRA enforcement action, FRA would need to consider additional regulatory measures to mandate the use of derails. We are doubtful that such further regulatory measures would become necessary as the potential liability for employees injured when derails could have been used is probably enough of a deterrent to arbitrary elimination of operating rules pertaining to derail protection.

Paragraph (h)(3) proposes that if a hand-operated derail is equipped with a lock, when the derail is not in use, the lock must be in the hasp and secured. For the purpose of this section, not in use means that no crew is either operating over the derail or continuously or intermittently operating over the derail. If no crew or equipment is in the vicinity of the derail or there is no intent to use the derail, then it must be locked, if so equipped, in the designated normal position.

As previously mentioned in the **SUPPLEMENTARY INFORMATION** section titled ''Accident at Graniteville, SC and Safety Advisory 2005–01,'' NTSB found that catastrophic accidents, such as the one at Graniteville, SC, could be prevented by adequate job briefings. The proposal found in paragraph (i) would require each railroad to have its own rules and procedures governing the minimum requirements for a satisfactory job briefing, which to FRA's knowledge, nearly all railroads already do. It is essential that employees working together know exactly what each person's role is in the operation, what the methods of operation and protection will be, and the order in which segments of the job are to be accomplished. With such knowledge, one employee could recognize the mistakes of another and correct them before any operating rule violation or serious accident occurred.

Paragraph (i)(2) proposes frequent job briefings at important junctures. It is critical that employees know what is expected of them before they start working, know what is expected to happen if the work plan changes after work is initiated but before the work is completed, and to confirm whether all the work was completed to everyone's satisfaction and according to the operating rules. For experienced employees, each job briefing should not be a particularly long meeting; in fact, FRA expects that some job briefings may last less than one minute, but the length of an adequate briefing will most likely depend on the complexity of the job.

Just in case there is any confusion that the operation of a hand-operated main track switch is a job requiring briefings, FRA proposes requirements in paragraph (i)(3) for such briefings where employees should be engaging in meaningful communication. Thus, in paragraph (i)(3)(i), FRA specifically proposes that before a train leaves the location where any hand-operated main track switch was operated, all crewmembers shall have verbal communication to confirm the position of the switch. Similarly, paragraph (i)(3)(ii) addresses that communication amongst employees is vital when roadway workers are working within the same work limits and operate hand-operated main track switches. Thus, when any roadway work group is working under the protections of the specified form of working limits, FRA proposes that any employee who operates a hand-operated main track switch within such limits shall do so under the direction of the roadway worker in charge. Further, it is proposed that the employee operating the hand-operated main track switch shall report to the roadway worker in charge the position of all hand-operated main track switches the employee has operated to the roadway worker in charge prior to the expiration of the authority limits.

In some roadway work group situations, a roadway worker may be instructed during a job briefing to convey switch position information to an employee who is not the roadway worker in charge. In this alternative situation, the contact person is acting as an intermediary between the employee operating the switch and the roadway worker in charge. This intermediary person is commonly referred to as an ''employee in charge.'' FRA proposes that it shall be acceptable for the employee in charge to pass on the switch position information from the employee operating the switch to the roadway worker in charge without firsthand verification of the switch position. The important aspect of this requirement is that the work group members are communicating the switch position and not who conveys the information. FRA would appreciate comments on this aspect of the proposal although the allowance of this option should reflect the reality of current operations.

V. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2005–23080. FRA invites comments on this regulatory evaluation.

FRA analyzed the foregoing NPRM and found that there will be relatively little change in the burden upon railroads, however, the FRA believes that much greater compliance with rules which are almost identical to what the railroads have promulgated as their own operating rules will likely result in a reduction in human factor accidents, especially those human factors causes most directly targeted by the rulemaking. FRA believes that most railroads can achieve average reductions of 35% in these accidents, because there is a large railroad with better than average compliance with its own operating rules which routinely has human factor accident rates 35% below the industry average. The costs of the foregoing are minimal, because most of the procedures mandated are already incorporated in the railroads' own operating rules. The biggest costs will be related to publication of changed language, and management of the operating rules programs. The rule would have even less impact on small entities, as they are excused from most of the burdens which regulate management of their operating rules testing programs. The NPRM would generate twenty-year discounted benefits of $191,189,965, and twenty-year discounted costs of $20,756,051, for a twenty-year discounted net benefit of $170,433,914, if the assumptions in this analysis are correct.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Analysis of Impact on Small Entities (AISE) that assesses the small entity impact of this proposal. Document inspection and copying facilities are available at the DOT's Central Docket Management Facility located in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://dms.dot.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2006–25267.

FRA notes that the impact on small entities have been considered throughout the development of this NPRM both internally and through consultation within the RSAC forum, as described in Section II of this preamble. After the Railroad Operating Rules Working Group failed to reach a consensus recommendation, FRA reported the Working Group's unofficial areas of agreement and disagreement to the RSAC.

