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Contents

Federal Register

Vol. 71, No. 202

Thursday, October 19, 2006

Agriculture Department

See Forest Service

Coast Guard

PROPOSED RULES

Drawbridge operations:
Connecticut, 61698–61701

Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

Customs and Border Protection Bureau

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61790–61792

Defense Department

See Navy Department

NOTICES

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—
Diagnosis related group updates; 2007 FY rates and weights; correction, 61729–61730

Meetings:

Senior Executive Service Performance Review Board; membership, 61730

Drug Enforcement Administration

NOTICES

Schedules of controlled substances:

Ephedrine, pseudoephedrine, and phenylpropanolamine; Schedule I proposed 2007 assessment, 61801–61803

Schedules of controlled substances; production quotas:

Schedules I and II—
Final revised 2006 aggregate, 61803–61806

Applications, hearings, determinations, etc.:

Tocris Cookson, Inc., 61800–61801

Education Department

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61730

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Environmental statements; notice of intent:

Complex 2030; stockpile stewardship and management, 61731–61736

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Indiana; withdrawn, 61686–61687

PROPOSED RULES

Air pollutants, hazardous; national emission standards:
Semiconductor manufacturing, 61701–61705

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61765–61771

Air pollution control:

Citizens suits; proposed settlements—
Natural Resources Defense Council, et al., 61771–61772

Executive Office of the President

See Trade Representative, Office of United States

Federal Aviation Administration

RULES

Airworthiness directives:

Aerospace Technologies of Australia Pty Ltd., 61636–61639

Airbus, 61639–61648

Boeing, 61644–61646

Turbomeca, 61634–61635, 61642–61643

PROPOSED RULES

Airworthiness directives:

McDonnell Douglas, 61690–61691

NOTICES

Exemption petitions; summary and disposition, 61821–61822

Federal Communications Commission

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61772–61774

Declaratory ruling petitions:

Arizona Dialtone Inc. and IDT Telecom, Inc., 61774

Meetings:

Technological Advisory Council, 61774

Federal Deposit Insurance Corporation

NOTICES

No Fear Act:

Employee, applicants; rights and remedies, 61774–61776

Federal Energy Regulatory Commission

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61736–61737

Electric rate and corporate regulation combined filings, 61756–61759

Environmental statements; availability, etc.:

Millennium Pipeline L.L.C. et al., 61759–61761

Environmental statements; notice of intent:

Kinder Morgan Illinois Pipeline LLC, 61761–61762

Hydroelectric applications, 61762–61765

Meetings:

Midwest Independent Transmission System Operator, Inc., et al., 61765

Applications, hearings, determinations, etc.:

330 Fund I, L.P., et al., 61737–61738

AB Energy, Inc., 61738

Allegheny Ridge Wind Farm, LLC, 61738–61739

Aquila, Inc., 61739

BG Dighton Power, LLC, 61739–61740

Black River Macro Discretionary Fund, Ltd., et al., 61740

Carolina Gas Transmission Corp. et al., 61740

Celeron Corp., 61740–61741

Cinergy Marketing & Trading, L.P., 61741
 CMP Androscoggin LLC, 61741–61742
 Colorado Interstate Gas Co., 61742
 Columbia Gas Transmission Corp., 61742–61743
 Dominion Cove Point LNG, LP, 61743
 Dominion Transmission, Inc., 61743–61744
 Eastern Shore Natural Gas Co., 61744
 ECP Energy, LLC, 61744
 Evergreen Windpower, LLC, 61744–61745
 Fairchild Energy, LLC, 61745
 FPL Energy Mower County, LLC, 61745–61746
 FPL Energy Oliver Wind, LLC, 61746
 Gas Transmission Northwest Corp., 61746
 Hawks Nest Hydro LLC, 61747
 International Paper Co., 61747
 Liberty Power Holdings, LLC, 61747–61748
 Liberty Power Maine, LLC, et al., 61748–61749
 MATEP LLC, 61749
 Moguai Energy, LLC, 61749–61750
 Mt. Tom Generating Co., LLC, 61750
 New Hope Power Partnership, 61750–61751
 Newmont Nevada Energy Investment LLC, 61751
 Noble Bliss Windpark, LLC, et al., 61751
 Northern Indiana Public Service Co., 61752
 Parkview AMC Energy, LLC, 61752–61753
 PEAK Capital Management, LLC, 61753
 Puget Sound Energy, Inc., 61753–61754
 Reliant Energy Power Supply, LLC, 61754
 Tennessee Gas Pipeline Co., 61754–61755
 Williston Basin Interstate Pipeline Co., 61755
 Wolverine Trading, Inc., 61755–61756

Federal Motor Carrier Safety Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61822–61825

Federal Railroad Administration

RULES

Railroad safety:

Passenger equipment safety standards—
 Miscellaneous amendments and safety appliances
 attachment, 61836–61864

Federal Reserve System

NOTICES

Banks and bank holding companies:

Formations, acquisitions, and mergers, 61776
 Permissible nonbanking activities, 61776

Federal Trade Commission

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61776–61780

Fish and Wildlife Service

NOTICES

Endangered and threatened species permit applications, determinations, etc., 61792

Meetings:

Sport Fishing and Boating Partnership Council, 61792–61793

Reports and guidance documents; availability, etc.:

National Management Control Plan; New Zealand mudsnail, 61793–61794

Food and Drug Administration

NOTICES

Reports and guidance documents; availability, etc.:

Blood and plasma establishments; biological product deviation reporting, 61780–61781

Licensed manufacturers of biological products other than blood and blood components; biological product deviation reporting, 61781–61782

Forest Service

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61706

Health and Human Services Department

See Food and Drug Administration

See National Institutes of Health

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61780

Homeland Security Department

See Coast Guard

See Customs and Border Protection Bureau

Housing and Urban Development Department

RULES

Public and Indian housing:

Indian Housing Block Grant Program; minimum funding extension, 61866–61868

Industry and Security Bureau

PROPOSED RULES

Export administration regulations:

China; export and reexport controls revisions and clarification; new authorization validated end-user, 61692

NOTICES

Export transactions:

List of unverified persons in foreign countries, guidance to exporters as to red flags (Supplement No. 3 to 15 CFR part 732); update, 61706–61708

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See Minerals Management Service

See Reclamation Bureau

See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service

RULES

Income taxes:

Foreign tax expenditures; partner's distributive share, 61648–61662

Income attributable to domestic production activities; deduction, 61662–61680

Procedure and administration:

Return information disclosure by officers and employees for investigative purposes

Correction, 61833

PROPOSED RULES

Income taxes:

Income attributable to domestic production activities; deduction; hearing, 61692–61693

Payments in lieu of taxes; treatment, 61693–61695

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61828–61832

International Trade Administration**NOTICES**

Antidumping:

Fresh garlic from—

China, 61708–61709

Heavy forged hand tools, finished or unfinished, with or without handles, from—

China, 61709–61710

Lemon juice from—

Argentina and Mexico, 61710–61714

Softwood lumber products from—

Canada, 61714

Countervailing duties:

Softwood lumber products from—

Canada, 61714–61715

North American Free Trade Agreement (NAFTA);

binational panel reviews:

Softwood lumber products from—

Canada, 61715–61716

Reports and guidance documents; availability, etc.:

Antidumping methodologies: market economy inputs, expected non-market economy wages, and duty drawback, 61716–61724

International Trade Commission**NOTICES**

Import investigations:

Engines, components and products containing the same, 61799–61800

Justice Department*See* Drug Enforcement Administration**Land Management Bureau****NOTICES**

Meetings:

Resource Advisory Councils—

New Mexico, 61794

Realty actions; sales, leases, etc.:

Nevada, 61794–61796

Survey plat filings:

Montana, 61796

Minerals Management Service**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 61796–61797

National Aeronautics and Space Administration**RULES**

Acquisition regulations:

Small business innovation research and small business technology transfer contractor re-certification of program compliance, 61687–61689

National Highway Traffic Safety Administration**NOTICES**

Motor vehicle safety standards:

Nonconforming vehicles importation eligibility determinations, 61825–61826

Motor vehicle safety standards; exemption petitions, etc.:

BMW, 61826–61827

National Institutes of Health**NOTICES**

Meetings:

National Human Genome Research Institute, 61782

National Institute of Biomedical Imaging and Bioengineering, 61785

National Institute of Child Health and Human Development, 61783–61784

National Institute of Diabetes and Digestive and Kidney Diseases, 61782–61785

National Institute of Neurological Disorders and Stroke, 61783

Scientific Review Center, 61785–61790

National Oceanic and Atmospheric Administration**NOTICES**

Grants and cooperative agreements; availability, etc.:

Environmental literacy projects, 61724–61729

Navy Department**RULES**

Navigation, COLREGS compliance exemptions:

USS HAWAII, 61685–61686

Nuclear Regulatory Commission**NOTICES**

Environmental statements; availability, etc.:

Nuclear Management Company, LLC, 61806

Meetings:

Reactor Safeguards Advisory Committee, 61806–61808

Office of United States Trade Representative*See* Trade Representative, Office of United States**Personnel Management Office****RULES**

Absence and leave:

Senior Executive Service; accrual and accumulation, 61633–61634

Reclamation Bureau**NOTICES**

Environmental statements; notice of intent:

Upper Truckee River and Marsh Restoration Project, CA, 61797–61799

Securities and Exchange Commission**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 61809

Self-regulatory organizations; proposed rule changes:

American Stock Exchange LLC, 61809–61815

NASDAQ Stock Market LLC, 61815–61819

New York Stock Exchange LLC, 61819–61820

Small Business Administration**NOTICES**

Interest rates; quarterly determinations, 61820

Social Security Administration**NOTICES**

Agency information collection activities; proposals,

submissions, and approvals, 61820–61821

Surface Mining Reclamation and Enforcement Office**RULES**

Permanent program and abandoned mine land reclamation plan submissions:

New Mexico, 61680–61685

PROPOSED RULES

Permanent program and abandoned mine land reclamation plan submissions:

Ohio, 61695–61698

Trade Representative, Office of United States**NOTICES**

World Trade Organization:

- Dispute settlement panel proceedings—
 - United States; measures affecting the cross-border supply of gambling and betting services, 61808–61809

Transportation Department

See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration

Treasury Department

See Internal Revenue Service

RULES

Merchandise, special classes:

- Canada; softwood lumber products; special entry requirements, 61399-61403 [**Editorial Note:** This document was inadvertently dropped from the **Federal Register** Table of Contents of Wednesday, October 18, 2006.]

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 61827

Separate Parts In This Issue**Part II**

Transportation Department, Federal Railroad Administration, 61836–61864

Part III

Housing and Urban Development Department, 61866–61868

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR

630.....61633

14 CFR

39 (6 documents)61634,
61636, 61639, 61642, 61644,
61648

Proposed Rules:

39.....61690

15 CFR**Proposed Rules:**

740.....61692
742.....61692
744.....61692
748.....61692

24 CFR

1000.....61866

26 CFR

1 (2 documents)61648,
61662
301.....61833

Proposed Rules:

1 (2 documents)61692,
61693

30 CFR

931.....61680

Proposed Rules:

935.....61695

32 CFR

706.....61685

33 CFR**Proposed Rules:**

117.....61698

40 CFR

52.....61686
81.....61686

Proposed Rules:

63.....61701

48 CFR

1819.....61687
1852.....61687

49 CFR

229.....61836
238.....61836

Rules and Regulations

Federal Register

Vol. 71, No. 202

Thursday, October 19, 2006

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-AK72

Absence and Leave; SES Annual Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to provide a higher annual leave accrual rate of 1 day (8 hours) per biweekly pay period for members of the Senior Executive Service, employees in senior-level and scientific or professional positions, and other employees covered by equivalent pay systems.

DATES: The regulations are effective November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Kevin Kitchelt by telephone at (202) 606-2858, by fax at (202) 606-0824, or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On March 21, 2005, the Office of Personnel Management (OPM) published interim regulations (70 FR 13343) to implement Section 202(b) of the Federal Workforce Flexibility Act of 2004 (Pub. L. 108-411, October 30, 2004) hereafter referred to as "the Act." Section 202(b) added paragraph (f) to 5 U.S.C. 6303 to provide that members of the Senior Executive Service (SES), employees in senior-level (SL) and scientific or professional (ST) positions, and employees covered by a pay system equivalent to the SES pay system or SL/ST pay system, as determined by OPM, will accrue annual leave at the rate of 1 day (8 hours) for each full biweekly pay period, without regard to their length of service in the Federal Government.

The 60-day comment period for the interim regulations ended on May 20, 2005. During the comment period, OPM received comments from 2 agencies, 3 professional organizations, 1 union, and 14 individuals. In this final rule document, we address the comments received on the interim regulations.

The majority of individuals commented that the interim regulations were unfair and created disparate treatment of Federal employees. The commenters believe the annual leave accrual rate should be based solely on an employee's length of creditable service and not on the employee's grade or pay level. OPM's regulations are consistent with the statutory language in 5 U.S.C. 6303(f), which provides entitlement to a higher annual leave accrual rate to SES members, employees in SL and ST positions, and employees in positions covered by a pay system, determined by OPM, to be equivalent to the SES or SL/ST pay systems. This annual leave benefit is one of two leave enhancements provided in the Act. Section 202(a) of the Act added paragraph (e) to 5 U.S.C. 6303 to provide OPM with the authority to prescribe regulations to permit an agency to provide to a newly appointed or reappointed employee service credit for prior work experience that otherwise would not be creditable for the purpose of determining the employee's annual leave accrual rate. An agency may provide service credit to an employee if his or her work experience was obtained in a position having duties that directly relate to the duties of the position to which the employee is being appointed and if it is determined that the use of this authority is necessary to recruit an individual with the skills and experience necessary to achieve an important agency mission or performance goal. (See OPM's interim regulations issued on April 29, 2005, at 70 FR 22245.) Agencies have discretionary authority to use this enhanced authority, regardless of an employee's grade.

Several commenters disagreed with the criteria in § 630.301(b)(3) of the interim regulations that require an SES or SL/ST "equivalent position" to be subject to a performance appraisal system. The commenters believe there is no basis in law to require an SES or SL/ST "equivalent position" to be covered by a performance appraisal system, and

this requirement is not consistent with Congress' intent in providing this leave benefit. Further, the commenters believe the requirement that an equivalent position must be subject to a performance appraisal system will have an adverse impact on an agency's ability to recruit exceptionally qualified and experienced individuals.

The law gives OPM sole authority to determine whether a pay system is equivalent to the SES pay system or SL/ST pay system for the purpose of authorizing the 8-hour annual leave accrual rate for categories of employees in positions covered by the pay system. OPM's regulations in § 630.301(b) allow the head of an agency to request that OPM authorize the 8-hour annual leave accrual rate for additional categories of employees in positions in pay systems, determined by OPM, to be equivalent to the SES pay system or SL/ST pay system because the covered pay systems meet three conditions—

1. Pay rates are established under an administratively determined (AD) pay system that has a single rate of pay (excluding locality pay) that is higher than the rate for GS-15, step 10 (excluding locality pay) or has a range of rates where the minimum rate (excluding locality pay) of the rate range is at least equal to the minimum rate for the SES and SL/ST pay systems (120 percent of the rate for GS-15, step 1, excluding locality pay) and the maximum rate (excluding locality pay) of the rate range is at least equal to the rate for level IV of the Executive Schedule;

2. Covered positions are equivalent to a "Senior Executive Service position" as defined in 5 U.S.C. 3132(a)(2), a senior-level position (*i.e.*, a non-executive position that is classified above GS-15, such as a high-level special assistant or a senior attorney in a highly-specialized field who is not a manager, supervisor, or policy advisor), or a scientific or professional position as described in 5 U.S.C. 3104; and

3. Covered positions are subject to a performance appraisal system established under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts B and C, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance.

The SES pay system assures a clear and direct linkage between performance

and pay. Paysetting for a member of the SES is based on the individual's performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. Since the SES and SL/ST pay systems are both subject to a performance appraisal system established under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts B and C, it is essential that, for any position to be deemed equivalent, it must be subject to an equivalent performance appose of allowing a higher annual leave accrual rate is to provide agencies with an additional tool to recruit well-qualified, experienced individuals for senior positions. We believe this additional leave benefit will assist agencies in recruiting mid-career individuals who may be hesitant to enter Federal service if they have to surrender a considerable amount of personal or vacation time without an opportunity to accrue additional paid time off in a timely manner.

Finally, we have amended § 630.301(b) to remove the word "Executive" to allow the head of any agency to request that OPM authorize the 8-hour annual leave accrual rate for additional categories of employees. We are revising this section to be consistent with the legislation.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR 630

Government employees.
Office of Personnel Management.
Linda M. Springer,
Director.

■ Accordingly, the interim rule amending 5 CFR part 630, which was published at 70 FR 13343 on March 21, 2005, is adopted as final with the following changes:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; 630.205 also issued under Pub. L. 108-411, 118 Stat 2312; 630.301 also issued under Pub. L. 103-356, 108 Stat. 3410 and Pub. L. 108-411, 118 Stat 2312; 630.303 also issued under 5 U.S.C. 6133(a); 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484,

106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100-566, and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

Subpart C—Annual Leave

■ 2. In § 630.301, paragraph (b) introductory text, is revised to read as follows:

§ 630.301 Annual leave accrual and accumulation—Senior Executive Service.

* * * * *

(b) The head of an agency may request that OPM authorize an annual leave accrual rate of 1 full day (8 hours) for each biweekly pay period for additional categories of employees who are covered by 5 U.S.C. 6301 and who hold positions that are determined by OPM to be equivalent to positions subject to the pay systems under 5 U.S.C. 5383 or 5376. Such a request must include documentation that the affected pay system is equivalent to the SES or SL/ST pay system because it meets all three of the following conditions:

* * * * *

[FR Doc. E6-17389 Filed 10-18-06; 8:45 am]
BILLING CODE 6325-39-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-23809; Directorate Identifier 2005-NE-52-AD; Amendment 39-14795; AD 2006-21-10]

RIN 2120-AA64

Airworthiness Directives; Turbomeca Arriel 2B Series Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Arriel 2B, 2B1, and 2B1A turboshaft engines. This AD requires visually inspecting the splines of the high-pressure (HP) pump drive gear shaft and coupling shaft assembly for

wear. This AD results from reports of uncommanded in-flight shutdowns of engines. We are issuing this AD to detect wear on the splines of the HP pump drive gear shaft and coupling shaft assembly, which could interrupt the fuel flow and cause an uncommanded in-flight shutdown of the engine on a single-engine helicopter. The in-flight shutdown of the engine could result in a forced autorotation landing or accident.