The AISE developed in connection with this NPRM concludes that this proposal would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

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CFR Section - 49 CFR	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Burden Cost
217.7 - Operating Rules ; Filing and Recordkeeping	1 New Railroad	1 submission	1 hour	1 hour	$40
- Filing rules, timetables, and special instructions	55 Railroads	165 amendments	20 minutes	55 hours	$2,200
- Amendments to operating rules, timetables, and timetable special instructions by Class I, Class II, Amtrak, and Commuter Railroads	20 New Railroads	20 submissions	55 minutes	18 hours	$720
- Class III and Other Railroads: Copy of Current Operating Rules, Timetables, and Special Instructions	632 Railroads	1,896 amendment	15 minutes	474 hours	$18,960
- Class III Railroads: Amendments to operating rules					
217.9 - Program of Operational Tests	687 Railroads	4,732 training sessions	8 hours	37,856 hours	$1,892,800
- Railroad and railroad officer testing responsibilities: Field Training	687 Railroads	4,732 records	2 minutes	158 hours	
- Written records of officer testing qualifications	20 New Railroads	20 programs	9.92 hours	198 hours	$0
- Written program of operational tests/inspections	55 Railroads	165 amendments	1.92 hours	317 hours	(Incl.RIA)
- Amendments to operational tests/insp. programs	687 Railroads	9,180,000 rcds.	5 minutes	765,000 hours	$7,920
- Records of individual tests/inspections	687 Railroads	444 reviews	2 hours	888 hours	$12,680
- Review of tests/inspections/adjustments to the program of operational tests: Monthly reviews	687 Railroads	4,732 designation	5 seconds + 1 hour	37 hours	$38,250,000
- Designation of railroad officers	687 Railroads	37 reviews	5 seconds + 1 hour	74 hours	$0 (Incl.RIA)
- Quarterly review of accident/incident data (etc.)	13 Railroads	37 designation + 74 reviews	5 seconds + 1 hour	34 hours	$0 (Incl.RIA)
- Officer designations & Six Month review	687 Railroads	20 designations + 34 reviews	1 minute	10 hours	$0 (Incl.RIA)
- Passenger Railroads: Officer designations & six Month reviews	687 Railroads	589 review rcds.	61 minutes	38	$0 (Incl.RIA)
- Records retention: Periodic reviews	687 Railroads	37 summary			
- Annual summary on operational tests/inspections: Summary records					
- FRA disapproval of operational testing/insp.					

217.11 - Program of Instruction on Operating Rules - Railroads instruction of employees - Current copy of employee periodic instruction prog. - Amendments to current employee instruction prog.	687 Railroads 20 New Railroads 687 Railroads	130,000 instr. employees 20 programs 220 amendments	8 hours 8 hours .92 hour	1,040,000 hours 160 hours 202 hours	$52,000,000 $6,400 $8,080
218.95 - Instruction, Training, and Examination - Records of instruction, training, examination - FRA disapproval of program: Railroad responses - Amended programs	687 Railroads 687 Railroads 687 Railroads	98,000 empl. rcds 50 submissions 20 amended docs.	5 minutes 1 hour 30 minutes	8,167 hours 50 hours 10 hours	$326,680 $2,000 $700
218.97 - Good Faith Challenge Procedures - Copies to employees of good faith procedures - Copies of amendments to good faith procedures - Good faith challenges to railroad directives - Resolution of challenges - Direct order to proceed procedures: Immediate review by railroad testing officer/employer - Documentation of employee protests to direct order - Copies of protest documentation - Advisory to employees about completion of work as ordered: Without penalty or consequences - Further review by designated railroad officer	687 Railroads 687 Railroads 687 Railroads 130,000 Employees 687 Railroads 687 Railroads 687 Railroads 687 Railroads 687 Railroads 687 Railroads	687 procedures 130,000 copies 130,000 copies 15 challenges 15 responses 5 reviews 10 protest docs. 20 copies 5 advisories 3 reviews	2 hours 6 minutes 3 minutes 10 minutes 5 minutes 15 minutes 15 minutes 1 minute 1 minute 15 minutes	1,374 hours 13,000 hours 6,500 hours 3 hours 1 hour 1 hour 3 hours .33 hour .08 hour 1 hour	$0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA)

218.99 - Shoving or Pushing Movements - Required operating rule compliant with this section - General Movement Requirements: Job briefings - Point Protection: Visual determination of clear track and corresponding signals or instructions - Remote Control Movements: Confirmations by Crew - Remote Control zone, exceptions to point protection: Determination/Communication track is clear - Operational exceptions: Dispatcher permitted movements that are verified	687 Railroads 100,000 RR employees 100,000 RR employees 100,000 RR employees 100,000 RR employees 6,000 RR Dispatchers	687 rule modific. 60,000 briefings 87,600,000 deter/instructions +87,600,000 signals 876,000 confirm. 876,000 deter/ communications 30,000 verified/ permitted movements	1 hour 1 minute 1 minute 1 minute 1 minute 1 minute	687 hours 1,000 hours 2,920,000 hrs. 14,600 hours 14,600 hours 500 hours	$0 (Incl.RIA) $50,000 $122,640,000 $613,200 $613,200 $21,000
218.101 - Leaving Equipment in the Clear - Operating Rule that Complies with this section	687 Railroads	687 amended op. rules	30 minutes	344 hours	$0 (Incl.RIA)
218.103 - Hand-Operated Switches and Derails - Operating Rule that Complies with this section - Release of limits of a main track authority: Acknowledgment by dispatcher and confirmation by employee with dispatcher - Job briefings: Minimum requirements specified in Operating Rules - Actual job briefings conducted by employees operating hand-operated main track switches - Additional job briefings for hand-operated main track switches - Exclusive track occupancy: Report of position of main track switches and conveyance of switch position to the roadway-worker-in-charge	687 Railroads 6,000 Dispatchers 632 Railroads 687 Railroads 687 Railroads 687 Railroads	687 amended op. rules 60,000 acknowl.+ 60,000 confirmtns 632 amended rules 1,125,000 brfngs 60,000 briefings 100,000 reports + 100,000 convey-ances	1 hour 30 seconds + 5 seconds 1 hour 1 minute 1 minute 1 minute	687 hours 583 hours 632 hours 18,750 hours 1,000 hours 3,334 hours	$0 (Incl.RIA) $0 (Incl.RIA) $0 (Incl.RIA) $787,500 $0 (Incl.RIA) $0 (Incl.RIA)