DATES: This AD becomes effective November 24, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 24, 2006.

ADDRESSES: You can get the service information identified in this AD from Turbomeca, 40220 Tarnos—France; Tel (33) 05 59 74 40 00; Telex 570 042; Fax (33) 05 59 74 45 15.

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7175; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Turbomeca Arriel 2B, 2B1, and 2B1A turboshaft engines. We published the proposed AD in the **Federal Register** on March 9, 2006 (71 FR 12150). That action proposed to require visually inspecting the splines of the HP pump drive gear shaft and coupling shaft assembly for wear.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no

comments on the proposal or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 107 engines installed on helicopters of U.S. registry. We also estimate that it will take about 1.0 work-hours per engine to perform the actions, and that the average labor rate is \$65 per work-hour. There are no required parts. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$6,955.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2006-21-10 Turbomeca: Amendment 39-14795. Docket No. FAA-2005-23809; Directorate Identifier 2005-NE-52-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 2B, 2B1, and 2B1A turboshaft engines. These engines are installed on, but not limited to, Eurocopter AS350B3 and EC130B4 helicopters.

Unsafe Condition

(d) This AD results from reports of uncommanded in-flight shutdowns of engines. We are issuing this AD to detect wear on the splines of the high-pressure (HP) pump drive gear shaft and the coupling shaft assembly, which could interrupt the fuel flow and cause an uncommanded in-flight shutdown of the engine on a single-engine helicopter. The in-flight shutdown of the engine could result in a forced autorotation landing or accident.

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.

Initial Visual Inspection

(f) Perform an initial visual inspection of the splines of the coupling assembly and the HP pump drive gear shaft for wear. Use 2.A. through 2.C.(2) of the Instructions to be Incorporated of Turbomeca Mandatory Service Bulletin (MSB) No. 292 73 2812, Update No. 2, dated June 28, 2005, as follows:

(1) For hydraulic mechanical units (HMUs) that have accumulated 450 or more hours time-since-new (TSN) or time-since-overhaul (TSO) on the effective date of this AD, inspect within 50 hours after the effective date of this AD. Replace the HMU if worn beyond limits.

(2) For HMUs that have fewer than 450 hours TSN or TSO on the effective date of this AD, inspect after accumulating 450 hours TSN or TSO, but before accumulating 500 hours TSN or TSO. Replace the HMU if worn beyond limits.

Repetitive Visual Inspections

(g) Thereafter, perform a visual inspection of the splines of the coupling shaft assembly and the HP pump drive gear shaft for wear every time you remove or install the HMU. Use 2.A. through 2.C.(2) of the Instructions to be Incorporated of Turbomeca MSB No. 292 73 2812, Update No. 2, dated June 28, 2005. Replace the HMU and coupling shaft assembly if worn beyond limits.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) DGAC airworthiness directive F-2005-188, dated November 23, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Turbomeca Mandatory Service Bulletin No. 292 73 2812, Update No. 2, dated June 28, 2005, to perform the visual inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca, 40220 Tarnos—France; Tel (33) 05 59 74 40 00; Telex 570 042; Fax (33) 05 59 74 45 15, for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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/cfr/ibr-locations.html>.

Issued in Burlington, Massachusetts, on October 12, 2006.

Thomas A. Boudreau,

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

[FR Doc. E6-17326 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2006-25928; Directorate Identifier 2006-CE-53-AD; Amendment 39-14797; AD 2006-21-12]

RIN 2120-AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2003-22-13, which applies to all AeroSpace Technologies of Australia Pty Ltd. (ASTA) Models N22B and N24A airplanes. AD 2003-22-13 currently requires you to visually inspect the ailerons for damage and replace if necessary; adjust the engine power levers aural warning microswitches; set flap extension and flap down operation limitations; and fabricate and install cockpit flap extension and flap down operation restriction placards. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The FAA inadvertently omitted Model N22S airplanes from the applicability of AD 2003-22-13. Therefore, this AD retains the actions exactly as required in AD 2003-22-13 and adds Model N22S airplanes to the Applicability section. We are issuing this AD to prevent failure of the aileron due to undetected pre-existing aileron damage and airplane operation outside of the approved limits. Aileron failure could lead to reduced or loss of control of the airplane.

DATES: This AD becomes effective on November 8, 2006.

As of November 8, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

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

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *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.

To get the service information identified in this AD, contact Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; fax 61 7 3306 3111.

To view the comments to this AD, go to <http://dms.dot.gov>. The docket number is FAA-2006-25928; Directorate Identifier 2006-CE-53-AD.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, reported several incidents of ailerons incurring damage during flight. Extensive tests and analysis revealed the cause of the damage to the ailerons resulted from operation outside approved limits and undetected pre-existing damage.

The CASA lowered the operational limits of the affected airplanes in order to prevent damage from occurring. Additional reports of aileron flutter were received even when operating within these lower approved limits. As a precautionary measure, the CASA further restricted flight operations by issuing Australian AD Number AD/GAF-N22/69, Amendment 4, dated February 27, 2003.

This situation prompted us to issue AD 2003-22-13, Amendment 39-13361 (68 FR 64270, November 13, 2003). AD 2003-22-13 currently requires the following on all ASTA Models N22B and N24A airplanes:

- Visually inspecting the ailerons for damage and replacing if necessary;
- Adjusting the engine power levers aural warning microswitches;
- Setting flap extension and flap down operation limitations; and
- Fabricating and installing cockpit flap extension and flap down operation restriction placards.

Since we issued AD 2003-22-13, the CASA issued Australian AD Number

AD/GAF-N22/69, Amendment 5, issued September 14, 2006, effective on October 26, 2006. That AD clarifies that N22 series and Model N24S airplanes with float/amphibian configuration are included in the Applicability section of their AD.

Upon reviewing Amendment 5 of the CASA AD to ensure N22 series and Model N24S airplanes with float/amphibian configuration were included in the Applicability section of AD 2003-22-13, we realized that we inadvertently omitted Model N22S airplanes from the Applicability section.

Models N22B and N24A airplanes with float/amphibian configuration were affected by AD 2003-22-13 because we included all serial numbers in the Applicability section.

This condition, if not corrected, could result in aileron failure. Such failure could lead to reduced or loss of control of the airplane.

Relevant Service Information

We reviewed Nomad Alert Service Bulletin ANMD-57-18, Rev 1, dated August 14, 2006. The service information describes procedures for:

- Adjusting the engine power levers aural warning microswitches;
- Setting flap extension and flap down operation limitations; and
- Fabricating and installing cockpit flap extension and flap down operation restriction placards.

FAA's Determination and Requirements of This AD

These ASTA Models N22B, N22S, and N24A airplanes are manufactured in Australia and are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the CASA has kept us informed of the situation described above. We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD supersedes AD 2003-22-13 with a new AD that retains the actions exactly as required in AD 2003-22-13, adds Model N22S airplanes to the Applicability section, and clarifies applicability to airplanes with float/amphibian configuration.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we

would have included a discussion of any information that may have influenced this action in the rulemaking docket.

FAA’s Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number “FAA–2006–25928; Directorate Identifier 2006–CE–53–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

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 AD.

Regulatory Findings

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

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the 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 removing Airworthiness Directive (AD) 2003–22–13, Amendment 39–13361 (88 FR 64270, November 13, 2003) and adding the following new AD:

2006–21–12 AeroSpace Technologies of Australia Pty Ltd.: Amendment 39–14797; Docket No. FAA–2006–25928; Directorate Identifier 2006–CE–53–AD.

Effective Date

(a) This AD becomes effective on November 8, 2006.

Affected ADs

(b) Supersedes AD 2003–22–13, Amendment 39–13361.

Applicability

(c) This AD affects Models N22B, N22S, and N24A airplanes, all serial numbers including airplanes with float/amphibian configuration, that are certificated in any category.

Unsafe Condition

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. We are issuing this AD to prevent failure of the aileron due to undetected pre-existing aileron damage and airplane operation outside of the approved limits. Aileron failure could lead to reduced or loss of control of the airplane.

Compliance

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Visually inspect the left-hand and right-hand ailerons for damage (i.e., distortion, bending, impact marks). Repair or replace any damaged aileron found.	(i) For Models N22B and N24A airplanes (airplanes previously affected by AD 2003–22–13): Inspect within the next 50 hours time-in-service (TIS) after December 23, 2003 (the effective date of AD 2003–22–13), unless already done. (ii) For Model N22S airplanes (airplanes not previously affected by AD 2003–22–13): Inspect within the next 10 hours TIS or 30 days, whichever occurs first, after the effective date of this AD, unless already done.	Following the applicable maintenance manual.

Actions	Compliance	Procedures
<p>(2) Adjust the engine power lever actuated landing gear "up" aural warning micro-switches and then perform a ground test. If deficiencies are detected during the ground test, make the necessary adjustments.</p> <p>(3) For Model N22B airplanes: (i) Fabricate placards that incorporate the following words (using at least 1/8-inch letters) and install these placards on the instrument panel within the pilot's clear view: (A) "RECOMMENDED APPROACH FLAPS 10 OR 20 DEG AT 90 KIAS"; (B) "USE 10° OR 20° FLAP FOR TAKE-OFF AND LANDING—WARNING—DO NOT EXCEED 20° FLAP EXTENSION DURING FLIGHT, LANDING GEAR UP WARNING WILL INITIATE FOR A TORQUE PRESSURE OF LESS THAN 30 PSI"; and (ii) Incorporate the following information into the Limitations section of the Airplane Flight Manual (AFM): (A) Limit the maximum flap extension to 20 degrees; and (B) Limit flaps down operations for landing to 10° or 20° flap.</p> <p>(4) For Model N22S airplanes: (i) Fabricate a placard that incorporates the following words (using at least 1/8-inch letters) and install this placard on the instrument panel within the pilot's clear view: "USE 10° FLAP FOR TAKE-OFF AND LANDING—WARNING—DO NOT EXCEED 10° FLAP EXTENSION DURING FLIGHT, LANDING GEAR UP WARNING WILL INITIATE FOR A TORQUE PRESSURE OF LESS THAN 30 PSI"; and (ii) Incorporate the following information into the Limitations section of the AFM: (A) Limit the maximum flap extension to 10 degrees; and (B) Limit flaps down operations for landing to 10° flap.</p>	<p>(iii) For all affected airplanes: Repair or replace before further flight after the inspection.</p> <p>(i) For Models N22B and N24A airplanes (airplanes previously affected by AD 2003–22–13): Within the next 50 hours TIS after December 23, 2003 (the effective date of AD 2003–22–13), unless already done following Nomad Alert Service Bulletin ANMD–57–18, dated December 19, 2002.</p> <p>(ii) For Model N22S airplanes (airplanes not previously affected by AD 2003–22–13): Within the next 10 hours TIS or 30 days, whichever occurs first, after the effective date of this AD, unless already done.</p> <p>Within the next 50 hours TIS after December 23, 2003 (the effective date of AD 2003–22–13), unless already done following Nomad Alert Service Bulletin ANMD–57–18, dated December 19, 2002.</p> <p>Within the next 10 hours TIS or 30 days, whichever occurs first, after the effective date of this AD, unless already done.</p>	<p>Following Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, and the applicable maintenance manual.</p> <p>Following Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006. To show compliance with paragraphs (e)(3)(ii)(A) and (e)(3)(ii)(B) of this AD, a copy of this AD may be inserted into the Limitations section of the AFM. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the AFM insertion and the placard requirements of paragraphs (e)(3)(i)(A) and (e)(3)(i)(B) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p> <p>Following Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006. To show compliance with paragraphs (e)(4)(ii)(A) and (e)(4)(ii)(B) of this AD, a copy of this AD may be inserted into the Limitations section of the AFM. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the AFM insertion and the placard requirement of paragraph (e)(4)(i) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>

Actions	Compliance	Procedures
<p>(5) For Model N24A airplanes:</p> <p>(i) Fabricate a placard that incorporates the following words (using at least 1/8-inch letters) and install this placard on the instrument panel within the pilot's clear view: "USE 10° FLAP FOR TAKE-OFF AND LANDING—WARNING—DO NOT EXCEED 10° FLAP EXTENSION DURING FLIGHT, LANDING GEAR UP WARNING WILL INITIATE FOR A TORQUE PRESSURE OF LESS THAN 30 PSI"; and</p> <p>(ii) Incorporate the following information into the Limitations section of the AFM:</p> <p>(A) Limit the maximum flap extension to 10 degrees; and</p> <p>(B) Limit flaps down operations for landing to 10° flap.</p>	<p>Within the next 50 hours TIS after December 23, 2003 (the effective date of AD 2003–22–13), unless already done following Nomad Alert Service Bulletin ANMD–57–18, dated December 19, 2002.</p>	<p>Following Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006. To show compliance with paragraphs (e)(5)(ii)(A) and (e)(5)(ii)(B) of this AD, a copy of this AD may be inserted into the Limitations section of the AFM. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the AFM insertion and the placard requirement of paragraph (e)(5)(i) of this AD. Make an entry into the aircraft records showing compliance with these portions of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Staff, FAA, ATTN: Doug Rudolph, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) AMOCs approved for AD 2003–22–13 are not approved for this AD.

Related Information

(h) This AD relates to Australian AD/GAF–N22/69, Amendment 5, dated September 14, 2006, which references Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006.

Material Incorporated by Reference

(i) You must use Nomad Alert Service Bulletin ANMD–57–18, Rev 1, dated August 14, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; fax 61 7 3306 3111.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; 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.

Issued in Kansas City, Missouri, on October 13, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–17425 Filed 10–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26083; Directorate Identifier 2006–NM–185–AD; Amendment 39–14793; AD 2006–21–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A340–200, and A340–300 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A330–200, A340–200, and A340–300 airplanes. This AD requires the installation of heatshields in the belly fairing of the center fuselage. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent exposing any fuel leaked from the center fuel tank to the hot temperature areas of the air conditioning packs, which could result in a fire and consequent fuel tank explosion.

DATES: This AD becomes effective November 3, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 3, 2006.

We must receive comments on this AD by December 18, 2006.

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

• DOT Docket Web site: Go to <http://dms.dot.gov> and follow the

instructions for sending your comments electronically.

• Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.

• Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled “Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements” (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation

Regulation No. 88 (“SFAR 88,” Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result

in fuel tank explosions and consequent loss of the airplane.

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 A330–200, A340–200, and A340–300 airplanes. The EASA advises that there could be temperatures in excess of 200 degrees Celsius on surfaces in the belly fairing of the center fuselage. Therefore, any fuel leaked from the center fuel tank would be exposed to the hot temperature areas of the air conditioning packs. This condition, if not corrected, could result in a fire and consequent fuel tank explosion.

Relevant Service Information

Airbus has issued Service Bulletins A330–21–3096 and A340–21–4107, both Revision 01, both dated October 10, 2005. The service bulletins describe procedures for the installation of heatshields in the belly fairing of the center fuselage. The installation includes the following actions:

- Replacing existing heatshields with new heatshields fitted with edges and draining tapping.
- Adding draining systems.
- Adding two heatshields.
- Adding two tight insulation sleeves on the ozone reducer and on the trim pipe.
- Replacing and adding brackets.
- Modifying a heatshield panel.

The EASA mandated the service information and issued airworthiness directive 2006–0191, dated July 10, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

FAA’s Determination and Requirements of this AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, “Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,” dated August 12, 2005, the EASA has kept the FAA informed of the situation described

above. We have examined the EASA’s findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent exposing any fuel leaked from the center fuel tank to the hot temperature areas of the air conditioning packs, which could result in a fire and consequent fuel tank explosion. This AD requires accomplishing the actions specified in the service information described previously, except as discussed in “Difference Between EASA Airworthiness Directive and This AD.”

Difference Between EASA Airworthiness Directive and This AD

The applicability of EASA airworthiness directive 2006–0191 excludes airplanes on which Airbus Service Bulletin A330–21–3096, Revision 01; or Airbus Service Bulletin A340–21–4107, Revision 01; have been accomplished in service. However, we have not excluded those airplanes in the applicability of this AD; rather, this 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 service bulletins and required by this AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this AD unless an alternative method of compliance is approved.

Costs of Compliance

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

The following table provides the estimated costs to comply with this AD for any affected airplane that might be imported and placed on the U.S. Register in the future.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane
Installation	65	\$80	\$17,290	\$22,490

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA-2006-26083; Directorate Identifier 2006-NM-185-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006-21-08 Airbus: Amendment 39-14793. Docket No. FAA-2006-26083; Directorate Identifier 2006-NM-185-AD.

Effective Date

(a) This AD becomes effective November 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330-200, A340-200, and A340-300 airplanes, certificated in any category; except airplanes on which Airbus Modification 49520 has been done in production.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent exposing any fuel leaked from the center fuel tank to the hot temperature areas of the air conditioning packs, which could result in a fire and consequent fuel tank explosion.

Compliance

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

Installation of Heatshields

(f) Within 27 months after the effective date of this AD, install heatshields in the belly fairing of the center fuselage in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-21-3096, Revision 01, dated October 10, 2005 (for Model A330-200 airplanes); or Airbus Service Bulletin A340-21-4107, Revision 01, dated October 10, 2005 (for Model A340-200 and A340-300 airplanes); as applicable.

Alternative Methods of Compliance (AMOCs)

(g)(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

(h) European Aviation Safety Agency (EASA) airworthiness directive 2006-0191, dated July 10, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A330-21-3096, Revision 01, dated October 10, 2005; or Airbus Service Bulletin A340-21-4107, Revision 01, dated October 10, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point

Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on October 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17426 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25730; Directorate Identifier 2006-NE-31-AD; Amendment 39-14796; AD 2006-21-11]

RIN 2120-AA64

Airworthiness Directives; Turbomeca Turmo IV A and IV C Series Turboshift Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Turmo IV A and IV C series turboshift engines. This AD requires identifying, inspecting and replacing flexible lubrication pipes manufactured after April 1, 2003. If both engines on the same helicopter each have an affected pipe, then this AD requires replacing one of the affected pipes before further flight. This AD also requires initial and repetitive borescope inspections of affected pipes, visual inspections for oil leakage, and visual inspections of the oil filter, on engines that are not required to have an affected pipe replaced before further flight by this AD. This AD results from 7 reports of oil leakage due to the deterioration of flexible lubrication pipes manufactured after April 1, 2003. We are issuing this AD to prevent dual-engine failure on a twin-engine helicopter.