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All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 17, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan at the following address: *robert.brogan@fra.dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with 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, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the proposed regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This is a rule with preemptive effect. Subject to a limited exception for essentially local safety hazards, its requirements will establish a uniform Federal safety standard that must be met, and State requirements covering the same subject are displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of State law, including State common law. Preemption is addressed in §§ 217.2 and 218.4, both titled ''Preemptive effect.'' As stated in the corresponding preamble language for §§ 217.2 and 218.4, section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. This is consistent with past practice at FRA, and within the Department of Transportation.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. FRA notes that the above factors have been considered throughout the development of this NPRM both internally and through consultation within the RSAC forum, as described in Section II of this preamble. After the Railroad Operating Rules Working Group failed to reach a consensus recommendation, FRA reported the Working Group's unofficial areas of agreement and disagreement to the RSAC. The RSAC has as permanent voting members two organizations representing State and local interests: AASHTO and ASRSM. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the federalism implications of this rulemaking from these representatives or from any other representative. States and other governments will be afforded opportunity to consult by virtue of this NPRM and comment period.

Please be advised that on April 27, 2005, FRA received from the State of California a petition for rulemaking on the subject of remote control operations referred to in the **SUPPLEMENTARY INFORMATION** section as ''Technology Aided Point Protection.'' The petition requested that FRA initiate a rulemaking ''to formally approve and establish rules affecting RCL [remote control locomotive] operations by railroads over public highway-rail at-grade crossings.'' California's petition did not raise an issue regarding preemption. On October 27, 2005, FRA denied California's rulemaking petition because it was procedurally deficient and it did not include sufficient information upon which to base a rulemaking proceeding. *See* Docket No. FRA–2005–21094 (found at *http://dms.dot.gov/*). Nevertheless, this proposed rule contains specific provisions of the kind requested in the petition.

For the foregoing reasons, FRA believes that this proposed rule is in accordance with the principles and criteria contained in Executive Order 13132.

E. Environmental Impact

FRA has evaluated this proposed regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's

Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) [currently $128,100,000] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $128,100,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

H. Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket 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.*

List of Subjects

49 CFR Part 217

Railroad operating rules, Program of operational tests and inspections, Program of instruction on operating rules, and Recordkeeping.

49 CFR Part 218

Railroad operating practices, Handling equipment, switches and derails, Shoving or pushing movements, Main track switches, Crossover switches, Remote control locomotive operations, Good faith challenge procedures, Program of instruction, training and examination, and Job briefings.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend parts 217 and 218 of Title 49, Code of Federal Regulations as follows:

PART 217—[AMENDED]

1. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

1A. Section 217.2 is added to read as follows:

§ 217.2 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

2. Section 217.4 is amended by adding the following definitions of *Associate Administrator for Safety* and *Qualified* to read as follows:

§ 217.4 Definitions.

* * * * *

Associate Administrator for Safety means the Associate Administrator for Safety of the Federal Railroad Administration or that person's delegate as designated in writing.

* * * * *

Qualified means that a person has successfully completed all instruction, training and examination programs required by the railroad and this part and that the person, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is expected to be competent.

* * * * *

3. Section 217.9 is revised to read as follows:

§ 217.9 Program of operational tests and inspections; recordkeeping.

(a) *Requirement to conduct operational tests and inspections.* Each railroad to which this part applies shall periodically conduct operational tests and inspections to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions, specifically including tests and inspections sufficient to verify compliance with the requirements of subpart F of part 218 of this chapter, in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the tests are conducted.

(b) *Railroad and railroad testing officer responsibilities.* (1) Each railroad officer who conducts operational tests and inspections shall:

(i) Be qualified on the railroad's operating rules in accordance with § 217.11 of this part;

(ii) Be qualified on the operational testing program requirements and procedures relevant to the testing the officer will conduct;

(iii) Receive appropriate field training, as necessary to achieve proficiency, on each operational test that the officer is authorized to conduct; and

(iv) Conduct operational tests in accordance with the railroad's program of operational tests and inspections.

(2) Written records documenting qualification of each railroad testing officer shall be retained at the railroad's system headquarters and at the division headquarters for each division where the officer is assigned and made

available to representatives of the FRA for inspection and copying during normal business hours.

(c) *Written program of operational tests and inspections.* Beginning thirty (30) days before commencing operations, each railroad to which this part applies shall retain one copy of its current program for periodic performance of the operational tests and inspections required by paragraph (a) of this section and one copy of each subsequent amendment to such program. These records shall be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted, for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. The program shall—

(1) Provide for operational testing and inspection under the various operating conditions on the railroad with particular emphasis on those operating rules that cause or are likely to cause the most accidents or incidents, such as those accidents or incidents identified in the quarterly reviews, six month reviews, and the annual summaries as required under paragraphs (e) and (f) of this section, as applicable. The railroad's program shall specifically provide for a minimum number of tests per year that cover the requirements of part 218, subpart F of this chapter.

(2) Describe each type of operational test and inspection adopted, including the means and procedures used to carry it out;

(3) State the purpose of each type of operational test and inspection;

(4) State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is conducted;

(5) Designate an officer, or officers for each railroad with division headquarters, by name or job title, who shall be responsible for ensuring that the program of operational tests and inspections is properly implemented on a system-wide basis or, for officers responsible for a division, on a divisional basis. The designated officer's responsibility will include, but not be limited to, ensuring that the railroad's testing officers are directing their efforts in an appropriate manner to reduce accidents/incidents and that all required reviews and summaries are completed.