DATES: Effective November 3, 2006.

We must receive any comments on this AD by December 18, 2006.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *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 Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15 for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT:

Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238-7175; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Community, recently notified us that an unsafe condition may exist on certain Turbomeca Turmo IV A and IV C series turboshift engines. EASA advises that 7 reports were received of oil leakage due to the deterioration of flexible lubrication pipes, part number (P/N) 0 249 92 813 0, installed on Turbomeca Turmo III C4 (military version) turboshift engines. Turbomeca is still investigating the cause of the deterioration, but links a manufacturing process change, applied by the pipe manufacturer, in 2003. The same process was used to manufacture flexible lubrication pipes, P/N 0 249 92 916 0. Either P/N pipe could be installed on Turmo IV A and IV C series turboshift engines.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Alert Mandatory Service Bulletin (MSB) No. A249 72 0802, Update No. 1, dated August 3, 2006. That Alert MSB describes procedures for identifying affected flexible lubrication pipes by their curing batch number, and replacing one of the affected pipes on a twin-engine helicopter to prevent dual-engine failure. That Alert MSB also

describes procedures for performing repetitive borescope inspections of all other affected pipes and visual inspections of the oil filter. EASA classified this service bulletin as mandatory and issued AD 2006-0240-E in order to ensure the airworthiness of these Turbomeca Turmo IV A and IV C series turboshift engines in Europe.

Bilateral Airworthiness Agreement

These Turbomeca Turmo IV A and IV C series turboshift engines 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. Under this bilateral airworthiness agreement, EASA kept the FAA informed of the situation described above. We have examined the findings of EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca Turmo IV A and IV C series turboshift engines of the same type design. We are issuing this AD to prevent dual-engine failure on a twin-engine helicopter. This AD requires identifying affected flexible lubrication pipes by their curing batch number, and replacing the affected pipe before further flight, on one engine if both engines on the same helicopter each have an affected pipe. This AD also requires initial and repetitive borescope inspections of flexible lubrication pipes and visual inspections of the oil filter, on engines that do not have the affected pipe replaced before further flight.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and

was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA-2006-25730; Directorate Identifier 2006-NE-31-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS 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 AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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:

2006-21-11 Turbomeca: Amendment 39-14796. Docket No. FAA-2006-25730; Directorate Identifier 2006-NE-31-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Turmo IV A and IV C series turboshaft engines with flexible lubrication pipes, part number (P/N)

0 249 92 813 0 or P/N 0 249 92 916 0, installed. These engines are installed on but not limited to, Aerospatiale SA 330—PUMA helicopters.

Unsafe Condition

(d) This AD results from 7 reports of oil leakage due to the deterioration of certain flexible lubrication pipes, part number (P/N) 0 249 92 813 0. We are issuing this AD to prevent dual-engine failure on a twin-engine helicopter.

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.

Initial Actions

(f) Before further flight:

(1) Identify the curing batch of the flexible lubrication pipes.

(2) If the two engines installed on the same helicopter have pipes with a curing batch of "2T03" (meaning 2nd quarter of 2003) or subsequent batch, replace one of the pipes with a pipe having a curing batch before batch "2T03".

(3) On the other engine, or on a helicopter that has only one engine affected by this AD, borescope-inspect the pipe for deterioration, visually inspect for oil leakage, and visually inspect the oil filter for black particle deterioration from the pipe. Replace the pipe if deterioration or leakage is found, with a pipe having a curing batch before batch "2T03".

Repetitive Actions

(g) Within every additional 25 operating hours, on engines still having an affected flexible lubrication pipe, borescope-inspect the pipe for deterioration, visually inspect the pipe for oil leakage, and visually inspect the oil filter for black particle deterioration from the pipe. Replace the pipe if deterioration or leakage is found, with a pipe having a curing batch before batch "2T03".

(h) Information on performing the initial and repetitive actions in this AD can be found in Turbomeca Alert Mandatory Service Bulletin No. A249 72 0802, Update No. 1, dated August 3, 2006.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) European Aviation Safety Agency airworthiness directive No. 2006-0240-E, dated August 11, 2006, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 12, 2006.

Thomas A. Boudreau,

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

[FR Doc. E6-17328 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2006-26085; Directorate Identifier 2006-NM-142-AD; Amendment 39-14794; AD 2006-21-09]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777-200 Series Airplanes Equipped with General Electric GE90-94B Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777-200 series airplanes equipped with General Electric GE90-94B engines. This AD requires inspecting to determine the part number of the identification plate of the torque box on the thrust reversers (TRs), and investigative and corrective actions if necessary. This AD results from engine certification testing which revealed that TRs on GE90-94B engines have inner walls that could develop disbonding in the upper bifurcation radii. Disbonding was found in an equivalent inner wall used during the testing. We are issuing this AD to prevent failure of a TR and adjacent components and their consequent separation from the airplane during flight or during a refused takeoff (RTO). These separated components could cause structural damage to the airplane or damage to other airplanes and possible injury to people on the ground. TR failure during a RTO could also cause the engine to produce forward thrust, resulting in asymmetric thrust and possible runway excursion.

DATES: This AD becomes effective November 3, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 3, 2006.

We must receive comments on this AD by December 18, 2006.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6443; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report indicating that engine certification testing on certain Boeing Model 777-200 series airplanes with General Electric GE90 engines revealed that certain thrust reversers (TRs) have inner walls that could develop disbonding in the upper bifurcation radii. Disbonding and structural degradation was found in an equivalent inner wall used during the testing. Investigation revealed that the disbonding was caused by a flight maneuver that applied too much stress in the upper bifurcation radii composite materials. This condition, if not corrected, could result in failure of a TR and adjacent components and their consequent separation from the airplane during flight or during a refused takeoff (RTO). These separated components could cause structural damage to the airplane or damage to other airplanes and possible injury to people on the ground. TR failure during a RTO could also cause the engine to produce forward thrust, resulting in asymmetric thrust and possible runway excursion.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 777-78A0056, dated April 20, 2006. The service bulletin describes procedures for a general visual inspection to determine the part number on the identification plate of the torque box on the TRs, and investigative and corrective actions if necessary. If the identification plate shows any part number specified in paragraph 3.B.1.a. of the service bulletin, without the service bulletin number as a modification number, the investigative and corrective actions include, among other things, replacing the existing TRs

with new or serviceable TRs, and marking the service bulletin number on the identification plate of the torque box. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The Boeing service bulletin refers to Spirit AeroSystems Document MAA7-70023-1, dated November 22, 2005, as an additional source of service information for accomplishing the corrective actions.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. Therefore, we are issuing this AD to prevent failure of a TR and adjacent components and their consequent separation from the airplane during flight or during a RTO. These separated components could cause structural damage to the airplane or damage to other airplanes and possible injury to people on the ground. TR failure during a RTO could also cause the engine to produce forward thrust, resulting in asymmetric thrust and possible runway excursion. This AD requires accomplishing the actions specified in the Boeing service information described previously, except as discussed under "Difference Between the AD and the Service Information."

Difference Between the AD and the Service Information

You should note that, although Boeing Alert Service Bulletin 777-78A0056 specifies that you may contact the manufacturer for repair instructions, this AD requires you to repair in one of the following ways:

- Using a method that we approve; or
- Using data that meet the

certification basis of the airplane that have been approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the FAA to make those findings.

Costs of Compliance

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

If an affected airplane is imported and placed on the U.S. Register in the future, the required inspection 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 AD would be \$80 per airplane.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2006-26085; Directorate Identifier 2006-NM-142-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006-21-09 Boeing: Amendment 39-14794. Docket No. FAA-2006-26085; Directorate Identifier 2006-NM-142-AD.

Effective Date

(a) This AD becomes effective November 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777-200 series airplanes equipped with General Electric GE90-94B engines; certificated in any category; as identified in Boeing Alert Service Bulletin 777-78A0056, dated April 20, 2006.

Unsafe Condition

(d) This AD results from engine certification testing which revealed that thrust reversers (TRs) on GE90-94B engines have inner walls that could develop disbonding in the upper bifurcation radii. Disbonding was found in an equivalent inner wall used during the testing. We are issuing this AD to prevent failure of a TR and adjacent components and their consequent separation from the airplane during flight or during a refused takeoff (RTO). These separated components could cause structural damage to the airplane or damage to other airplanes and possible injury to people on the ground. TR failure during a RTO could also cause the engine to produce forward thrust, resulting in asymmetric thrust and possible runway excursion.

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.

General Visual Inspection/Investigative and Corrective Actions

(f) Within 24 months after the effective date of this AD: Do a general visual inspection to determine the part number of the identification plate of the torque box on the TRs, and do all applicable investigative and corrective actions before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777-78A0056, dated April 20, 2006. If any discrepancy is found and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the TR using a method approved in accordance with the procedures specified in paragraph (g) of this AD.

Note 1: The Boeing service bulletin refers to Spirit AeroSystems Document MAA7-70023-1, dated November 22, 2005, as an additional source of service information for accomplishing the corrective actions.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 777-78A0056, dated April 20, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on October 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17428 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25060; Directorate Identifier 2006-NM-119-AD; Amendment 39-14792; AD 2006-21-07]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A321 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 24, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 24, 2006.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 19, 2006 (71 FR 35220). That NPRM proposed to require the removal of one of the two inflating vacuums in order to reduce the speed of the slide inflation.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Requests To Change Compliance Time

Airbus concurs with the contents of the NPRM. Airbus notes that French airworthiness directive F-2005-155, dated August 31, 2005, mandated corrective actions be done before September 10, 2008; however, the NPRM proposes accomplishing the modification within 3 years after the effective date of the AD. Airbus notes that the current compliance time would give operators until the last quarter of 2009 to accomplish the required modification.

The Air Transport Association (ATA), on behalf of its members and U.S. Airways, asks that the compliance time for the modification specified in the NPRM be extended to 42 months. The ATA states that its members generally support the intent of the AD, and have been in lead airline discussions with Airbus and Messier on the referenced service bulletins. The commenters state that to comply with the work instructions specified in the referenced Air Cruisers service bulletins, the affected slides must be sent to the original equipment manufacturer (OEM) for modification. Due to this fact, more time is necessary for accomplishing the modification.

We do not agree with the requests to either reduce or extend the compliance time. The 36-month compliance time required by this AD reflects an equivalent amount of time specified by the French airworthiness directive. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. In consideration of these items, as well as the reports of slide damage and deflation during deployment tests, we have determined that the 36-month compliance time required by this AD will ensure an acceptable level of safety and allow the modifications to be done during scheduled maintenance intervals for most affected operators. In addition, if the slides are sent to the OEM for modification, the compliance time is more than adequate to cover such circumstances. We have made no change to the AD in this regard.

Request To Change/Clarify Certain Procedures

The Modification and Replacement Parts Association (MARPA) provided the following comments to the NPRM.

- MARPA states that paragraph (e) of the NPRM requires work to be accomplished as specified in a particular Airbus service bulletin.

MARPA adds that manufacturer's service documents are privately authored instruments, generally having copyright protection against duplication and distribution. When a service document is incorporated by reference into a public document, such as an airworthiness directive, pursuant to 5 U.S.C. 552(a) and 1 CFR part 51, it loses its private, protected status and becomes a public document. MARPA notes that the NPRM is one of these public documents, but does not incorporate by reference that service document. Therefore, the NPRM, as proposed, attempts to require compliance with a public law by reference to a private writing. MARPA believes that public laws, by definition, should be public, and asks that the referenced Airbus service bulletin be incorporated by reference into the AD.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

- MARPA also states that service documents incorporated by reference should be made available to the public by publication in either the **Federal Register** or the Docket Management System (DMS), keyed to the action that incorporates those documents. The stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals. MARPA adds that, traditionally, "affected individuals" means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing, and/or servicing alternatively certified parts under section 21.303 ("Parts

Manufacturer Approval"), of the Federal Aviation Regulations (14 CFR 21.303). MARPA states that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the referenced Airbus service bulletin be published either in the **Federal Register** or on DMS.

In regard to the commenter's request that service documents be made available to the public by publication in the **Federal Register**, we agree that incorporation by reference was authorized to reduce the volume of material published in the **Federal Register** and the Code of Federal Regulations. However, as specified in the **Federal Register** Document Drafting Handbook, the Director of the Office of the OFR decides when an agency may incorporate material by reference. As the commenter is aware, the OFR files documents for public inspection on the workday before the date of publication of the rule at its office in Washington, DC. As stated in the *Federal Register Document Drafting Handbook*, when documents are filed for public inspection, anyone may inspect or copy file documents during the OFR's hours of business. Further questions regarding publication of documents in the **Federal Register** or incorporation by reference should be directed to the OFR.

In regard to the commenter's request to post service bulletins on DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

- In addition, MARPA states that paragraph (g)(3) of the NPRM is vague. MARPA adds that courts have universally held that requirements are unenforceable if they are too vague to convey to a reasonable person the specific acts that are required or proscribed by the rule.

We partially agree with MARPA. We are considering clarifying the text of paragraph (g)(3) in future ADs to more clearly remind operators they are required to assure a product is airworthy before it is returned to service. However, we consider the existing text to be legally enforceable since it requires performing FAA-approved corrective actions before returning the product to an airworthy condition. No change is required to this final rule in that regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 37 products of U.S. registry. We also estimate that it takes about 5 work hours per product to do the actions and that the average labor rate is \$80 per work hour. Required parts cost about \$370 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no change for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be \$28,490, or \$770 per product.

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006-21-07 Airbus: Amendment 39-14792. Docket No. FAA-2006-25060; Directorate Identifier 2006-NM-119-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus A321 aircraft, all certified models and serial numbers that are equipped with escape slides, part number (P/N) 62292-105, 62292-106, 62293-105, or 62293-106. Aircraft on which no modification/replacement of escape slides at doors 2 and 3 has been performed since embodiment of Airbus Modification 34989 in production are not affected by the requirements of this AD.

Reason

(d) Some cases of slide damage and deflation have been reported during deployment tests at doors 2 and 3 of the A321. Analysis has shown that the slide may inflate too fast compared to the associated door release. If there is a delay during the opening of the door, the inflatable slide may exercise pressure on this not yet opened door, which could result in damage to the inflatable slide. A slide not inflated correctly may disrupt passenger emergency evacuation. For such reason, this AD renders mandatory the removal of one of the two inflating vacuums in order to reduce the speed of the slide inflation.

Actions and Compliance

(e) Unless already done, do the following actions except as stated in paragraph (f) below: Within 36 months after the effective date of this AD, modify the slides, P/N 62292-105, 62292-106, 62293-105, or 62293-106, in accordance with the instructions given in Airbus Service Bulletin A320-25-1416, dated May 20, 2005.

FAA AD Differences

(f) None.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, ATTN: Dan Rodina, Aerospace Safety Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

(4) Reporting Requirements: For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h)(1) This AD is related to MCAI French airworthiness directive F-2005-155, dated August 31, 2005, which references Airbus Service Bulletin A320-25-1416, dated May 20, 2005, for information on required actions.

(2) Airbus Service Bulletin A320-25-1416, dated May 20, 2005, refers to Air Cruisers Service Bulletin S.B. A321 005-25-15, dated May 30, 2005, as an additional source of service information for modifying the escape slides.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A320-25-1416, dated May 20, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; 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/cfr/ibr-locations.html>.

Issued in Renton, Washington, on October 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17420 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9292]

RIN 1545-BB11

Partner's Distributive Share: Foreign Tax Expenditures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding the allocation of creditable foreign tax expenditures by partnerships. The regulations are necessary to clarify the application of

section 704(b) to allocations of creditable foreign tax expenditures. The final regulations affect partnerships and their partners.

DATES: Effective Date: These regulations are effective October 19, 2006.

Applicability Date: These regulations apply to partnership taxable years beginning on or after October 19, 2006.

FOR FURTHER INFORMATION CONTACT:

Timothy J. Leska at 202-622-3050 or Michael I. Gilman at 202-622-3850 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 704 of the Internal Revenue Code (Code). On April 21, 2004, temporary regulations (TD 9121) relating to the proper allocation of partnership expenditures for foreign taxes were published in the **Federal Register** (69 FR 21405). A notice of proposed rulemaking (REG-139792-02) cross-referencing the temporary regulations was also published in the **Federal Register** (69 FR 21454) on April 21, 2004. A public hearing was requested and held on September 14, 2004. The IRS received a number of written comments responding to the temporary and proposed regulations. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision and the corresponding temporary regulations are removed.

Section 704(a) provides that a partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided, be determined by the partnership agreement. Section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances) if the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect. Thus, in order to be respected, partnership allocations either must have substantial economic effect or must be in accordance with the partners' interests in the partnership.

In general, for an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that, in the event there is an economic burden or benefit that corresponds to the allocation, the partner to whom the

allocation is made must receive the economic benefit or bear such economic burden. See § 1.704-1(b)(2)(ii). As a general rule, the economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received, independent of tax consequences. See § 1.704-1(b)(2)(iii). Even if the allocation affects substantially the dollar amounts, the economic effect of the allocation (or allocations) is not substantial if, at the time the allocation (or allocations) becomes part of the partnership agreement, (1) The after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (2) there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement. See § 1.704-1(b)(2)(iii).

The temporary and proposed regulations clarified the application of the regulations under section 704 to foreign taxes paid or accrued by a partnership and eligible for credit under section 901(a) (creditable foreign tax expenditures or CFTEs). While allocations of CFTEs that are disproportionate to the related income may have economic effect in that they reduce the recipient partner's capital account and affect the amount the recipient partner is entitled to receive on liquidation, this effect will almost certainly not be substantial after taking U.S. tax consequences into account. For example, the after-tax economic consequences to a foreign or other tax-indifferent partner whose share of the tax expense is borne by a U.S. taxable partner will be enhanced by reason of the allocation, and there is a strong likelihood that the after-tax economic consequences to a U.S. partner will not be substantially diminished since the allocation of the CFTE increases the allowable foreign tax credit and results in a dollar-for-dollar reduction in the U.S. tax the partner would otherwise owe.