(6) Begin within thirty (30) days of the date of commencing operations; and

(7) Include a schedule for making the program fully operative within 210 days after it begins.

(d) *Records of individual tests and inspections.* Each railroad to which this part applies shall keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record shall specify the officer administering the test and inspection and each employee tested. These records shall be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(e) *Reviews of tests and inspections and adjustments to the program of operational tests.*

(1) *Reviews by railroads other than passenger railroads.* Each railroad to which this part applies, except for a railroad with less than 400,000 total employee work hours annually and except for a railroad subject to paragraph (e)(2) of this section, shall conduct periodic reviews and analyses as provided in this paragraph and shall retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the following written reviews.

(i) *Monthly review.* The designated officer for each division headquarters, or system headquarters, if no division headquarters exists, shall conduct a written monthly review of the operational testing data for the division or system to determine compliance by the railroad testing officers with the railroad's program of operational tests and inspections required by paragraph (c) of this section. At a minimum, this monthly review shall include the name of each railroad testing officer, the number of tests and inspections conducted by each officer, and whether the officer conducted the minimum number of each type of test or inspection required by the railroad's program. Monthly reviews shall be completed no later than 15 days after the month has ended.

(ii) *Quarterly review.* The designated officer of each division headquarters, or system headquarters, if no division headquarters exists, shall conduct a written quarterly review of the accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for that division or system to identify the relevant operating rules related to those accidents/incidents that occurred during the quarter. Based upon the results of that review, the designated officer shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period(s). Quarterly reviews and adjustments shall be completed no later than 30 days after the quarter has ended.

(iii) *Six month review.* The designated officer of each system headquarters office responsible for development and administration of the program of operational tests shall conduct a review of the program of operational tests and inspections on a six month basis to ensure that it is being utilized as intended, that the monthly and quarterly reviews provided for in this paragraph have been properly completed, that appropriate adjustments have been made to the distribution of tests and inspections required, and that the railroad testing officers are appropriately directing their efforts. Six month reviews shall be completed no later than 30 days after the review period has ended.

(2) *Reviews by passenger railroads.* Not less than once every six months, the designated officers of the National Railroad Passenger Corporation and of each railroad providing commuter service in a metropolitan or suburban area shall conduct periodic reviews and analyses as provided in this paragraph and shall retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the reviews. Each such review shall be completed within 30 days of the close of the period.

(i) The designated officer of each division headquarters, or system headquarters, if no division headquarters exists, shall conduct a written review of the operational testing data for the division or system to determine compliance by the railroad testing officers with its program of operational tests and inspections required by paragraph (c) of this section. At a minimum, this review shall include the name of each railroad testing officer, the number of tests and inspections conducted by each officer, and whether the officer conducted the minimum number of each type of test or inspection required by the railroad's program.

(ii) The designated officer of each division headquarters, or system headquarters, if no division headquarters exists, shall conduct a written review of accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for the division or

system to identify the relevant operating rules related to those accidents/incidents that occurred during the period. Based upon the results of that review, the designated officer shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period(s).

(iii) The designated officer of each system headquarters office responsible for development and administration of the program of operational tests shall conduct a review of the program of operational tests and inspections to ensure that it is being utilized as intended, that the other reviews provided for in this paragraph have been properly completed, that appropriate adjustments have been made to the distribution of tests and inspections required, and that the railroad testing officers are appropriately directing their efforts.

(3) *Records retention.* The records of periodic reviews required in paragraphs (e)(1) and (e)(2) of this section shall be retained for a period of one year after the end of the calendar year to which they relate and shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. All written records of reviews may be stored electronically.

(f) *Annual summary on operational tests and inspections.* Before March 1 of each calendar year, each railroad to which this part applies, except for a railroad with less than 400,000 total employee work hours annually, shall retain, at each of its division headquarters and at the system headquarters of the railroad, one copy of a written summary of the following with respect to its previous calendar year activities: The number, type, and result of each operational test and inspection, stated according to operating divisions where applicable, that was conducted as required by paragraphs (a) and (c) of this section. These records shall be retained for three calendar years after the end of the calendar year to which they relate and shall be made available to representatives of the FRA for inspection and copying during normal business hours.

(g) *Electronic recordkeeping.* Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in this section, provided that all of the following conditions are met:

(1) The railroad adequately limits and controls accessibility to such information retained in its electronic database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The railroad provides representatives of the FRA with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

(h) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or

(2) Otherwise falsify such records through material misstatement, omission, or mutilation.

(i) Upon review of the program of operational tests and inspections required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program, the railroad shall be provided an opportunity of not less than 30 days to respond and to provide written or oral submissions, or both, in support of the program. The Associate Administrator for Safety shall render a final decision in writing and the railroad shall be provided not less than 30 days to amend the program in accordance with the Associate Administrator for Safety's decision.

4. Appendix A to Part 217 is amended by revising the entry for § 217.9 to read as follows:

Appendix A to Part 217—Schedule of Civil Penalties

Section	Violation	Willful violation
* * * * * * *		
217.9 Operational tests and inspections:		
(a) Program	$7,500	$10,000
(b) Railroad and railroad testing officer responsibilities:		
(1) Failure to provide instruction, examination, or field training, or failure to conduct tests in accordance with program	$5,000	$7,500
(2) Records	$5,000	$7,500
(c) Record of Program	$5,000	$7,500
(d) Record of tests and inspections	$7,500	$10,000
(e) Failure to conduct or retain copy of:		
(1) Monthly review	$5,000	$7,500
(2) Quarterly review	$7,500	$10,000
(3) Six month review	$5,000	$7,500
(4) Records	$5,000	$7,500
(f) Annual summary	$7,500	$10,000
(h) Falsification of record	(—)	$11,000
(i) Failure to timely or appropriately amend program after disapproval	$7,500	$10,000
* * * * * * *		

PART 218—[AMENDED]

5. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

5A. Section 218.4 is added to read as follows:

§ 218.4 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

6. Section 218.5 is amended by revising the definition of *Flagman's signals* to read as follows:

§ 218.5 Definitions.