The temporary and proposed regulations were based on the assumption that partnerships specially allocate foreign taxes where the recipient partner would elect to claim the CFTE as a credit, rather than as a deduction. As a matter of administrative convenience, the regulations applied to

all allocations of CFTEs even though, in rare instances, a partner may instead elect to deduct the CFTEs. Thus, the temporary and proposed regulations provided that partnership allocations of CFTEs cannot have substantial economic effect and, therefore, must be allocated in accordance with the partners' interests in the partnership.

The temporary and proposed regulations provided a safe harbor under which partnership allocations of CFTEs will be deemed to be in accordance with the partners' interests in the partnership. Under this safe harbor, if the partnership agreement satisfies the requirements of § 1.704-1(b)(2)(ii)(b) or (d) (capital account maintenance, liquidation according to capital accounts, and either deficit restoration obligations or qualified income offsets), then an allocation of CFTEs that is proportionate to a partner's distributive share of the partnership income to which such taxes relate (including income allocated pursuant to section 704(c)) will be deemed to be in accordance with the partners' interests in the partnership. If the allocation of CFTEs does not satisfy this safe harbor, then the allocation of CFTEs will be tested under the partners' interests in the partnership standard set forth in § 1.704-1(b)(3).

Summary of Comments and Explanation of Provisions

These final regulations retain the provisions of the proposed and temporary regulations excluding allocations of CFTEs from the substantial economic effect safe harbor of § 1.704-1(b)(2), and provide a safe harbor under which allocations of CFTEs will be deemed to be in accordance with the partners' interests in the partnership. As provided in the temporary and proposed regulations, the final regulations provide that allocations of CFTEs must be in proportion to the distributive shares of income to which the CFTEs relate in order to satisfy the safe harbor.

The final regulations provide that the income to which a CFTE relates is the net income in the CFTE category to which the CFTE is allocated and apportioned. A CFTE category is a category of net income attributable to one or more activities of the partnership. The net income in a CFTE category is the net income determined for U.S. Federal income tax purposes (U.S. net income) attributable to each separate activity of the partnership that is included in the CFTE category. Income from separate activities is included in the same CFTE category only if the U.S. net income from the

activities is allocated among the partners in the same proportions. For this purpose, income from a divisible part of a single activity that is shared in a different ratio than other income from that activity is treated as income from a separate activity. CFTEs are allocated and apportioned to CFTE categories in accordance with § 1.904-6 principles, as modified by the final regulations. Therefore, CFTEs generally are allocated to a CFTE category if the income on which the CFTE is imposed (the net income recognized for foreign tax purposes) is in the CFTE category.

Accordingly, the safe harbor of the final regulations requires a three-step process to determine the distributive share of income to which a CFTE relates. First, the partnership must determine its CFTE categories. Second, the partnership must determine the U.S. net income in each CFTE category. Third, the partnership must allocate and apportion CFTEs to the CFTE categories based on the net income in the CFTE categories that is recognized for foreign tax purposes. To satisfy the safe harbor, the partnership must allocate CFTEs among the partners in the same proportion as the allocations of U.S. net income in the applicable CFTE category.

Summary of Comments

A number of comments were received on the temporary and proposed regulations. The comments included requests for clarification and recommendations relating to the following: (i) The definition of CFTEs, (ii) the CFTE categories, (iii) the distributive share of income to which a CFTE relates, (iv) the application of the principles of § 1.904-6, (v) the partners' interests in the partnership, (vi) the effective date and transition rule and (vii) certain other matters. The comments and final regulations are discussed in detail below.

A. Creditable Foreign Tax Expenditures (CFTEs)

The temporary and proposed regulations provide that a CFTE is a foreign tax paid or accrued by a partnership that is eligible for a credit under section 901(a). A qualifying domestic corporate shareholder may claim a credit under section 901(a) for taxes paid or accrued by a foreign corporation and deemed paid by the shareholder under section 902 or 960 upon distribution or inclusion of the associated earnings. Several commentators requested guidance concerning whether taxes deemed paid under section 902 or 960 are subject to these regulations. Although a domestic corporation may be eligible to claim a

credit for deemed-paid taxes with respect to stock of a foreign corporation it owns indirectly through a partnership, any such deemed-paid taxes are determined directly by the corporate partner based on the partner's distributive share of dividend income or inclusion. Such deemed-paid taxes, therefore, are not partnership items and are not taxes paid or accrued (or deemed paid or accrued) by a partnership. Accordingly, foreign taxes deemed paid under section 902 or 960 are not subject to these regulations.

The final regulations retain the definition of CFTE contained in the temporary and proposed regulations. In response to the comment, the final regulations clarify that a CFTE does not include foreign taxes deemed paid by a corporate partner under section 902 or 960. The final regulations also clarify that the regulations do not apply to foreign taxes paid or accrued by a partner (foreign taxes for which the partner has legal liability within the meaning of § 1.901-2(f)). Finally, the final regulations clarify that a CFTE does include a foreign tax paid or accrued by a partnership that is eligible for a credit under an applicable U.S. income tax treaty.

B. CFTE Categories

Examples in the temporary and proposed regulations illustrated that the determination of the income to which a CFTE relates must be made separately for certain categories of income when the partnership agreement provides for different allocations of such income. Commentators requested additional guidance regarding the relevant categories for purposes of the safe harbor, including clarification that the safe harbor does not require the partnership to determine its CFTE categories by reference to section 904(d) categories. Subject to the requirements of section 704(b) and other applicable provisions of U.S. law, partners are free to allocate income in any manner they choose. Although partners must assign their distributive shares of partnership items (along with their other items of income and expense) to section 904(d) categories to compute the applicable limitations on the foreign tax credit, the CFTE categories need not be determined by reference to section 904(d) categories. These principles were illustrated by the examples in the temporary and proposed regulations. However, the IRS and the Treasury Department agree with commentators that it is appropriate to provide additional guidance in determining a partnership's relevant categories of income. Accordingly, the final regulations provide additional

guidance for purposes of making this determination. The additional guidance is also intended to assist in the determination of the distributive share of income to which a foreign tax relates. See the discussion at section C in this preamble. Consistent with the comments, the rules provided for in the final regulations rely to the extent possible on U.S. tax principles.

The final regulations clarify that the relevant category of income is the CFTE category, defined in the final regulations as U.S. net income attributable to one or more activities of the partnership. In general, the final regulations provide that U.S. net income from all of the partnership's activities is treated as income in a single CFTE category. This general rule does not apply, however, if the partnership agreement provides for an allocation of U.S. net income from one or more activities that differs from the allocation of U.S. net income from other activities. In that case, U.S. net income from each activity or group of activities that is subject to a different allocation is treated as net income in a separate CFTE category. For this purpose, income from a divisible part of a single activity is treated as income from a separate activity if such income is shared in a different ratio than other income from the activity.

Thus, if a partnership agreement allocates all partnership items in the same manner, the partnership will have a single CFTE category, regardless of the number of activities in which the partnership is engaged. Conversely, a partnership agreement that provides for different allocations of net income with respect to one or more activities will have multiple CFTE categories. For example, assume a partnership (AB) with two partners is engaged in two activities and that the partnership agreement provides that all partnership items are shared 50-50. In such a case, the partnership has a single CFTE category. However, the partnership would have two CFTE categories if the items from one activity were shared 50-50 and the items from the second activity were shared 80-20.

Different allocations of the partnership's U.S. net income from separate activities and, thus, multiple CFTE categories may result if the partnership agreement contains special allocations. For example, assume that AB partnership agreement allocates all items other than depreciation 50-50, and that deductions for depreciation are allocated 100 percent to one of the partners. In such a case, the allocations of U.S. net income from the two activities will differ if AB's deductions for depreciation relate solely to one

activity or if the deductions relate disproportionately to the activities. See paragraph (b)(5) *Example 22*. A preferential allocation of income will not result in multiple CFTE categories if the allocation relates to all of the partnership's net income. For example, assume partnership AB allocates \$100 of gross income each year to one of the partners and all remaining items 50–50. In such a case, the special allocation of \$100 of gross income affects the overall sharing ratio of partnership net income, but does not result in different sharing ratios with respect to income from the partnership's two activities.

Accordingly, the U.S. net income attributable to the two activities is included in a single CFTE category. See paragraph (b)(5) *Example 25*.

Whether the partnership has different sharing ratios with respect to income from one or more activities, and therefore has more than one CFTE category, depends on the facts and circumstances. Therefore, the final regulations provide that whether a partnership has one or more activities, and the scope of those activities, must be determined in a reasonable manner taking into account all the facts and circumstances. In evaluating whether aggregating or disaggregating income from particular business or investment operations constitutes a reasonable method of determining the scope of an activity, the principal consideration is whether or not the proposed determination has the effect of separating CFTEs from the related foreign income. Accordingly, relevant facts and circumstances include whether the partnership conducts business or investment operations in more than one geographic location or through more than one entity or branch, and whether certain types of income are exempt from foreign tax or subject to preferential foreign tax treatment. In addition, income from a divisible part of a single activity is treated as income from a separate activity if necessary to prevent the separation of CFTEs from the related foreign income. Finally, the final regulations provide that the partnership's activities must be determined consistently from year to year absent a material change in facts and circumstances.

C. Distributive Share of Income to Which a CFTE Relates

The temporary and proposed regulations required the allocation of a CFTE to be in proportion to the partner's distributive share of income to which it relates. Several commentators requested that the final regulations provide additional guidance in

determining a partner's distributive share of income for purposes of the safe harbor. Some commentators believed that it was unclear whether allocations of CFTEs must be proportionate to allocations of income as determined for U.S. tax purposes or as determined under foreign law. One comment recommended that, at least in cases where there is a preferential allocation of income, income as determined for U.S. tax purposes should control. Other commentators requested that the final regulations clarify whether allocations of CFTEs must follow allocations of gross or net income, and that the final regulations clarify the effect of special allocations and allocations of separately stated items on allocations of CFTEs under the safe harbor. Commentators also requested clarifications regarding section 704(c) allocations, income allocations that are deductible under foreign law, guaranteed payments, and situations in which certain partners' allocable shares of partnership income are excluded from the foreign tax base. In response to the comments, the final regulations provide several clarifications regarding the determination of a partner's distributive share of income to which a CFTE relates.

1. Net Income in a CFTE Category

The final regulations clarify that the net income in a CFTE category is the net income for U.S. Federal income tax purposes, determined by taking into account all items attributable to the relevant activity or group of activities (or portion thereof). The final regulations provide that the items of gross income included in a CFTE category must be determined in a consistent manner under any reasonable method taking into account all the facts and circumstances. Expenses, losses or other deductions generally must be allocated and apportioned to gross income included in a CFTE category in accordance with the rules of §§ 1.861–8 and 1.861–8T.

Sections 1.861–8 and 1.861–8T require taxpayers to use special rules contained in §§ 1.861–9 through 1.861–13T and § 1.861–17 to allocate and apportion deductions for interest expense and research and development (R&D) costs. See §§ 1.861–8(e)(3) and 1.861–8T(e)(2). Those provisions generally require taxpayers to allocate and apportion such deductions at the partner level and do not provide rules for allocating and apportioning the deductions at the partnership level. See §§ 1.861–9T(e) and 1.861–17(f). Therefore, the final regulations permit a partnership to allocate and apportion

deductions for interest and R&D costs for purposes of determining net income in a CFTE category under any reasonable method, including but not limited to the rules contained in §§ 1.861–9 through 1.861–13T and § 1.861–17.

The final regulations clarify that in applying U.S. Federal income tax principles to determine the net income attributable to an activity of a branch, the only items of gross income taken into account are items of gross income that are recognized by the branch for U.S. Federal income tax purposes. Therefore, a payment from one branch to another does not increase the gross income attributable to the activity of the recipient. See paragraph (b)(5) *Example 24*. Similarly, because U.S. tax principles apply to determine net income attributable to an activity of a branch, the inter-branch payment does not reduce the gross income of the payor. See paragraph (b)(4)(viii)(c)(3)(B) and paragraph (b)(5) *Example 24*.

The discussion in this preamble addresses the effect of the following factors on the determination of net income in a CFTE category: (a) Section 704(c) allocations, (b) preferential income allocations and guaranteed payments, and (c) the exclusion of income of certain partners from the foreign tax base.

(a) Section 704(c) Allocations

Several commentators requested clarification of when section 704(c) allocations should be taken into account. Some commentators believed that section 704(c) allocations should only be taken into account where the built-in gain or loss is also recognized in the foreign jurisdiction. A number of commentators suggested further that section 704(c) allocations should be taken into account only upon the disposition of the section 704(c) property, while other commentators believed that section 704(c) allocations should also be taken into account as the section 704(c) property is depreciated or amortized over time.

After consideration of these comments, the final regulations retain the general principle that all section 704(c) allocations must be taken into account when determining net income in the relevant category. The IRS and the Treasury Department concluded that any attempt to trace the impact of built-in gain (or loss) under foreign tax principles to corresponding items under U.S. tax principles would be difficult to do and impractical to administer. Because allocations of net income from a CFTE category are allocations of the net income recognized for U.S. tax

purposes, the IRS and the Treasury Department believe that all section 704(c) allocations (including “reverse” section 704(c) allocations and section 704(c) allocations that are made prior to an asset’s disposition) must be taken into account in determining a partner’s distributive share of income. Thus, the final regulations provide that the net income in a CFTE category is the net income for U.S. income tax purposes, determined by taking into account all items attributable to the relevant activity, including, among other items, items allocated pursuant to section 704(c). See paragraph (b)(5) *Example 26*.

(b) Preferential Income Allocations and Guaranteed Payments

Several commentators requested that the final regulations provide guidance regarding the treatment of preferential income allocations and guaranteed payments when applying the safe harbor. In particular, clarification was requested as to the relevance of the deductibility of such items under foreign law in determining whether CFTEs are related to such items.

The final regulations generally provide that the income to which a CFTE relates is the net income in the CFTE category to which the CFTE is allocated and apportioned. However, if an allocation of partnership income is treated as a deductible payment under foreign law, then no CFTEs are related to that income because it is not included in the foreign tax base. To reflect this principle, the final regulations provide that income attributable to an activity shall not include an item of partnership income to the extent the allocation of such item of income (or payment thereof) to a partner results in a deduction under foreign law. By removing the income associated with a preferential income allocation that is deductible under foreign law from the net income in a CFTE category, this provision of the final regulations ensures that no CFTE will be related to such income, which is not included in the base upon which the creditable foreign tax is imposed.

The principle that no CFTEs are related to income if the allocation of such income results in a deduction under foreign law applies with equal force to cases in which a guaranteed payment made by a partnership to a partner is deductible by the partnership under foreign law. Conversely, where a partner receives a guaranteed payment and the guaranteed payment is not deductible by the partnership under foreign law (and thus does not reduce the foreign tax base), CFTEs should relate to the guaranteed payment.

Accordingly, the final regulations contain two provisions to reflect these principles. First, under the final regulations, a guaranteed payment is treated as income in a CFTE category to the extent that the payment is not deductible by the partnership under foreign law. Second, the final regulations provide that such a guaranteed payment is treated as a distributive share of income for purposes of the safe harbor. Consequently, the final regulations provide that CFTEs relate to income taken into account as a guaranteed payment to the extent the payment is not deductible under foreign law, and therefore CFTEs must be allocated to the partner receiving the guaranteed payment.

One commentator requested guidance concerning the source and character of guaranteed payments for other U.S. tax purposes. These issues are clearly important, but they are beyond the scope of this project and are not addressed in these final regulations.

(c) Taxes Imposed on Certain Partners’ Income

A foreign jurisdiction may impose tax with respect to partnership income that is allocable to certain partners and not with respect to partnership income allocable to other partners. For example, as was the case in *Vulcan Materials Co. v. Comm’r*, 96 T.C. 410 (1991), *aff’d in unpublished opinion*, 959 F.2d 973 (11th Cir. 1992), *nonacq.* 1995–2 CB 2, a foreign jurisdiction may impose tax solely with respect to the nonresident partners’ shares of partnership income. One commentator suggested that the final regulations provide that in these situations, allocations of CFTEs satisfy the safe harbor if they are allocated to the partner or partners whose income is included in the foreign tax base. The final regulations adopt this comment, and provide that income in a CFTE category does not include net income that foreign law would exclude from the foreign tax base as a result of the status of the partner. By removing such income from a CFTE category, this provision of the final regulations ensures that CFTEs will be related only to income of those partners whose income is included in the base upon which the creditable foreign tax is imposed.

2. Distributive Share of Income

The final regulations provide that a partner’s distributive share of income generally is the portion of the net income in a CFTE category that is allocated to the partner. Therefore, a partner’s distributive share of income is

determined under U.S. tax principles, taking into account the modifications described in section C1 under “Net income in a CFTE category.”

The final regulations provide a special rule for cases in which more than one partner receives positive income allocations (income in excess of expenses) from a CFTE category and the aggregate of such positive income allocations exceeds the net income in the CFTE category because one or more other partners is allocated a net loss (expenses in excess of income). Because in this situation the sum of the positive income allocations from the CFTE category exceeds 100 percent of the net income in the category, an adjustment to the safe harbor formula is required to ensure that aggregate allocations of CFTEs do not exceed 100 percent of the CFTEs in the category. Accordingly, solely for purposes of allocating CFTEs under the safe harbor, the final regulations limit the distributive share of income of each partner that receives a positive income allocation to the partner’s positive income allocation attributable to the CFTE category, divided by the aggregate positive income allocations attributable to the CFTE category, multiplied by the net income in the CFTE category. For example, assume that the partnership has \$100 of net income (\$130 of gross income and \$30 of expenses) in a CFTE category and that partner A is allocated \$65 of gross income, partner B is allocated \$45 of gross income and partner C is allocated \$20 of gross income and \$30 of expenses. In this case, solely for purposes of the safe harbor, partner A’s distributive share of income is \$59 ($\$65/\110×100) and partner B’s distributive share of income is \$41 ($\$45/\110×100).

3. No Net Income

The final regulations contain a special rule for cases in which CFTEs are allocated and apportioned to a CFTE category that does not have any net income for U.S. tax purposes in the year the foreign taxes are paid or accrued. In such cases, there is no net income in the CFTE category to which the CFTEs relate. In the absence of a special rule, allocations of such CFTEs among the partners would not fall within the general safe harbor of the final regulations and would be required to be allocated in accordance with the partners’ interests in the partnership. To eliminate uncertainty in this situation, the final regulations include a rule that relates such CFTEs to net income recognized for U.S. tax purposes in other years or in other CFTE categories. (For rules relating to the allocation and

apportionment of CFTEs to a CFTE category, see section D below.)