* * * * *

Flagman's signals means a red flag by day and a white light at night, and fusees as prescribed in the railroad's operating rules.

* * * * *

7. Section 218.37 is amended by revising paragraphs (a)(1)(iii) and (a)(1)(iv) to read as follows:

§ 218.37 Flag protection.

(a) * * *

(1) * * *

(iii) When a train stops on main track, flag protection against following trains on the same track must be provided as follows: A crew member with flagman's signals must immediately go back at least the distance prescribed by timetable or other instructions for the territory and display one lighted fusee. He may then return one-half of the distance to his train where he must remain until he has stopped the approaching train or is recalled. When recalled, he must leave one lighted fusee and while returning to his train, he must also place single lighted fusees at intervals that do not exceed the burning time of the fusee. When the train departs, a crew member must leave one lighted fusee and until the train resumes speed not less than one-half the maximum authorized speed (including slow order limits) in that territory, he must drop off single lighted fusees at intervals that do not exceed the burning time of the fusee.

(iv) When required by the railroad's operating rules, a forward crew member with flagman's signals must protect the front of his train against opposing movements by immediately going forward at least the distance prescribed by timetable or other instructions for the territory, displaying one lighted fusee, and remaining at that location until recalled.

* * * * *

8. Part 218 is amended by adding subpart F to read as follows:

Subpart F—Handling Equipment, Switches and Derails

Sec.
218.91 Purpose and scope.
218.93 Definitions.
218.95 Instruction, training and examination.
218.97 Good faith challenge procedures.
218.99 Shoving or pushing movements.
218.101 Leaving equipment in the clear.
218.103 Hand-operated switches and derails.

Subpart F—Handling Equipment, Switches and Derails

§ 218.91 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties that can result from the mishandling of equipment, switches and derails.

(b) This subpart prescribes minimum operating rule requirements for the handling of equipment, switches and derails. Each railroad may prescribe additional or more stringent requirements in its operating rules, timetables, timetable special instructions, and other special instructions.

§ 218.93 Definitions.

As used in this subpart—

Associate Administrator for Safety means the Associate Administrator for Safety of the Federal Railroad Administration or that person's delegate as designated in writing.

Clearance point means the location near a turnout beyond which it is unsafe for passage on an adjacent track(s). Where a person is permitted by a railroad's operating rules to ride the side of a car, a clearance point shall accommodate a person riding the side of a car.

Controlled siding means a siding within centralized traffic control (CTC) or interlocking limits where a signal indication authorizes the siding's use.

Correspondence of crossover switches means both crossover switches are lined for the crossover or both are lined for the straight tracks.

Employee means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this subpart.

Foul or fouling a track means rolling equipment or on-track maintenance-of-way equipment is located such that any part of the equipment is between the clearance point and the switch point leading to the track on which the equipment is standing.

Hand-operated switch means any type of switch when operated by manual manipulation, including when operated by a push button or radio control, when such switch is not protected by distant switch indicators, switch point indicators or other visual or audio verification that the switch points are lined for the intended route and fit properly.

Highway-rail grade crossing means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

Locomotive means a piece of on-track equipment (other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with § 240.104(a)(2)):

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

Pedestrian crossing means a separate designated sidewalk or pathway where pedestrians, but not vehicles, cross railroad tracks. Sidewalk crossings contiguous with, or separate but adjacent to, highway-rail grade crossings, are presumed to be part of the highway-rail grade crossings and are not considered pedestrian crossings.

Qualified means that a person has successfully completed all instruction, training and examination programs required by the railroad and this subpart and that the person, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is expected to be competent.

Remote control operator means a locomotive engineer, as defined in § 240.5 of this chapter, certified by a railroad to operate remote control locomotives pursuant to § 240.107 of this chapter.

Remote control zone means one or more tracks within defined limits designated in the timetable special instructions, or other railroad publication, within which remote control locomotives, under certain circumstances specified in this part, may be operated without an employee assigned to protect the pull-out end of the remote control movement, i.e., the end on which the locomotive is located.

Roadway maintenance activity means any work limited to the duties prescribed for a roadway worker by definition in this section, including movement of on-track maintenance-of-way equipment other than locomotives.

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in § 214.7 of this chapter.

Roadway worker in charge means a roadway worker who is qualified in accordance with § 214.353 of this chapter for the purpose of establishing on-track safety for roadway work groups.

Switchtender means a qualified employee assigned to handle switches at a specific location.

Track is clear means a crewmember or other qualified employee makes a visual determination that:

(1) The portion of the track to be used is unoccupied by rolling equipment, on-track maintenance-of-way equipment and conflicting movements;

(2) Intervening highway-rail grade crossings and pedestrian crossings are protected as follows:

(i) Crossing gates are in the fully lowered position; or

(ii) A designated and qualified employee is stationed at the crossing and has the ability to communicate with trains; or

(iii) At crossings equipped only with flashing lights or passive warning devices, when it is clearly seen that no traffic is approaching or stopped at the crossing and the leading end of the movement over the crossing does not exceed 15 miles per hour;

(3) Intervening switches and derails are properly lined for the intended movement; and

(4) The portion of the track has sufficient room to contain the equipment being shoved or pushed.

§ 218.95 Instruction, training and examination.

(a) *Program*. Effective [DATE 90 DAYS FOLLOWING THE EFFECTIVE DATE OF THE FINAL RULE], each railroad shall maintain a written program of instruction, training and examination of employees for compliance with operating rules implementing the requirements of this subpart to the extent these requirements are pertinent to the employee's duties. If all requirements of this subpart are satisfied, a railroad may consolidate any portion of the instruction, training or examination required by this subpart with the program of instruction required under § 217.11 of this chapter.

(1) The written program of instruction, training and examination shall specifically address the requirements of this subpart, as well as consequences of non-compliance.

(2) The written program of instruction, training and examination shall include training in any technology (and related procedures) employed to accomplish work subject to the particular requirements, actions required by the employee to enable and use the system, means to detect malfunctioning of equipment or deviations from proper procedures, actions to be taken when malfunctions or deviations are detected, and information needed to prevent unintentional interference with the proper functioning of such technology.

(3) *Implementation schedule for employees, generally*. Each employee performing duties subject to the requirements in this subpart shall be initially instructed, trained and examined prior to [DATE 12 MONTHS FROM PUBLICATION DATE OF THE FINAL RULE], and employees required to be instructed, trained and examined thereafter or hired during the 12-month period following [publication date of the final rule] shall be instructed, trained and examined before performing duties subject to the requirements in this subpart.

(4) After [DATE 12 MONTHS AFTER PUBLICATION DATE OF THE FINAL RULE], no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless instructed, trained and examined on these rules within the previous three years.

(5) The records of instruction, examination and training required by this section shall document qualification of employees under this subpart.

(b) Written records documenting instruction, training and examination of each employee required by this subpart shall be retained at its system headquarters and at the division headquarters for each division where the employee is assigned and made available to representatives of the FRA for inspection and copying during normal business hours.

(c) Upon review of the program of instruction, training and examination required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program, the railroad shall be provided an opportunity of not less than 30 days to respond and to provide written or oral submissions, or both, in support of the program. The Associate Administrator for Safety shall render a final decision in writing and the railroad shall be provided not less than 30 days to amend the program in accordance with the Associate Administrator for Safety's decision.

§ 218.97 Good faith challenge procedures.

(a) *General procedures*. Each employer is responsible for the training of and compliance by its employees with the requirements of this subpart.

(1) Each employer shall adopt and implement written procedures which guarantee each employee the right to challenge in good faith whether the procedures that will be used to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. Each employer's written procedures shall provide for prompt and equitable resolution of challenges made in accordance with this subpart.

(2) The written procedures required by this section shall indicate that the good faith challenge described in paragraph (a)(1) of this section is not intended to abridge any rights or remedies available to the employee under 49 U.S.C. 20109 or a collective bargaining agreement.

(3) Each affected employee shall be instructed on the written procedures required by this paragraph as part of the training prescribed by § 217.11 of this chapter.

(4) A copy of the written procedures shall be provided to each affected employee and made available for inspection and copying by representatives of the FRA during normal business hours. The employer shall provide a copy of any amendments to its written procedures to each affected employee prior to its effective date.

(b) The written procedures shall—

(1) Grant each employee the right to challenge any directive which, based on the employee's good faith determination, would cause the employee to violate any requirement of this subpart or any operating rule relied upon to fulfill the requirements of this subpart;

(2) Provide that an employee making a good faith challenge shall not be

discharged or in any way discriminated against for making the challenge;

(3) Provide that no work is to be performed with respect to the challenged task until the challenge is resolved. A challenge may be resolved by: a railroad or employer officer's acceptance of the employee's request; an employee's acceptance of the directive; an employee's agreement to a compromise solution acceptable to the person issuing the directive; or a direct order to proceed with the work, as initially ordered. Such direct order shall be entered only in accordance with prior and subsequent procedures set forth in paragraph (c) of this section.

(c) The written procedures, prior appeal and subsequent procedures shall:

(1) Provide for immediate review by at least one officer of the railroad or employer prior to execution of a direct order. The review shall not be conducted by the person issuing the challenged directive, or his or her subordinate. The railroad or employer officer providing this immediate review shall have the same options for resolving the challenge as the initial officer, except that the reviewing officer's decision shall not be subject to further immediate review, unless provided for in a railroad's written procedures;

(2) Provide that the employee be afforded an opportunity to document electronically or in writing any protest to the direct order before the tour of duty is complete. The employee shall be afforded the opportunity to retain a copy of the protest;

(3) Provide that the employee be orally advised that completing the work as ordered will not subject the employee to penalties or consequences for non-compliance under this subpart; and

(4) Provide that the employee has a right to further review by a designated railroad or employer officer, within a specified period following completion of the duty tour, for the purpose of verifying the proper application of the regulation, law, procedure or rule in question. Upon request by the employee, that verification decision shall be made in writing to the employee.

§ 218.99 Shoving or pushing movements.

(a) Each railroad shall have in effect an operating rule which complies with the requirements of paragraphs (b) through (d) of this section, and, each railroad officer, supervisor and employee shall uphold and comply with that rule.

(b) *General movement requirements.*

(1) *Job briefing.* Rolling equipment shall not be shoved or pushed until the locomotive engineer has participated in a job briefing by the employee who will direct the move, who shall describe as part of the job briefing the means of communication to be used and how point protection will be provided.

(2) *Point Protection.* When rolling equipment is shoved or pushed, point protection shall be provided by a crewmember or other qualified employee:

(i) Visually determining, for the duration of the shoving or pushing movement, that the track is clear either within the range of vision or for the complete distance the equipment is to be shoved or pushed. The determination that the track is clear may be made with the aid of monitored cameras or other technological means, provided that it and the procedures for use provide an equivalent level of protection to that of a direct visual determination by an employee properly positioned to make the observation; and

(ii) Giving signals or instructions necessary to control the movement.