Under the final regulations, CFTEs allocated and apportioned to a CFTE category that has no net income for U.S. tax purposes will be deemed to relate to the aggregate net income (if any) recognized by the partnership in that CFTE category during the preceding three-year period (not taking into account years in which there is a net loss in the CFTE category for U.S. tax purposes). Accordingly, the CFTEs in these situations generally must be allocated among the partners in the same proportion as the allocations of such net income for the prior three-year period to satisfy the safe harbor. If the partnership does not have net income in the applicable CFTE category in either the current year or any of the previous three taxable years, the CFTEs must be allocated among the partners in the same proportion that the partnership reasonably expects to allocate net income in the applicable CFTE category over the succeeding three years. If the partnership does not reasonably expect to have net income in the applicable CFTE category in the succeeding three years, the CFTEs must be allocated among the partners in the same proportion as the total partnership net income for the year is allocated. If the CFTE cannot be allocated under any of the foregoing rules, it must be allocated in proportion to the partners' outstanding capital contributions.

D. Allocation and Apportionment of CFTEs to CFTE Categories

The temporary and proposed regulations provided that the income to which a CFTE relates is determined in accordance with the principles of § 1.904-6. Section 1.904-6, which contains rules for allocating and apportioning foreign taxes to the categories of income described in section 904(d), provides generally that a foreign tax is related to income if the income is included in the base upon which the foreign tax is imposed. Section 1.904-6(a)(1)(ii) contains special rules for apportioning taxes among categories of income when the income on which the foreign tax is imposed includes income in more than one category. It also provides special rules for allocating a foreign tax that is imposed on an item that would be income under U.S. tax principles in another year (timing difference) or an item that does not constitute income under U.S. tax principles (base differences).

A number of comments were received requesting clarification of the § 1.904-6 principles that apply for purposes of

these regulations. In particular, commentators requested guidance concerning the applicability of the related party interest expense rule in § 1.904-6(a)(1)(ii), timing and base differences, and inter-branch payments.

The final regulations retain the rule that the determination of the income to which a CFTE relates is made in accordance with the principles of § 1.904-6. In response to the comments, however, the final regulations contain several clarifications and modifications regarding how the principles of § 1.904-6 apply in allocating foreign taxes to CFTE categories. The final regulations clarify that in applying § 1.904-6 for purposes of the safe harbor, the relevant categories are the CFTE categories determined under the rules described in section B in this preamble. Therefore, the final regulations clarify that application of the principles of § 1.904-6 requires a CFTE to be allocated to a CFTE category if the net income on which the tax is imposed (the net income recognized for foreign tax purposes) is in the CFTE category. The final regulations also provide guidance on (a) the apportionment rule in § 1.904-6(a)(1)(ii), (b) the rules for timing differences, (c) the rules for base differences and (d) the treatment of inter-branch payments.

1. Apportionment of CFTEs

Section 1.904-6(a)(1)(ii) provides that where foreign taxes are imposed on income that relates to more than one separate category, the foreign taxes must be apportioned among the separate categories pro rata based on the amount of net income in each category. Subject to a special rule for related party interest expense, the net income in each category generally is determined under foreign law. If foreign law does not provide rules for the allocation and apportionment of expenses, losses or other deductions to a particular category of income, then such items must be allocated and apportioned in accordance with the rules of §§ 1.861-8 through 1.861-14T.

Commentators requested clarification that the apportionment rule in § 1.904-6(a)(1)(ii), which apportions foreign taxes among categories based on relative amounts of net income as determined under foreign law, applies for purposes of apportioning taxes among the categories of income created by the partnership agreement. Commentators recommended that the related party interest expense rule be disregarded for purposes of the apportionment rule.

In response to these comments, the final regulations clarify that the principles of § 1.904-6(a)(1)(ii) require a

taxpayer to apportion foreign taxes among the CFTE categories based on the relative amounts of net income as determined under foreign law in each CFTE category. In addition, the final regulations modify the apportionment rule in two respects. See § 1.704-(b)(4)(viii)(d)(1).

The final regulations adopt the recommendation to disregard the related party interest expense rule contained in § 1.904-6(a)(1)(ii) for purposes of apportioning taxes among the CFTE categories on the basis of foreign net income. The IRS and the Treasury Department agree that this rule, which coordinates the characterization of taxes and income for section 904(d) purposes, is not relevant for purposes of apportioning CFTEs to CFTE categories. Rather, the apportionment of CFTEs is based on the partnership income, as determined under foreign law, in the CFTE categories, which may include partnership items in one or more section 904(d) categories.

The final regulations also provide that if foreign law does not provide rules for the allocation and apportionment of expenses, losses or other deductions allowed under foreign law to a CFTE category of income, then such expenses, losses or other deductions must be allocated and apportioned to gross income as determined under foreign law in a manner that is consistent with the allocation and apportionment of such items for purposes of determining the net income in the CFTE category for U.S. tax purposes.

2. Timing Differences

A timing difference arises when an item subject to foreign tax is recognized as income under U.S. tax principles in a different year. The temporary and proposed regulations did not contain a specific textual rule regarding the application of the timing difference rule of § 1.904-6(a)(1)(iv) in the context of section 704(b). However, the temporary and proposed regulations included an example that involved a timing difference (Example 27), which indicated that a current year CFTE attributable to an item of income recognized in the prior year for U.S. tax purposes related to, and thus must be allocated in accordance with, the income allocated under the partnership agreement in the prior year.

Upon further consideration, the IRS and the Treasury Department have concluded that relating foreign taxes paid or accrued in one year to income recognized for U.S. tax purposes in another year would be difficult for taxpayers to comply with and for the IRS to administer. In many instances, it

would be difficult to identify accurately the extent of timing differences and the years in which such differences would be reversed. Moreover, where income allocations change from year to year, it often would be impossible for partnerships to determine how the partners would share related U.S. income in subsequent years.

Accordingly, the final regulations provide for a more administrable rule that requires the partnership to allocate a CFTE attributable to a timing difference among the partners in the same proportions as the allocations of income recognized for U.S. tax purposes in the relevant CFTE category in the year such taxes are paid or accrued. See paragraph (b)(5) *Example 23* (reflecting modifications to *Example 27* in the temporary and proposed regulations). This approach should result in allocations of CFTEs that are generally in proportion to the partners' distributive shares of U.S. taxable income over time, and therefore is consistent with the underlying purposes of the foreign tax credit rules to mitigate double taxation. See the discussion at section E in this preamble under "Partners' Interests in the Partnership" for cases in which the partnership agreement allocates CFTEs attributable to a timing difference among the partners in proportion to allocations of U.S. income in an earlier or later year when the income with respect to which the foreign tax is imposed is recognized for U.S. tax purposes.

In addition, the final regulations expressly incorporate the timing difference rule of § 1.904-6(a)(1)(iv). Therefore, a CFTE attributable to a timing difference is allocated to the CFTE category to which the income would be assigned if the income were recognized for U.S. tax purposes in the year in which the foreign tax is imposed.

3. Base Differences

A base difference arises when an item subject to foreign tax is not income under U.S. tax principles. Several commentators observed that the base difference rule under § 1.904-6(a)(1)(iv) provides little indication of how a CFTE attributable to a base difference should be allocated for purposes of the safe harbor. The IRS and the Treasury Department agree that this issue should be clarified. In the absence of any income to which such a CFTE relates, the final regulations provide that a CFTE attributable to a base difference is related to the income recognized for U.S. tax purposes in the relevant CFTE category in the year such taxes are paid or accrued. For this purpose, a CFTE

attributable to a base difference is allocated and apportioned to the CFTE category that includes the partnership items attributable to the activity with respect to which the creditable foreign tax is imposed. Thus, the final regulations adopt similar rules for dealing with timing and base differences. These changes are intended to provide greater certainty for taxpayers and simplify the administration of the safe harbor.

4. Inter-Branch Transactions

Several commentators requested additional guidance regarding the application of the final regulations to transactions between branches (including disregarded entities owned by the partnership) that are disregarded for U.S. tax purposes. In response to this comment, the final regulations provide that if a branch of the partnership (including a disregarded entity owned by the partnership) is required to include in income under foreign law a payment (inter-branch payment) it receives from the partnership or another branch of the partnership, any CFTE imposed with respect to the payment relates to the income in the CFTE category that includes the items attributable to the recipient. In cases where the partnership agreement results in more than one CFTE category with respect to the recipient, such tax is allocated to the CFTE category that includes the items attributable to the activity to which the inter-branch payment relates. A similar rule applies to payments received by the partnership from a branch of the partnership. This rule is consistent with the timing and base difference rules in the final regulations because it associates foreign tax imposed on the recipient with net income of the recipient as determined under U.S. tax principles, notwithstanding differences in U.S. and foreign tax rules. Like the timing and base difference rules, this rule avoids the need for complex tracing rules.

It is possible that this approach might result in distortions of the effective foreign tax rates on the partners' distributive shares of income in certain cases. Nevertheless, the IRS and the Treasury Department have concluded that imposing a requirement to trace taxes imposed on the recipient with respect to such inter-branch payments to income recognized under U.S. tax principles by the payor would be difficult for taxpayers to comply with and for the IRS to administer.

Some commentators recommended that at least in cases where the income allocations take such inter-branch payments into account in determining

the partners' distributive shares of income, the allocation of CFTEs should be respected if made in proportion to income allocations that reflect such payments. The final regulations do not adopt this comment, as the approach suggested by these commentators would require taxpayers and the IRS to identify the inter-branch payments and relate such amounts to items of income of the payor and to CFTEs imposed on the recipient to substantiate that CFTEs of the payor and recipient were properly allocated. The IRS and the Treasury Department concluded that this approach would be difficult to administer and was therefore ill-suited to inclusion in a safe harbor. See the discussion at section E under "Partners' Interests in the Partnership" for cases in which the partnership agreement allocates partnership items of income to reflect inter-branch payments.

E. Partners' Interests in the Partnership

Some commentators suggested that allocations of CFTEs that are not proportionate to allocations of the related income (and therefore fail to satisfy the safe harbor) will nevertheless be valid as in accordance with the partners' interests in the partnership standard of § 1.704-1(b)(3). According to these commentators, the partners' interests in the partnership with respect to a CFTE are conclusively determined by the manner in which the CFTE is allocated under the partnership agreement. The IRS and the Treasury Department believe that this view of the partners' interests in the partnership is incorrect, particularly in the context of a CFTE that is allocated to a partner who can use the associated foreign tax credit. In such a situation, the partner is relieved of a corresponding amount of U.S. tax, and thus does not bear the economic burden of the CFTE. Because of this lack of economic burden, the allocation of the CFTE is meaningless in the determination of the partners' interests in the partnership with respect to the CFTE and with respect to any other partnership item that has a material effect on the amount of CFTE that would be allocated to a partner under the safe harbor of the final regulations. Consequently, the final regulations clarify that in determining the partners' interests in the partnership with respect to an allocation of a partnership item, the allocation of the CFTE itself must be disregarded. This rule does not apply where the partners to whom the taxes are allocated reasonably expect to claim a deduction for such taxes in determining their U.S. tax liabilities.

As indicated in the preamble to the temporary regulations, the IRS and the Treasury Department believe that only in unusual circumstances (such as where the CFTEs are deducted and not credited) will allocations that fail to satisfy the safe harbor be in accordance with the partners' interests in the partnership. As discussed in this preamble, for administrative reasons, the final regulations do not adopt a tracing approach for timing differences or inter-branch payments. Allocations of foreign taxes in such situations that are based on a tracing approach may constitute an unusual situation where the safe harbor is not satisfied, but the allocations are in accordance with the partners' interests in the partnership.

When a CFTE is attributable to a timing difference, the CFTE category to which the CFTE is allocated may or may not have income for U.S. tax purposes in the year the foreign tax is paid or accrued. In either case, allocations of such CFTEs that are proportionate to allocations of the income at the time such income is recognized for U.S. tax purposes may not qualify for safe harbor treatment, but nonetheless be in accordance with the partners' interests in the partnership.

Allocations of CFTEs imposed on the payor of an inter-branch payment may fail the safe harbor, but nonetheless be in accordance with the partners' interests in the partnership if the allocations of the CFTEs are in the same proportions as the allocations of the income of the payor, other than income that is eliminated from the foreign tax base because the inter-branch payment is deductible under foreign law. See paragraph (b)(5) *Example 24* (iv). Similarly, allocations of CFTEs imposed on the recipient with respect to an inter-branch payment may fail the safe harbor, but nonetheless be in accordance with the partners' interests in the partnership, if such allocations are proportionate to the allocations of income recognized for U.S. tax purposes out of which the payment is made. See paragraph (b)(5) *Example 24* (iii).

Several commentators also requested guidance regarding whether a reallocation of CFTEs will cause the IRS to reallocate other partnership items so that the partners' ending capital account balances will remain unchanged. If the reallocation of the CFTEs causes the partners' capital accounts not to reflect their contemplated economic arrangement, the partners may need to reallocate other partnership items to ensure the tax consequences of the partnership allocations are consistent with their contemplated economic arrangement. Consistent with the

principles of the proposed and temporary regulations, the final regulations clarify that the IRS generally will not reallocate other partnership items in the year in which a CFTE is reallocated. See paragraph (b)(5) *Example 25* (ii). This treatment is also consistent with the results arising from and approach taken with respect to reallocations of other items of income, gain, loss or deduction that are not sustained under section 704(b). The IRS and the Treasury Department believe the parties and not the government should determine what allocations should be changed to reflect their economic arrangement.

F. Effective Date and Transition Rule

The provisions of these final regulations generally apply for partnership taxable years beginning on or after October 19, 2006. A transition rule is provided for existing partnerships. Under the transition rule, if a partnership agreement was entered into before April 21, 2004, then the partnership may apply the provisions of § 1.704-1(b) as if the amendments made by these final regulations had not occurred. If the partnership agreement is materially modified on or after April 21, 2004, however, transition relief is no longer afforded, and the rules of § 1.704-1T(b)(4)(xi) or these final regulations apply, depending upon the date on which the material modification occurs and the tax year at issue. For this purpose, a material modification includes any change in ownership of the partnership. This transition rule does not apply if, as of April 20, 2004, persons that are related to each other (within the meaning of sections 267(b) and 707(b)) collectively have the power to amend the partnership agreement without the consent of any unrelated party. However, taxpayers may rely on the provisions of paragraph (b)(4)(viii) of this section for partnership taxable years beginning on or after April 21, 2004.

As stated in this preamble, the temporary and proposed regulations included a limited transition relief provision which ceases to apply upon a material modification of the partnership agreement, including any change in ownership. In addition, transition relief was not provided to partnerships owned by related parties who collectively have the power to amend the partnership agreement. One commentator requested that the IRS and the Treasury Department consider modifying the transition relief provision to indicate that a change in ownership is not a material modification unless there is more than a 50 percent change in

ultimate beneficial ownership over a three-year period. The commentator also requested that the final regulations include a rule providing transition relief to partnerships owned by related parties who collectively have the power to amend the partnership agreement only in a way that does not adversely impact unrelated partners.

After careful consideration of these comments, the IRS and the Treasury Department have decided not to expand the transition relief described in the proposed and temporary regulations. Accordingly, the final regulations do not adopt these comments.

G. Other Comments

One commentator suggested that where the partners are unrelated, the safe harbor should permit the partnership to allocate CFTEs in the same proportion as all other partnership expenses (rather than in proportion to related income). Section 1.704-1(b)(4)(ii) requires partnership credits to be allocated in the same proportions as items giving rise to the credits. Allocating CFTEs in proportion to other partnership expenses would be inconsistent with § 1.704-1(b)(4)(ii). Moreover, such an approach would result in the inappropriate separation of CFTEs from the income to which such CFTEs relate. Thus, the final regulations do not incorporate this comment.

The temporary and proposed regulations provided that the safe harbor is available if the partnership agreement satisfied the requirements of § 1.704-1(b)(2)(ii)(b) or (d) (capital account maintenance, liquidation according to capital accounts, and either deficit restoration obligation or qualified income offsets) and the partnership agreement provided for the allocation of the CFTE in proportion to the partner's distributive share of partnership income. Commentators suggested that the safe harbor also should be available if the partnership allocations satisfy the economic effect equivalence standard of § 1.704-1(b)(2)(ii)(j).

The purpose of the safe harbor is to provide assurance that allocations of CFTEs will be respected if the CFTEs are allocated in proportion to the income to which such CFTEs relate. This purpose is satisfied as long as CFTEs are allocated in proportion to valid allocations of net income, regardless of whether the partnership maintains capital accounts or liquidates in accordance with them. Accordingly, the final regulations adopt these comments by eliminating the requirement that the partnership allocations satisfy the requirements of § 1.704-1(b)(2)(ii)(b) or (d), and instead

condition eligibility for the safe harbor on the validity of income allocations, as described in this preamble.

One commentator suggested that the final regulations clarify that the underlying allocation of income to which the foreign tax relates itself must be valid in order to qualify for the safe harbor. The commentator pointed out that an income allocation may be valid because it has substantial economic effect, or because it is in accordance with (or is deemed to be in accordance with) the partners' interests in the partnership. If income allocations are not valid, allocations of CFTEs based on such allocations will not be in proportion to the income to which the CFTEs relate. Accordingly, it is appropriate to clarify that the allocations of other items must be valid. However, the IRS and the Treasury Department believe that invalid allocations of other items should not disqualify allocations of CFTEs for safe harbor treatment unless the invalid allocations, in the aggregate, materially affect the allocation of CFTEs. Therefore, the final regulations provide that allocations of CFTEs may qualify for safe harbor treatment so long as allocations of all other partnership items that, in the aggregate, have a material effect on the amount of CFTEs allocated to the partners are valid.

Commentators suggested that the safe harbor should be available if the partnership agreement is silent with regard to the allocation of CFTEs, but actual allocations of CFTEs are made in proportion to related income. The IRS

and the Treasury Department agree. Accordingly, the final regulations allow safe harbor treatment if the CFTE is allocated (whether or not pursuant to an express provision in the partnership agreement) and reported on the partnership return in proportion to the distributive shares of income to which the CFTE relates.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of this regulation are Timothy J. Leska, Office of the Associate Chief Counsel (Passthroughs & Special Industries) and Michael I. Gilman, Office of the Associate Chief Counsel (International). However, other personnel from the IRS

and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.704-1 is amended as follows:

■ **1.** Paragraph (b)(0) is amended by redesignating the entry in the table of contents for § 1.704-1(b)(4)(xi) as the entry for § 1.704-1(b)(4)(viii) and by adding entries following the entry for § 1.704-1(b)(4)(viii). The entries for §§ 1.704-1(b)(4)(ix) and 1.704-1(b)(4)(x) are removed.

■ **2.** The heading and text of paragraphs (b)(1)(ii)(b), and (b)(5) *Examples 25* through *28* are revised.

■ **3.** Paragraphs (b)(3)(iv) and (b)(4)(viii), and paragraph (b)(5) *Examples 20* through *24* are added.

■ **4.** Paragraph (b)(4)(xi) is removed.

The additions and revisions read as follows:

§ 1.704-1 Partner's distributive share.

* * * * *
(b) * * * (0) * * *

Heading	Section
Allocation of creditable foreign taxes	1.704-1(b)(4)(viii)
In general	1.704-1(b)(4)(viii)(a)
Creditable foreign tax expenditures (CFTEs)	1.704-1(b)(4)(viii)(b)
Income to which CFTEs relate	1.704-1(b)(4)(viii)(c)
In general	1.704-1(b)(4)(viii)(c)(1)
CFTE category	1.704-1(b)(4)(viii)(c)(2)
Net income in a CFTE category	1.704-1(b)(4)(viii)(c)(3)
Distributive shares of income	1.704-1(b)(4)(viii)(c)(4)
No net income in a CFTE category	1.704-1(b)(4)(viii)(c)(5)
Allocation and apportionment of CFTEs to CFTE categories	1.704-1(b)(4)(viii)(d)
In general	1.704-1(b)(4)(viii)(d)(1)
Timing and base differences	1.704-1(b)(4)(viii)(d)(2)
Special rules for inter-branch payments	1.704-1(b)(4)(viii)(d)(3)

* * * * *
(1) * * *
(ii) * * *

(b) *Rules relating to foreign tax expenditures—(1) In general.* The provisions of paragraphs (b)(3)(iv) and (b)(4)(viii) of this section (regarding the allocation of creditable foreign taxes)

apply for partnership taxable years beginning on or after October 19, 2006. The rules that apply to allocations of creditable foreign taxes made in partnership taxable years beginning before October 19, 2006 are contained in §§ 1.704-1T(b)(1)(ii)(b)(1) and 1.704-1T(b)(4)(xi) as in effect prior to October

19, 2006 (see 26 CFR part 1 revised as of April 1, 2005). However, taxpayers may rely on the provisions of paragraphs (b)(3)(iv) and (b)(4)(viii) of this section for partnership taxable years beginning on or after April 21, 2004.

(2) *Transition rule.* Transition relief is provided herein to partnerships whose

agreements were entered into prior to April 21, 2004. In such case, if there has been no material modification to the partnership agreement on or after April 21, 2004, then the partnership may apply the provisions of paragraph (b) of this section as if the amendments made by paragraphs (b)(3)(iv) and (b)(4)(viii) of this section had not occurred. If the partnership agreement was materially modified on or after April 21, 2004, then the rules provided in paragraphs (b)(3)(iv) and (b)(4)(viii) of this section shall apply to the later of the taxable year beginning on or after October 19, 2006 or the taxable year within which the material modification occurred, and to all subsequent taxable years. If the partnership agreement was materially modified on or after April 21, 2004, and before a tax year beginning on or after October 19, 2006, see §§ 1.704–1T(b)(1)(ii)(b)(1) and 1.704–1T(b)(4)(xi) as in effect prior to October 19, 2006 (26 CFR part 1 revised as of April 1, 2005). For purposes of this paragraph (b)(1)(ii)(b)(2), any change in ownership constitutes a material modification to the partnership agreement. This transition rule does not apply to any taxable year (and all subsequent taxable years) in which persons that are related to each other (within the meaning of section 267(b) and 707(b)) collectively have the power to amend the partnership agreement without the consent of any unrelated party.

* * * * *

(3) * * *

(iv) *Special rule for creditable foreign tax expenditures.* In determining whether an allocation of a partnership item is in accordance with the partners' interests in the partnership, the allocation of the creditable foreign tax expenditure (CFTE) (as defined in paragraph (b)(4)(viii)(b) of this section) must be disregarded. This paragraph (b)(3)(iv) shall not apply to the extent the partners to whom such taxes are allocated reasonably expect to claim a deduction for such taxes in determining their U.S. tax liabilities.

(4) * * *

(viii) *Allocation of creditable foreign taxes—(a) In general.* Allocations of creditable foreign taxes do not have substantial economic effect within the meaning of paragraph (b)(2) of this section and, accordingly, such expenditures must be allocated in accordance with the partners' interests in the partnership. See paragraph (b)(3)(iv) of this section. An allocation of a creditable foreign tax expenditure (CFTE) will be deemed to be in accordance with the partners' interests in the partnership if—

(1) The CFTE is allocated (whether or not pursuant to an express provision in the partnership agreement) and reported on the partnership return in proportion to the distributive shares of income to which the CFTE relates; and

(2) Allocations of all other partnership items that, in the aggregate, have a material effect on the amount of CFTEs allocated to a partner pursuant to paragraph (b)(4)(viii)(a)(1) of this section are valid.

(b) *Creditable foreign tax expenditures (CFTEs).* For purposes of this section, a CFTE is a foreign tax paid or accrued by a partnership that is eligible for a credit under section 901(a) or an applicable U.S. income tax treaty. A foreign tax is a CFTE for these purposes without regard to whether a partner receiving an allocation of such foreign tax elects to claim a credit for such tax. Foreign taxes paid or accrued by a partner with respect to a distributive share of partnership income, and foreign taxes deemed paid under section 902 or 960 by a corporate partner with respect to stock owned, directly or indirectly, by or for a partnership, are not taxes paid or accrued by a partnership and, therefore, are not CFTEs subject to the rules of this section. See paragraphs (e) and (f) of § 1.901–2 for rules for determining when and by whom a foreign tax is paid or accrued.

(c) *Income to which CFTEs relate—(1) In general.* For purposes of paragraph (b)(4)(viii)(a) of this section, CFTEs are related to net income in the partnership's CFTE category or categories to which the CFTE is allocated and apportioned in accordance with the rules of paragraph (b)(4)(viii)(d) of this section. Paragraph (b)(4)(viii)(c)(2) of this section provides rules for determining a partnership's CFTE categories. Paragraph (b)(4)(viii)(c)(3) of this section provides rules for determining the net income in each CFTE category. Paragraph (b)(4)(viii)(c)(4) of this section provides guidance in determining a partner's distributive share of income in a CFTE category. Paragraph (b)(4)(viii)(c)(5) of this section provides a special rule for allocating CFTEs when a partnership has no net income in a CFTE category.

(2) *CFTE category—(i) Income from activities.* A CFTE category is a category of net income (or loss) attributable to one or more activities of the partnership. Net income (or loss) from all the partnership's activities shall be included in a single CFTE category unless the allocation of net income (or loss) from one or more activities differs from the allocation of net income (or loss) from other activities, in which case

income from each activity or group of activities that is subject to a different allocation shall be treated as net income (or loss) in a separate CFTE category.

(ii) *Different allocations.* Different allocations of net income (or loss) generally will result from provisions of the partnership agreement providing for different sharing ratios for net income (or loss) from separate activities. Different allocations of net income (or loss) from separate activities generally will also result if any partnership item is shared in a different ratio than any other partnership item. A guaranteed payment described in paragraph (b)(4)(viii)(c)(3)(ii) of this section, gross income allocation, or other preferential allocation will result in different allocations of net income (or loss) from separate activities only if the amount of the payment or the allocation is determined by reference to income from less than all of the partnership's activities. For purposes of this paragraph (b)(4)(viii)(c)(2), a partnership item shall not include any item that is excluded from income attributable to an activity pursuant to the second sentence of paragraph (b)(4)(viii)(c)(3)(ii) of this section (relating to allocations or payments that result in a deduction under foreign law).

(iii) *Activity.* Whether a partnership has one or more activities, and the scope of each activity, shall be determined in a reasonable manner taking into account all the facts and circumstances. In evaluating whether aggregating or disaggregating income from particular business or investment operations constitutes a reasonable method of determining the scope of an activity, the principal consideration is whether the proposed determination has the effect of separating CFTEs from the related foreign income. Accordingly, relevant considerations include whether the partnership conducts business in more than one geographic location or through more than one entity or branch, and whether certain types of income are exempt from foreign tax or subject to preferential foreign tax treatment. In addition, income from a divisible part of a single activity shall be treated as income from a separate activity if necessary to prevent separating CFTEs from the related foreign income. The partnership's activities must be determined consistently from year to year absent a material change in facts and circumstances.

(3) *Net income in a CFTE category—(i) In general.* The net income in a CFTE category means the net income for U.S. Federal income tax purposes, determined by taking into account all partnership items attributable to the

relevant activity or group of activities, including items of gross income, gain, loss, deduction, and expense and items allocated pursuant to section 704(c). The items of gross income attributable to an activity shall be determined in a consistent manner under any reasonable method taking into account all the facts and circumstances. Except as otherwise provided below, expenses, losses or other deductions shall be allocated and apportioned to gross income attributable to an activity in accordance with the rules of §§ 1.861–8 and 1.861–8T. Under these rules, if an expense, loss or other deduction is allocated to gross income from more than one activity, such expense, loss or deduction must be apportioned among each such activity using a reasonable method that reflects to a reasonably close extent the factual relationship between the deduction and the gross income from such activities. See § 1.861–8T(c). For purposes of determining net income in a CFTE category, the partnership's interest expense and research and experimental expenditures described in section 174 may be allocated and apportioned under any reasonable method, including but not limited to the methods prescribed in § 1.861–9 through § 1.861–13T (interest expense) and § 1.861–17 (research and experimental expenditures). For purposes of determining the net income attributable to any activity of a branch, the only items of gross income taken into account in applying this paragraph (b)(4)(viii)(c)(3) are those items of gross income recognized by the branch for U.S. income tax purposes. See paragraph (b)(5) *Example 24* of this section (relating to inter-branch payments).

(ii) Special rules. Income attributable to an activity shall include the amount included in a partner's income as a guaranteed payment (within the meaning of section 707(c)) from the partnership to the extent that the guaranteed payment is not deductible by the partnership under foreign law. See paragraph (b)(5) *Example 25* (iv) of this section. Except for an inter-branch payment described in paragraph (b)(4)(viii)(d)(3) of this section, income attributable to an activity shall not include an item of partnership income to the extent the allocation of such item of income (or payment thereof) results in a deduction under foreign law. See paragraph (b)(5) *Example 25* (iii) and (iv) of this section. Similarly, income attributable to an activity shall not include net income that foreign law would exclude from the foreign tax base as a result of the status of a partner. See

paragraph (b)(5) *Example 27* of this section.

(4) *Distributive shares of income.* For purposes of paragraph (b)(4)(viii)(a)(1) of this section, distributive share of income means the net income from each CFTE category, determined in accordance with paragraph (b)(4)(viii)(c)(3) of this section, that is allocated to a partner. A guaranteed payment shall be treated as a distributive share of income for purposes of paragraph (b)(4)(viii)(a)(1) of this section to the extent that the guaranteed payment is treated as income attributable to an activity pursuant to paragraph (b)(4)(viii)(c)(3)(ii) of this section. See paragraph (b)(5) *Example 25* (iv) of this section. If more than one partner receives positive income allocations (income in excess of expenses) from a CFTE category, which in the aggregate exceed the total net income in the CFTE category, then for purposes of paragraph (b)(4)(viii)(a)(1) of this section such partner's distributive share of income from the CFTE category shall equal the partner's positive income allocation from the CFTE category, divided by the aggregate positive income allocations from the CFTE category, multiplied by the net income in the CFTE category.

(5) *No net income in a CFTE category.* If a CFTE is allocated or apportioned to a CFTE category that does not have net income for the year in which the foreign tax is paid or accrued, the CFTE shall be deemed to relate to the aggregate of the net income (disregarding net losses) recognized by the partnership in that CFTE category in each of the three preceding taxable years. Accordingly, except as provided below, such CFTE must be allocated in the current taxable year in the same proportion as the allocation of the aggregate net income for the prior three-year period in order to satisfy the requirements of paragraph (b)(4)(viii)(a)(1) of this section. If the partnership does not have net income in the applicable CFTE category in either the current year or any of the previous three taxable years, the CFTE must be allocated in the same proportion that the partnership reasonably expects to allocate the aggregate net income (disregarding net losses) in the CFTE category for the succeeding three taxable years. If the partnership does not reasonably expect to have net income in the CFTE category for the succeeding three years and the partnership has net income in one or more other CFTE categories for the year in which the foreign tax is paid or accrued, the CFTE shall be deemed to relate to such other net income and must be allocated in proportion to the allocations of such

other net income. If any CFTE is not allocated pursuant to the above provisions of this paragraph then the CFTE must be allocated in proportion to the partners' outstanding capital contributions.

(d) *Allocation and apportionment of CFTEs to CFTE categories—(1) In general.* CFTEs are allocated and apportioned to CFTE categories in accordance with the principles of § 1.904–6. Under these principles, a CFTE is related to income in a CFTE category if the income is included in the base upon which the foreign tax is imposed. In accordance with § 1.904–6(a)(1)(ii) as modified by this paragraph (b)(4)(viii)(d), if the foreign tax base includes income in more than one CFTE category, the CFTEs are apportioned among the CFTE categories based on the relative amounts of taxable income computed under foreign law in each CFTE category. For purposes of this paragraph (b)(4)(viii)(d), references in § 1.904–6 to a separate category or separate categories shall mean “CFTE category” or “CFTE categories” and the rules in § 1.904–6(a)(1)(ii) are modified as follows:

(i) The related party interest expense rule in § 1.904–6(a)(1)(ii) shall not apply in determining the amount of taxable income computed under foreign law in a CFTE category.

(ii) If foreign law does not provide for the direct allocation or apportionment of expenses, losses or other deductions allowed under foreign law to a CFTE category of income, then such expenses, losses or other deductions must be allocated and apportioned to gross income as determined under foreign law in a manner that is consistent with the allocation and apportionment of such items for purposes of determining the net income in the CFTE categories for U.S. tax purposes pursuant to paragraph (b)(4)(viii)(c)(3) of this section.

(2) *Timing and base differences.* A foreign tax imposed on an item that would be income under U.S. tax principles in another year (a timing difference) is allocated to the CFTE category that would include the income if the income were recognized for U.S. tax purposes in the year in which the foreign tax is imposed. A foreign tax imposed on an item that would not constitute income under U.S. tax principles in any year (a base difference) is allocated to the CFTE category that includes the partnership items attributable to the activity with respect to which the foreign tax is imposed. See paragraph (b)(5) *Example 23* of this section.

(3) *Special rules for inter-branch payments.* Notwithstanding any other

provision of this paragraph (d), the rules of this paragraph (b)(4)(viii)(d)(3) shall apply if a branch (including an entity described in § 301.7701-2(c)(2)(i) of this chapter) of the partnership is required to include in income under foreign law a payment it receives from another branch of the partnership. The foreign tax imposed on such payments (“inter-branch payments”) is allocated to the CFTE category that includes the items attributable to the relevant activities of the recipient branch. In cases where the partnership agreement results in more than one CFTE category with respect to activities of the recipient branch, such tax is allocated to the CFTE category that includes the items attributable to the activity to which the inter-branch payment relates. The rules of this paragraph (b)(4)(viii)(d)(3) shall also apply to payments between a partnership and a branch of the partnership. See paragraph (b)(5) *Example 24* of this section.

* * * * *

(xi) [Reserved].

(5) * * *

Example 20. (i) A and B form AB, an eligible entity (as defined in § 301.7701-3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB operates business M in country X and earns income from passive investments in country X. Country X imposes a 40 percent tax on business M income, which tax is a CFTE, but exempts from tax income from passive investments. In 2007, AB earns \$100,000 of income from business M and \$30,000 from passive investments and pays or accrues \$40,000 of country X taxes. For purposes of section 904(d), the income from business M is general limitation income and the income from the passive investments is passive income. Pursuant to the partnership agreement, all partnership items, including CFTEs, from business M are allocated 60 percent to A and 40 percent to B, and all partnership items, including CFTEs, from passive investments are allocated 80 percent to A and 20 percent to B. Accordingly, A is allocated 60 percent of the business M income (\$60,000) and 60 percent of the country X taxes (\$24,000), and B is allocated 40 percent of the business M income (\$40,000) and 40 percent of the country X taxes (\$16,000). The income from the passive investments is allocated \$24,000 to A and \$6,000 to B. Assume that allocations of all items other than CFTEs are valid.

(ii) Because the partnership agreement provides for different allocations of the net income attributable to business M and the passive investments, the net income attributable to each is income in a separate CFTE category. See paragraph (b)(4)(viii)(c)(2) of this section. AB must determine the net income in each CFTE category and the CFTEs allocable to each CFTE category. Under paragraph (b)(4)(viii)(c)(3) of this section, the net income in the business M CFTE category is the \$100,000 attributable to business M and

the net income in the passive investments CFTE category is the \$30,000 attributable to the passive investments. Under paragraph (b)(4)(viii)(d) of this section, the \$40,000 of country X taxes is allocated to the business M CFTE category and no portion of the country X taxes is allocated to the passive investments CFTE category. Therefore, the \$40,000 of country X taxes are related to the \$100,000 of net income in the business M CFTE category. See paragraph (b)(4)(viii)(c)(1) of this section. Because AB’s partnership agreement allocates the net income from the business M CFTE category 60 percent to A and 40 percent to B, and the country X taxes 60 percent to A and 40 percent to B, the allocations of the CFTEs are in proportion to the distributive shares of income to which the CFTEs relate. Because AB satisfies the requirement of paragraph (b)(4)(viii) of this section, the allocations of the country X taxes are deemed to be in accordance with the partners’ interests in the partnership. Because the business M income is general limitation income, all \$40,000 of taxes are attributable to the general limitation category. See § 1.904-6.