(c) *Remote control movement requirements.* All remote control movements are considered shoving or pushing movements, except when the remote control operator controlling the movement is riding the leading end of the leading locomotive in a position to visually determine conditions in the direction of movement. In addition to the other requirements of this section, when initiating a remote control shoving or pushing movement:

(1) The remote control operator shall visually determine the direction the equipment moves; or

(2) A member of the crew shall visually determine the direction the equipment moves and confirm the direction with the remote control operator. If no confirmation is received, the movement shall be immediately stopped.

(d) *Remote control zone, exception to point protection requirement.* When a remote control zone is activated, point protection, as prescribed in paragraph (b)(2) of this section, is not required under the following conditions:

(1) The remote control movement is operated from a controlling locomotive on the leading end in the direction of movement, i.e., the movement occurs on the pull-out end;

(2) The track is clear for the movement as determined by the remote control crewmembers or crewmembers from a relieved remote control crew who have transferred the remote control zone directly to the relieving crew; and

(3) The remote control zone is not jointly occupied and has not been jointly occupied since the last determination that the track is clear.

(e) *Operational exceptions.* A railroad may adopt operating rules other than those required by paragraphs (b) through (d) of this section in the following circumstances:

(1) Push-pull operations when operated from the leading end in the direction of movement, i.e., push mode;

(2) Shoving or pushing operations with manned helper locomotives or distributed power locomotives when operated from the leading end in the direction of movement;

(3) During the performance of roadway maintenance activity under the direct control of a roadway worker performing work in accordance with railroad operating rules specific to roadway workers; or

(4) When the leading end of a shoving movement is on a main track or controlled siding, under the following conditions:

(i) The train dispatcher gives permission to make the movement and verifies that:

(A) Another movement or work authority is not in effect within the same or overlapping limits unless conflicting movements are protected; and

(B) A main track is not removed from service by a work authority within the same or overlapping limits;

(ii) Movement is limited to the train's authority;

(iii) Movement shall not be made into or within yard limits, restricted limits, drawbridges, or work authority limits;

(iv) Movement shall not enter or foul a highway-rail grade crossing or pedestrian crossing except when:

(A) Crossing gates are in the fully lowered position; or

(B) A designated and qualified employee is stationed at the crossing and has the ability to communicate with trains; or

(C) At crossings equipped only with flashing lights or passive warning devices, when it is clearly seen that no traffic is approaching or stopped at the crossing and the leading end of the movement over the crossing does not exceed 15 miles per hour; and

(v) Movement shall not be made into or within interlocking limits or controlled point limits unless the following conditions are met:

(A) The signal governing movement is more favorable than restricting aspect;

(B) Each signal governing movement into and through interlocking limits or controlled point limits shall be continuously observed by a member of that crew;

(C) The crewmember is in a position to determine that the train's movement

has occupied the circuit controlling that signal as evidenced by that signal assuming its most restrictive aspect; and

(D) Movement does not exceed the train's length.

§ 218.101 Leaving equipment in the clear.

(a) Each railroad shall have in effect an operating rule which complies with the requirements of paragraphs (b) and (c) of this section and each railroad officer, supervisor and employee shall uphold and comply with that rule.

(b) Equipment shall not be left where it will foul a connecting track unless:

(1) The equipment is standing on a main track or siding and the main track or siding switch that the equipment is fouling is lined for the main track or siding on which the equipment is standing; or

(2) The equipment is standing on a yard or industry switching lead track and the yard or industry track switch that the equipment is fouling is lined for the yard or industry switching lead track on which the equipment is standing.

(c) Each railroad shall implement procedures that enable employees to identify clearance points and a means to identify locations where clearance points will not permit a person to safely ride on the side of a car.

§ 218.103 Hand-operated switches and derails.

(a) Each railroad shall have in effect an operating rule which complies with the requirements set forth in this section and each railroad officer, supervisor and employee shall uphold and comply with that rule.

(b) *General.* Employees operating or verifying the position of a hand-operated switch or derail shall:

(1) Be qualified on the railroad's operating rules relating to their operation;

(2) Be individually responsible for the position of the switch or derail in use;

(3) Visually ensure that switches and derails are properly lined for the intended route;

(4) Visually ensure that the points fit properly and the target, if so equipped, corresponds with the switch's position;

(5) Ensure that the switch is latched or secured by placing the lock or hook, if so equipped, in the hasp before making movements in either direction over the switch;

(6) After locking, hooking or latching a switch or derail that is so equipped, test the lock, hook or latch to ensure it is secured;

(7) Ensure that switches are not operated while equipment is standing or moving over a switch; and

(8) Ensure that when not in use, switches are locked, hooked, or latched if so equipped.

(c) *Hand-operated Main Track Switches.* (1) The normal position of a hand-operated main track switch shall be designated by the railroad in writing and the switch shall be lined and locked in that position when not in use except when:

(i) The train dispatcher directs otherwise with respect to the position of a hand-operated main track switch and the necessary protection is provided; or

(ii) The hand-operated switch is left in the charge of a crewmember of another train, a switchtender, or a roadway worker in charge.