Example 21. (i) A and B form AB, an eligible entity (as defined in § 301.7701-3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB operates business M in country X and business N in country Y. Country X imposes a 40 percent tax on business M income, country Y imposes a 20 percent tax on business N income, and the country X and country Y taxes are CFTEs. In 2007, AB has \$100,000 of income from business M and \$50,000 of income from business N. Country X imposes \$40,000 of tax on the income from business M and country Y imposes \$10,000 of tax on the income of business N. Pursuant to the partnership agreement, all partnership items, including CFTEs, from business M are allocated 75 percent to A and 25 percent to B, and all partnership items, including CFTEs, from business N are split evenly between A and B (50 percent each). Accordingly, A is allocated 75 percent of the income from business M (\$75,000), 75 percent of the country X taxes (\$30,000), 50 percent of the income from business N (\$25,000), and 50 percent of the country Y taxes (\$5,000). B is allocated 25 percent of the income from business M (\$25,000), 25 percent of the country X taxes (\$10,000), 50 percent of the income from business N (\$25,000), and 50 percent of the country Y taxes (\$5,000). Assume that allocations of all items other than CFTEs are valid. The income from business M and business N is general limitation income for purposes of section 904(d).

(ii) Because the partnership agreement provides for different allocations of the net income attributable to businesses M and N, the net income attributable to each business is income in a separate CFTE category even though all of the income is in the general limitation category for section 904(d) purposes. See paragraph (b)(4)(viii)(c)(2) of this section. Under paragraph (b)(4)(viii)(c)(3) of this section, the net income in the business M CFTE category is the \$100,000 attributable to business M and the net income in the business N CFTE category is \$50,000

attributable to business N. Under paragraph (b)(4)(viii)(d) of this section, the \$40,000 of country X taxes is allocated to the business M CFTE category and the \$10,000 of country Y taxes is allocated to the business N CFTE category. Therefore, the \$40,000 of country X taxes are related to the \$100,000 of net income in the business M CFTE category and the \$10,000 of country Y taxes are related to the \$50,000 of net income in the business N CFTE category. See paragraph (b)(4)(viii)(c)(1) of this section. Because AB’s partnership agreement allocates the \$40,000 of country X taxes in the same proportion as the net income in the business M CFTE category, and the \$10,000 of country Y taxes in the same proportion as the net income in the business N CFTE category, the allocations of the country X taxes and the country Y taxes are in proportion to the distributive shares of income to which the foreign taxes relate. Because AB satisfies the requirements of paragraph (b)(4)(viii) of this section, the allocations of the country X and country Y taxes are deemed to be in accordance with the partners’ interests in the partnership.

Example 22. (i) The facts are the same as in *Example 21*, except that the partnership agreement provides for the following allocations. Depreciation attributable to machine X, which is used in business M, is allocated 100 percent to A. B is allocated the first \$20,000 of gross income attributable to business N, which allocation does not result in a deduction under foreign law. All remaining items, except CFTEs, are allocated 50 percent to A and 50 percent to B. For 2007, assume that business M generates \$120,000 of income, before taking into account depreciation attributable to machine X. The total amount of depreciation attributable to machine X is \$20,000, which results in \$100,000 of net income attributable to business M for U.S. and country X tax purposes. Business N generates \$70,000 of gross income and has \$20,000 of expenses, resulting in \$50,000 of net income for U.S. and country Y tax purposes. Pursuant to the partnership agreement, A is allocated \$40,000 of the net income attributable to business M (\$60,000 of business M income less \$20,000 of depreciation attributable to machine X), and \$15,000 of the net income attributable to business N. B is allocated \$60,000 of the net income attributable to business M and \$35,000 of the net income attributable to business N (\$20,000 of gross income, plus \$15,000 of net income).

(ii) As a result of the special allocations, the net income attributable to business M (\$100,000) is allocated 40 percent to A and 60 percent to B. The net income attributable to business N (\$50,000) is allocated 30 percent to A and 70 percent to B. Because the partnership agreement provides for different allocations of the net income attributable to businesses M and N, the net income from each of businesses M and N is income in a separate CFTE category. See paragraph (b)(4)(viii)(c)(2) of this section. Under paragraph (b)(4)(viii)(c)(3) of this section, the net income in the business M CFTE category is the \$100,000 of net income attributable to business M and the net income in the business N CFTE category is the \$50,000 of net income attributable to business N. Under

paragraph (b)(4)(viii)(d)(1) of this section, the \$40,000 of country X taxes is allocated to the business M CFTE category and the \$10,000 of country Y taxes is allocated to the business N CFTE category. Therefore, the \$40,000 of country X taxes relates to the \$100,000 of net income in the business M CFTE and the \$10,000 of country Y taxes relates to the \$50,000 of net income in the business N CFTE category. See paragraph (b)(4)(viii)(c)(1) of this section. The allocations of the country X taxes will be in proportion to the distributive shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if such taxes are allocated 40 percent to A and 60 percent to B. The allocations of the country Y taxes will be in proportion to the distributive shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if such taxes are allocated 30 percent to A and 70 percent to B.

(iii) Assume that for 2008, all the facts are the same as in paragraph (i) of this *Example 22*, except that business M generates \$60,000 of income before taking into account depreciation attributable to machine X and country X imposes \$16,000 of tax on the \$40,000 of net income attributable to business M. Pursuant to the partnership agreement, A is allocated 25 percent of the income from business M (\$10,000), and B is allocated 75 percent of the income from business M (\$30,000). Allocations of the country X taxes will be in proportion to the distributive shares of income to which they relate and will be deemed to be in accordance with the partners' interests in the partnership if such taxes are allocated 25 percent to A and 75 percent to B.

Example 23. (i) The facts are the same as in *Example 21*, except that AB does not actually receive the \$50,000 of income accrued in 2007 with respect to business N until 2008 and AB accrues and receives an additional \$100,000 with respect to business N in 2008. Also assume that A, B, and AB each report taxable income on an accrual basis for U.S. tax purposes and AB reports taxable income using the cash receipts and disbursements method of accounting for country X and country Y purposes. In 2007, AB pays or accrues country X taxes of \$40,000. In 2008, AB pays or accrues country Y taxes of \$30,000. Pursuant to the partnership agreement, in 2007, A is allocated 75 percent of business M income (\$75,000) and country X taxes (\$30,000) and 50 percent of business N income (\$25,000). B is allocated 25 percent of business M income (\$25,000) and country X taxes (\$10,000) and 50 percent of business N income (\$25,000). In 2008, A and B are each allocated 50 percent of the business N income (\$50,000) and country Y taxes (\$15,000).

(ii) For 2007, the \$40,000 of country X taxes paid or accrued by AB relates to the \$100,000 of net income in the business M CFTE category. No portion of the country X taxes paid or accrued in 2007 relates to the \$50,000 of net income in the business N CFTE category. For 2008, the net income in the business N CFTE category is the \$100,000

attributable to business N. See paragraph (b)(4)(viii)(c)(3) of this section. Under paragraph (b)(4)(viii)(d)(1) of this section, \$20,000 of the country Y tax paid or accrued in 2008 is allocated to the business N CFTE category. The remaining \$10,000 of country Y tax is allocated to the business N CFTE category under paragraph (b)(4)(viii)(d)(2) of this section (relating to timing differences). Therefore, the \$30,000 of country Y taxes paid or accrued by AB in 2008 is related to the \$100,000 of net income in the business N CFTE category for 2008. See paragraph (b)(4)(viii)(c)(1) of this section. Because AB's partnership agreement allocates the \$40,000 of country X taxes and the \$30,000 of country Y taxes in proportion to the distributive shares of income to which the taxes relate, the allocations of the country X and country Y taxes satisfy the requirements of paragraphs (b)(4)(viii)(a)(1) and (2) of this section and the allocations of the country X and Y taxes are deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section.

Example 24. (i) The facts are the same as in *Example 21*, except that businesses M and N are conducted by entities (DE1 and DE2, respectively) that are corporations for country X and Y tax purposes and disregarded entities for U.S. tax purposes. Also, assume that DE1 makes payments of \$75,000 during 2007 to DE2 that are deductible by DE1 for country X tax purposes and includible in income of DE2 for country Y tax purposes. As a result of such payments, DE1 has taxable income of \$25,000 for country X purposes on which \$10,000 of taxes are imposed and DE2 has taxable income of \$125,000 for country Y purposes on which \$25,000 of taxes are imposed. For U.S. tax purposes, \$100,000 of AB's income is attributable to the activities of DE1 and \$50,000 of AB's income is attributable to the activities of DE2. Pursuant to the partnership agreement, all partnership items, including CFTEs, from business M are allocated 75 percent to A and 25 percent to B, and all partnership items, including CFTEs, from business N are split evenly between A and B (50 percent each). Accordingly, A is allocated 75 percent of the income from business M (\$75,000), 75 percent of the country X taxes (\$7,500), 50 percent of the income from business N (\$25,000), and 50 percent of the country Y taxes (\$12,500). B is allocated 25 percent of the income from business M (\$25,000), 25 percent of the country X taxes (\$2,500), 50 percent of the income from business N (\$25,000), and 50 percent of the country Y taxes (\$12,500).

(ii) Because the partnership agreement provides for different allocations of the net income attributable to businesses M and N, the net income attributable to each of business M and business N is income in separate CFTE categories. See paragraph (b)(4)(viii)(c)(2) of this section. Under paragraph (b)(4)(viii)(c)(3) of this section, the \$100,000 of net income attributable to business M is in the business M CFTE category and the \$50,000 of net income attributable to business N is in the business N CFTE category. Under paragraph (b)(4)(viii)(d)(1) of this section, the \$10,000 of country X taxes is allocated to the business

M CFTE category and \$10,000 of the country Y taxes is allocated to the business N CFTE category. Under paragraph (b)(4)(viii)(d)(3) of this section, the additional \$15,000 of country Y tax imposed with respect to the inter-branch payment is assigned to the business N CFTE category. Therefore, the \$10,000 of country X taxes is related to the \$100,000 of net income in the business M CFTE category and the \$25,000 of country Y taxes is related to the \$50,000 of net income in the business N CFTE category. See paragraph (b)(4)(viii)(c)(1) of this section. Because AB's partnership agreement allocates the \$10,000 of country X taxes in the same proportion as the distributive shares of income to which the taxes relate and the \$25,000 of country Y taxes in the same proportion as the distributive shares of income to which the taxes relate, AB satisfies the requirements of paragraph (b)(4)(viii) of this section and the allocations of the country X and country Y taxes are deemed to be in accordance with the partners' interests in the partnership. No inference is intended with respect to the application of other provisions to arrangements that involve disregarded payments. See paragraph (b)(1)(iii) of this section (relating to the effect of sections of the Internal Revenue Code other than section 704(b)).

(iii) Assume that the facts are the same as paragraph (i) of this *Example 24*, except that the partnership agreement provides that the \$15,000 of country Y tax imposed with respect to the inter-branch payment is allocated 75 percent to A (\$11,250) and 25 percent to B (\$3,750) and that the remaining \$10,000 of country Y tax is allocated 50 percent to A (\$5,000) and 50 percent to B (\$5,000). Thus, the country Y taxes are allocated 65 percent to A and 35 percent to B while the income in the business N CFTE category is allocated 50 percent to A and 50 percent to B. The allocations of the country Y tax are not deemed to be in accordance with the partners' interests because they are not in proportion to the allocations of the distributive shares of income from the business N CFTE category. However, upon sufficient substantiation that \$15,000 of country Y tax paid by DE2 with respect to the \$75,000 inter-branch payment relates to income that is recognized by DE1 for U.S. tax purposes, the allocations of the country Y taxes may be established to be actually in accordance with the partners' interests in the partnership. The allocations of the \$10,000 of country X taxes are deemed to be in accordance with the partners' interests in the partnership because the country X taxes are allocated in the same proportion as the distributive shares of income to which they relate.

(iv) Assume that the facts are the same as in paragraph (i) of this *Example 24*, except that in order to reflect the \$75,000 payment from DE1 to DE2, the partnership agreement allocates \$75,000 of the income attributable to business M equally between A and B (50 percent each). Therefore, the total income attributable to business M is allocated 56.25 percent to A (75 percent of \$25,000 plus 50 percent of \$75,000) and 43.75 percent to B (25 percent of \$25,000 and 50 percent of \$75,000). The allocation of the country X

taxes (75 percent to A and 25 percent to B) is not deemed to be in accordance with the partners' interests because it is not in proportion to the allocations of the distributive shares of income from the business M CFTE category. However, upon sufficient substantiation that all \$10,000 of country X tax paid by DE1 relates to the \$25,000 of DE1's income that is shared in the same 75–25 ratio, the allocations of the country X taxes may be established to be actually in accordance with the partners' interests in the partnership. The allocations of the \$25,000 of country Y taxes are deemed to be in accordance with the partners' interests in the partnership because the country Y taxes are allocated in the same proportion as the distributive shares of income to which they relate.

Example 25. (i) A contributes \$750,000 and B contributes \$250,000 to form AB, an eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB operates business M in country X. Country X imposes a 20 percent tax on the net income from business M, which tax is a CFTE. In 2007, AB earns \$300,000 of gross income, has deductible expenses of \$100,000, and pays or accrues \$40,000 of country X tax. Pursuant to the partnership agreement, the first \$100,000 of gross income each year is allocated to A as a return on excess capital contributed by A. All remaining partnership items, including CFTEs, are split evenly between A and B (50 percent each). The gross income allocation is not deductible in determining AB's taxable income under country X law. Assume that allocations of all items other than CFTEs are valid.

(ii) AB has a single CFTE category because all of AB's net income is allocated in the same ratio. See paragraph (b)(4)(viii)(c)(2). Under paragraph (b)(4)(viii)(c)(3) of this section, the net income in the single CFTE category is \$200,000. The \$40,000 of taxes is allocated to the single CFTE category and, thus, related to the \$200,000 of net income in the single CFTE category. In 2007, AB's partnership agreement allocates \$150,000 or 75 percent of the net income to A (\$100,000 attributable to the gross income allocation plus \$50,000 of the remaining \$100,000 of net income) and \$50,000 or 25 percent of the net income to B. AB's partnership agreement allocates the country X taxes in accordance with the partners' shares of partnership items remaining after the \$100,000 gross income allocation. Therefore, AB allocates the country X taxes 50 percent to A (\$20,000) and 50 percent to B (\$20,000). AB's allocations of country X taxes are not deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section, because they are not in proportion to the allocations of the distributive shares of income to which the country X taxes relate. Accordingly, the country X taxes will be reallocated according to the partners' interest in the partnership. Assuming that the partners do not reasonably expect to claim a deduction for the CFTE in determining their U.S. tax liabilities, a reallocation of the CFTEs under paragraph (b)(3) of this section would be 75 percent to A (\$30,000) and 25 percent to B (\$10,000). If

the reallocation of the CFTEs causes the partners' capital accounts not to reflect their contemplated economic arrangement, the partners may need to reallocate other partnership items to ensure that the tax consequences of the partnership's allocations are consistent with their contemplated economic arrangement over the term of the partnership. The Commissioner will not reallocate other partnership items after the reallocation of the CFTEs.

(iii) The facts are the same as in paragraph (i) of this *Example 25*, except that the \$100,000 allocation of gross income is deductible under country X law and that AB pays or accrues \$20,000 of foreign tax. Under paragraph (b)(4)(viii)(c)(3) of this section, the net income in the single CFTE category is the \$100,000 of net income, determined by disregarding the \$100,000 of gross income that is allocated to A and deductible in determining AB's taxable income under the law of country X. See paragraph (b)(4)(viii)(c)(3)(ii) of this section. The \$20,000 of country X tax is allocated to the single CFTE category, and, thus, related to the \$100,000 of net income in the single CFTE category. See paragraphs (b)(4)(viii)(c)(1) and (d) of this section. No portion of the tax is related to the \$100,000 of gross income allocated to A. Pursuant to the partnership agreement, AB allocates the country X taxes 50 percent to A (\$10,000) and 50 percent to B (\$10,000). AB's allocations of country X taxes are deemed to be in accordance with the partners' interests in the partnership under paragraph (b)(4)(viii) of this section.

(iv) The results in (ii) and (iii) of this *Example 25* would be the same assuming all of the facts except that, rather than being a preferential gross income allocation, the \$100,000 was a guaranteed payment to A within the meaning of section 707(c). See paragraph (b)(4)(viii)(c)(3) of this section.

Example 26. (i) A and B form AB, an eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB operates business M in country X and business N in country Y. A, a U.S. corporation, contributes a building with a fair market value of \$200,000 and an adjusted basis of \$50,000 for both U.S. and country X purposes. The building contributed by A is used in business M. B, a country X corporation, contributes \$800,000 cash. The AB partnership agreement provides that AB will make allocations under section 704(c) using the traditional method under § 1.704–3(b) and that all other items, excluding creditable foreign taxes, will be allocated 20 percent to A and 80 percent to B. The partnership agreement provides that creditable foreign taxes will be allocated in proportion to the partners' distributive shares of net income in each CFTE category, which shall be determined by taking into accounts items allocated pursuant to section 704(c). Country X and Country Y impose tax at a rate of 20 percent and 40 percent, respectively, and such taxes are CFTEs. In 2007, AB sells the building contributed by A for \$200,000, thereby recognizing taxable income of \$150,000 for U.S. and country X purposes, and recognizes \$250,000 of other income

from the operation of business M. AB pays or accrues \$80,000 of country X tax on such income. Also in 2007, business N recognizes \$100,000 of taxable income for U.S. and country Y purposes and pays or accrues \$40,000 of country Y tax. Pursuant to the partnership agreement, A is allocated \$200,000 of business M income (\$150,000 of taxable income in accordance with section 704(c) and \$50,000 of other business M income) and \$40,000 of country X tax, and 20 percent of both business N income (\$20,000) and country Y tax (\$8,000). B is allocated \$200,000 of business M income and \$40,000 of country X tax and 80 percent of both the business N income (\$80,000) and country Y tax (\$32,000). Assume that allocations of all items other than CFTEs are valid.

(ii) The net income attributable to business M (\$400,000) is allocated 50 percent to A and 50 percent to B while the net income attributable to business N (\$100,000) is allocated 20 percent to A and 80 percent to B. Because the partnership agreement provides for different allocations of the net income attributable to businesses M and N, the net income attributable to each activity is income in a separate CFTE category. See paragraph (b)(4)(viii)(c)(2) of this section. Under paragraph (b)(4)(viii)(c)(3) of this section, the net income in the business M CFTE category is the \$400,000 of net income attributable to business M and the net income in the business N CFTE category is the \$100,000 of net income attributable to business N. Under paragraph (b)(4)(viii)(d)(1) of this section, the \$80,000 of country X tax is allocated to the business M CFTE category and the \$40,000 of country Y tax is allocated to the business N CFTE category. Therefore, the \$80,000 of country X tax relates to the \$400,000 of net income in the business M CFTE category and the \$40,000 of country Y tax relates to the \$100,000 of net income in the business N CFTE category. See paragraph (b)(4)(viii)(c)(1) of this section. Because AB's partnership agreement allocates the \$80,000 of country X taxes and \$40,000 of country Y taxes in proportion to the distributive shares of income to which such taxes relate, the allocations are deemed to be in accordance with the partners' interest in the partnership under paragraph (b)(4)(viii) of this section.