(2) *Releasing Authority Limits.* In non-signaled territory, before a train or engine service employee releases the limits of a main track authority and a hand-operated switch is used to clear the main track, and, prior to departing the train's location, the following conditions are required:

(i) The employee releasing the limits, after conducting a job briefing in accordance with paragraph (i)(3)(i) of this section, shall report to the train dispatcher that the hand-operated main track switch has been restored to its normal position and locked, unless the train dispatcher directs that the hand-operated main track switch be left lined and locked in the reverse position and the necessary protection is provided;

(ii) If the report of the switch position is correct, the train dispatcher shall repeat the reported switch position information to the employee releasing the limits and ask whether that is correct; and

(iii) The employee releasing the limits shall then confirm to the train dispatcher that this information is correct.

(d) Rolling and on-track maintenance-of-way equipment shall not foul a track until all hand-operated switches and derails connected with the movement are properly lined, or in the case of hand-operated switches designed to be trailed through, until the intended route is seen to be clear or the train has been granted movement authority. When a conflicting movement is approaching a hand-operated switch, the track shall not be fouled or the switch or derail operated.

(e) When equipment enters a track, the hand-operated switch to that track shall not be lined away from the track until the equipment has passed the clearance point in the track.

(f) Except during continuous switching operations, when an employee lines a hand-operated switch to let equipment enter or leave the main track, the employee shall move at least twenty (20) feet away from the switch and not return to the switch until the movement is complete.

(g)(1) *Hand-operated crossover switches, generally.* Both hand-operated switches of a crossover shall be properly lined before equipment begins a crossover movement. A crossover movement shall be completed before either hand-operated switch is restored to normal position, except when one crew is using both tracks connected by the crossover during continuous switching operations.

(2) *Correspondence of hand-operated crossover switches.* (i) Hand-operated crossover switches shall be left in corresponding position except when:

(A) Used to provide blue signal protection under § 218.27 of this part; or

(B) Used for inaccessible track protection under § 214.327 of this chapter; or

(C) Performing maintenance, testing or inspection of hand-operated crossover switches in centralized traffic control (CTC) territory.

(ii) Hand-operated crossover switches shall be immediately restored to correspondence after protection is no longer required.

(h) *Hand-operated derails.* (1) The normal position of fixed derails is in the derailing position except as provided in part 218, subpart B of this chapter, or the railroad's operating rules or special instructions. Derails shall be kept in that position except when changed to permit movement, whether or not any equipment is on the tracks they protect.

(2) Movement shall not be made over a derail in the derailing position.

(3) Derails equipped with locks shall be locked, when not in use.

(i) *Job briefings.* (1) Minimum requirements necessary for an adequate job briefing shall be specified.

(2) Job briefings shall be conducted by employees operating hand-operated switches before work is begun, each time a work plan is changed and at completion of the work.

(3) *Additional job briefing requirements for hand-operated main track switches.*

(i) Before a train or a train crew leaves the location where any hand-operated main track switch was operated, all crewmembers shall have verbal communication to confirm the position of the switch.

(ii) In the case of exclusive track occupancy authority established under § 214.321, foul time under § 214.323, or train coordination under § 214.325, when a roadway worker qualified to operate hand-operated main track switches is granted permission by the

roadway worker in charge to occupy or otherwise use the limits of the exclusive track occupancy, such employee receiving permission to occupy the working limits shall report the position of any such switches operated upon expiration of the authority limits to the roadway worker in charge or to a designated intermediary employee who shall convey the switch position to the roadway worker in charge.

9. Appendix A to Part 218 is amended by adding a heading for subpart F and entries for §§ 218.95, 218.97, 218.99, 218.101, and 218.103 to read as follows:

Appendix A to Part 218—Schedule of Civil Penalties

Section	Violation	Willful violation
* * * * * * *		
Subpart F—Handling Equipment, Switches and Derails:		
218.95 Instruction, Training and Examination:		
(a) Program	$7,500	$10,000
(b) Records	5,000	7,500
(c) Failure to timely or appropriately amend program after disapproval	7,500	10,000
218.97 Good Faith Challenge Procedures:		
(a–c) Failure to adopt or implement procedures	7,500	10,000
218.99 Shoving or Pushing Movements:		
(a) Failure to implement required operating rule	7,500	10,000
(b) Failure to conduct job briefing, use a qualified employee, or establish protect protection	7,500	10,000
(c) Failure to observe equipment direction	7,500	10,000
(d) Failure to establish remote control zone in lieu of point protection	7,500	10,000
(e) Failure to abide by operational exception requirements	7,500	10,000
218.101 Leaving Equipment in the Clear:		
(a) Failure to implement required operating rule	7,500	10,000
(b) Equipment left improperly fouling	7,500	10,000
(c) Failure to implement procedures for identifying clearance points	7,500	10,000
218.103 Switches and Derails:		
(a) Failure to implement required operating rule	7,500	10,000
(b–i) Railroad and employee failures	5,000	7,500

Issued in Washington, DC on October 4, 2006.

Joseph H. Boardman,

Administrator.

[FR Doc. 06–8568 Filed 10–11–06; 8:45 am]

BILLING CODE 4910–06–P

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H.R. 3858/P.L. 109–308

Pets Evacuation and Transportation Standards Act of 2006 (Oct. 6, 2006; 120 Stat. 1725)

H.R. 4841/P.L. 109–309

To amend the Ojito Wilderness Act to make a technical correction. (Oct. 6, 2006; 120 Stat. 1727)

S. 3187/P.L. 109–310

To designate the Post Office located at 5755 Post Road, East Greenwich, Rhode Island, as the "Richard L. Cevoli Post Office". (Oct. 6, 2006; 120 Stat. 1728)

S. 3613/P.L. 109–311

To designate the facility of the United States Postal Service located at 2951 New York Highway 43 in Averill Park, New York, as the "Major George Quamo Post Office Building". (Oct. 6, 2006; 120 Stat. 1729)

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