Example 27. (i) A, a U.S. citizen, and B, a country X citizen, form AB, a country X eligible entity (as defined in § 301.7701–3(a) of this chapter), treated as a partnership for U.S. tax purposes. AB's only activity is business M, which it operates in country X. Country X imposes a 40 percent tax on the portion of AB's business M income that is the allocable share of AB's owners that are not citizens of country X, which tax is a CFTE. The partnership agreement provides that all partnership items, excluding CFTEs, from business M are allocated 40 percent to A and 60 percent to B. CFTEs are allocated 100 percent to A. In 2007, AB earns \$100,000 of net income from business M and pays or accrues \$16,000 of country X taxes on A's allocable share of AB's income (\$40,000). Pursuant to the partnership agreement, A is allocated 40 percent of the business M income (\$40,000) and 100 percent of the country X taxes (\$16,000), and B is allocated

60 percent of the business M income (\$60,000) and no country X taxes. Assume that allocations of all items other than CFTEs are valid.

(ii) AB has a single CFTE category because all of AB's net income is allocated in the same ratio. See paragraph (b)(4)(viii)(c)(2). Under paragraph (b)(4)(viii)(c)(3) of this section, the \$40,000 of business M income that is allocated to A is included in the single CFTE category. Under paragraph (b)(4)(viii)(c)(3)(i) of this section, no portion of the \$60,000 allocated to B is included in the single CFTE category. Under paragraph (b)(4)(viii)(d) of this section, the \$16,000 of taxes is allocated to the single CFTE category.

Therefore, the \$16,000 of country X taxes is related to the \$40,000 of net income in the single CFTE category that is allocated to A. See paragraph (b)(4)(viii)(c)(1) of this section. Because AB's partnership agreement allocates the country X taxes in proportion to the distributive share of income to which the taxes relate, AB satisfies the requirement of paragraph (b)(4)(viii) of this section, and the allocation of the country X taxes is deemed to be in accordance with the partners' interests in the partnership.

* * * * *

§ 1.704-1T [Removed]

■ **Par. 3.** Section 1.704-1T is removed.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: September 12, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9293]

RIN 1545-BF88

TIPRA Amendments to Section 199

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations concerning the amendments made by the Tax Increase Prevention and Reconciliation Act of 2005 to section 199 of the Internal Revenue Code. The temporary regulations also contain a rule concerning the use of losses incurred by members of an expanded affiliated group. Section 199 provides a deduction for income attributable to domestic production activities. The regulations

will affect taxpayers engaged in certain domestic production activities. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective October 19, 2006.

Applicability Date: For dates of applicability, see § 1.199-8T(i)(5) and (6).

FOR FURTHER INFORMATION CONTACT:

Concerning §§ 1.199-2T(e)(2) and 1.199-8T(i)(5), Paul Handleman or Lauren Ross Taylor, (202) 622-3040; concerning §§ 1.199-3T(i)(7) and (8), and 1.199-5T, Martin Schaffer, (202) 622-3080; and concerning §§ 1.199-7T(b)(4) and 1.199-8T(i)(6), Ken Cohen, (202) 622-7790 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document provides rules relating to the deduction for income attributable to domestic production activities under section 199 of the Internal Revenue Code (Code). Section 199 was added to the Code by section 102 of the American Jobs Creation Act of 2004 (Pub. L. 108-357, 118 Stat. 1418), and amended by section 403(a) of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 25) and section 514 of the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. 109-222, 120 Stat. 345) (TIPRA). On June 1, 2006, the IRS and Treasury Department published final regulations under section 199 (71 FR 31268). The preamble to the final regulations states that the IRS and Treasury Department plan on issuing regulations on the amendments made to section 199 by section 514 of TIPRA.

General Overview

Section 199(a)(1) allows a deduction equal to 9 percent (3 percent in the case of taxable years beginning in 2005 or 2006, and 6 percent in the case of taxable years beginning in 2007, 2008, or 2009) of the lesser of (A) the qualified production activities income (QPAI) of the taxpayer for the taxable year, or (B) taxable income (determined without regard to section 199) for the taxable year (or, in the case of an individual, adjusted gross income (AGI)).

Section 199(b)(1) limits the deduction for a taxable year to 50 percent of the W-2 wages paid by the taxpayer during the calendar year that ends in such taxable year. For this purpose, section 199(b)(2)(A) defines the term W-2 wages to mean, with respect to any person for any taxable year of such person, the sum

of the amounts described in section 6051(a)(3) and (8) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year. Section 514(a) of TIPRA added new section 199(b)(2)(B), which provides that the term W-2 wages does not include any amount which is not properly allocable to domestic production gross receipts (DPGR) for purposes of section 199(c)(1). Section 199(b)(2)(C) provides that the term W-2 wages does not include any amount that is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for the return. Section 199(b)(3) provides that the Secretary shall prescribe rules for the application of section 199(b) in the case of an acquisition or disposition of a major portion of either a trade or business or a separate unit of a trade or business during the taxable year.

Pass-Thru Entities

Section 199(d)(1)(A) provides that, in the case of a partnership or S corporation, (i) section 199 shall be applied at the partner or shareholder level, (ii) each partner or shareholder shall take into account such person's allocable share of each item described in section 199(c)(1)(A) or (B) (determined without regard to whether the items described in section 199(c)(1)(A) exceed the items described in section 199(c)(1)(B)), and (iii), as amended by section 514(b) of TIPRA, each partner or shareholder shall be treated for purposes of section 199(b) as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary).

Section 199(d)(1)(B) provides that, in the case of a trust or estate, (i) the items referred to in section 199(d)(1)(A)(ii) (as determined therein) and the W-2 wages of the trust or estate for the taxable year shall be apportioned between the beneficiaries and the fiduciary (and among the beneficiaries) under regulations prescribed by the Secretary, and (ii) for purposes of section 199(d)(2), AGI of the trust or estate shall be determined as provided in section 67(e) with the adjustments described in such section.

Section 199(d)(1)(C) provides that the Secretary may prescribe rules requiring or restricting the allocation of items and wages under section 199(d)(1) and may prescribe such reporting requirements as the Secretary determines appropriate.

Expanded Affiliated Groups

Section 199(d)(4)(A) provides that all members of an expanded affiliated group (EAG) are treated as a single corporation for purposes of section 199. Section 199(d)(4)(B) provides that an EAG is an affiliated group as defined in section 1504(a), determined by substituting "more than 50 percent" for "at least 80 percent" each place it appears and without regard to section 1504(b)(2) and (4).

Authority To Prescribe Regulations

Section 199(d)(8) authorizes the Secretary to prescribe such regulations as are necessary to carry out the purposes of section 199, including regulations that prevent more than one taxpayer from being allowed a deduction under section 199 with respect to any activity described in section 199(c)(4)(A)(i).

Explanation of Provisions

W-2 Wages Properly Allocable to Domestic Production Gross Receipts

Section 514(a) of TIPRA amended section 199(b)(2) to provide that the term *W-2 wages* does not include any amount that is not properly allocable to DPGR for purposes of section 199(c)(1). The Secretary is authorized to provide rules for the proper allocation of items (including wages) in determining QPAI. See section 199(d)(8). The temporary regulations provide that for taxable years beginning after May 17, 2006, the term *W-2 wages* includes only amounts described in § 1.199-2(e)(1) (paragraph (e)(1) wages) that are properly allocable to DPGR. The temporary regulations provide that a taxpayer may determine the amount of paragraph (e)(1) wages that is properly allocable to DPGR using any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances.

The temporary regulations provide safe harbors for determining the amount of paragraph (e)(1) wages that is properly allocable to DPGR. Under the wage expense safe harbor for taxpayers using either the section 861 method of cost allocation under § 1.199-4(d) or the simplified deduction method under § 1.199-4(e), a taxpayer may determine the amount of paragraph (e)(1) wages that is properly allocable to DPGR by multiplying the amount of paragraph (e)(1) wages by the ratio of the taxpayer's wage expense included in calculating QPAI for the taxable year to the taxpayer's total wage expense used in calculating the taxpayer's taxable income (or AGI, if applicable) for the taxable year. For purposes of determining the amount of wage

expense in cost of goods sold (CGS) under this safe harbor, a taxpayer may determine its wage expense included in CGS using any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances. For example, a reasonable method would include a taxpayer using direct labor included in CGS as wage expense included in CGS. Additionally, a reasonable method would include a taxpayer using the section 263A labor costs used by the taxpayer in its simplified service cost method with labor-based allocation ratio under § 1.263-1(h)(4)(ii) as wage expense included in CGS. Because CGS frequently includes goods manufactured in prior years, and thus would frequently include paragraph (e)(1) wages from prior years attributable to DPGR, the amount of paragraph (e)(1) wages in CGS that is properly allocable to DPGR may be difficult to determine. The IRS and Treasury Department request comments on appropriate safe harbors for determining the amount of paragraph (e)(1) wages in CGS that are properly allocable to DPGR.

A taxpayer that uses the small business simplified overall method of cost allocation under § 1.199-4(f) may use the small business simplified overall method safe harbor for determining the amount of paragraph (e)(1) wages that is properly allocable to DPGR. Under that safe harbor, the amount of paragraph (e)(1) wages that is properly allocable to DPGR is equal to the same proportion of paragraph (e)(1) wages that the amount of DPGR bears to the taxpayer's total gross receipts.

As a consequence of the amendment to section 199(b)(2) made by TIPRA and its interplay with the rules in § 1.199-7(a) and (b) for the computation of an EAG's section 199 deduction, the section 199 deduction for the members of an EAG may be reduced if one member of an EAG uses employees of another member of the EAG to perform activities attributable to DPGR and does not have paragraph (e)(1) wages. In general, § 1.199-7(a) and (b) provides that each member of an EAG calculates its own taxable income or loss, QPAI, and *W-2 wages*, which are then aggregated in determining the EAG's section 199 deduction. Therefore, prior to the amendment to section 199(b)(2), in determining the wage limitation under section 199(b)(1) (the *W-2 wage limitation*), it was irrelevant which member of an EAG had the paragraph (e)(1) wages, because there was no requirement that paragraph (e)(1) wages be properly allocable to DPGR to qualify as *W-2 wages*, and the *W-2 wages* of all the members of an EAG are aggregated.

For example, assume that X and Y are members of an EAG and do not join in the filing of a consolidated Federal income tax return. X has paragraph (e)(1) wages incurred in connection with Y's DPGR activities, but X has no DPGR itself. Further assume that Y has no paragraph (e)(1) wages. Prior to the amendment to section 199(b)(2), notwithstanding that X has no DPGR, X would have *W-2 wages*, because there was no requirement that paragraph (e)(1) wages be properly allocable to DPGR. Thus, the EAG would have *W-2 wages*, the same as if Y, rather than X, had the paragraph (e)(1) wages. Assuming the EAG had QPAI and taxable income, the EAG would receive a section 199 deduction.

After the amendment to section 199(b)(2), to qualify as *W-2 wages* within the meaning of § 1.199-2T(e)(2), paragraph (e)(1) wages must be properly allocable to DPGR to qualify as *W-2 wages*. Because each member of an EAG separately calculates its own items before they are aggregated by the EAG, the member having the paragraph (e)(1) wages must itself have DPGR to which the wages are properly allocable in order to qualify those wages as *W-2 wages*. Paragraph (e)(1) wages that are not properly allocable to DPGR of the member having the paragraph (e)(1) wages do not qualify as *W-2 wages*, even if the paragraph (e)(1) wages were paid in connection with another member's DPGR activities. Thus, after the amendment to section 199(b)(2), X's paragraph (e)(1) wages do not qualify as *W-2 wages*, because X has no DPGR to which the paragraph (e)(1) wages would be properly allocable. Accordingly, as neither X nor Y has *W-2 wages*, the EAG has no *W-2 wages* and no section 199 deduction. If Y had the paragraph (e)(1) wages rather than X, the EAG would have *W-2 wages* and a section 199 deduction.

However, if X and Y join in the filing of a consolidated Federal income tax return, the results may differ. Section 1.1502-13(c)(1)(i) and (c)(4) requires that the separate entity attributes of X's and Y's intercompany items or corresponding items be redetermined to the extent necessary to produce the effect as if X and Y were divisions of a single corporation. Thus, § 1.1502-13(c)(1)(i) and (c)(4) may apply to treat the paragraph (e)(1) wages incurred by X as *W-2 wages*. The temporary regulations provide examples to demonstrate the described scenarios.

Pass-Thru Entities

Section 514(b) of TIPRA amended section 199(d)(1)(A)(iii) regarding a partner's or shareholder's share of *W-2*

wages from a partnership or S corporation for taxable years beginning after May 17, 2006. After TIPRA, the section 199(d)(1)(A)(iii) wage limitation for pass-thru entities no longer includes the second prong of a two-prong standard, by which a partner's or shareholder's share of W-2 wages from the partnership or S corporation was limited to the lesser of that person's allocable share of W-2 wages from the entity or a specified percentage of the person's QPAI, computed by taking into account only the items of the entity allocated to that person for the taxable year of the entity.

Section 1.199-5T(b)(3) and (c)(3) provides guidance regarding a partner's or shareholder's share of W-2 wages of a partnership or an S corporation after the effective date of TIPRA. Except as provided by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)), the partnership or S corporation must allocate its paragraph (e)(1) wages (including any such wages from a lower-tier partnership of which the partnership or S corporation is a partner) among its partners or shareholders in the same manner that wage expense is allocated among those partners or shareholders. The partner or shareholder must add its share of the paragraph (e)(1) wages from the partnership or S corporation to the partner's or shareholder's paragraph (e)(1) wages from other sources, if any. The partner (other than a partner that itself is a partnership or S corporation) or shareholder then must calculate its W-2 wages (as defined in § 1.199-2T(e)(2)) by determining the amount of its paragraph (e)(1) wages properly allocable to DPGR. See § 1.199-2T(e)(2) for the computation of W-2 wages.

Section 1.199-5T(e) requires a non-grantor trust or estate to calculate each beneficiary's share (as well as the trust's or estate's share, if any) of QPAI and W-2 wages from the trust or estate at the trust or estate level. The QPAI of a trust or estate and W-2 wages of the trust or estate are allocated to each beneficiary and to the trust or estate based on the relative proportion of the trust's or estate's distributable net income (DNI), as defined by section 643(a), for the taxable year that is distributed or required to be distributed to the beneficiary or is retained by the trust or estate.

Because the second prong of the wage limitation of section 199(d)(1)(A)(iii) was prospectively repealed by TIPRA, there is no longer any need for a special rule for tiered structures (where a pass-thru entity owns an interest in another pass-thru entity). Accordingly, the rule in § 1.199-9(g) of the final regulations

regarding the section 199(d)(1)(A)(iii) wage limitation and tiered structures has not been included in these temporary regulations.

The temporary regulations provide a transition rule for the situation in which a partner (or shareholder) and a partnership (or S corporation) have different taxable years, only one of which begins on or before the effective date of TIPRA. Under § 1.199-5T(b)(4) and (c)(4), the beginning date of the taxable year of the partnership (or S corporation) determines which definition of W-2 wages and which W-2 wage limitation for pass-thru entities apply.

Expanded Affiliated Groups

After issuance of the final regulations, it was brought to the attention of the IRS and Treasury Department that the combination of the aggregation rules for determining the taxable income of an EAG in § 1.199-7(b)(1) and the rules of section 172 for net operating loss (NOL) deductions can result in the same loss being used twice in determining the taxable income limitation under section 199(a)(1)(B). That is, in determining the taxable income limitation under section 199(a)(1)(B), a loss sustained by a member of an EAG could be used in the year the loss is sustained to offset the taxable income of another member of the EAG in determining the EAG's taxable income limitation. However, because the EAG is not a separate taxpaying entity that files its own tax return, the member that sustained the loss would still have an NOL carryover or carryback. Thus, the loss could be used again as an NOL deduction of the member that sustained the loss in a previous or subsequent year to offset its own income, either as a member of the same EAG, a different EAG, or on a stand-alone basis. Because the section 199 deduction is a percentage of the lesser of QPAI or taxable income (subject to the W-2 wage limitation), the use of the same loss twice could potentially reduce the section 199 deduction that should be allowable.

For example, assume that corporations X and Y are the only two members of an EAG and that X and Y do not file a consolidated Federal income tax return. In 2010, X and Y each have \$100 of QPAI which, under § 1.199-7(b), are aggregated in determining the EAG's QPAI. X has \$100 of taxable income and Y has a \$100 NOL, which are also aggregated in determining the EAG's taxable income for purposes of the taxable income limitation of section 199(a)(1)(B). Further assume that the EAG has sufficient W-2 wages so that the section

199 deduction is not limited under section 199(b)(1). Thus, although in 2010 the EAG has \$200 of QPAI and sufficient W-2 wages so that the section 199 deduction is not limited under section 199(b)(1), as a result of the use of Y's NOL, the EAG has \$0 of taxable income and no section 199 deduction. However, because the EAG is not a separate taxpaying entity, Y has an NOL of \$100 which is available for carryover or carryback. In 2011, X has \$100 of taxable income and Y, before the deduction allowed under section 172, has \$300 of taxable income. Under section 172, Y reduces its 2011 taxable income of \$300 by its 2010 NOL of \$100, thus reducing Y's taxable income to \$200. Y's loss was effectively used twice, first in 2010 to reduce the EAG's taxable income for purposes of the taxable income limitation of section 199(a)(1)(B) and then in 2011 to reduce Y's own taxable income, which reduces the EAG's aggregate taxable income for purposes of the taxable income limitation.

This result was not intended. Accordingly, § 1.199-7T(b)(4) has been added to provide that, to the extent that an NOL was used in the year it was sustained in determining any EAG's taxable income for purposes of the taxable income limitation of section 199(a)(1)(B), such NOL is not treated as an NOL carryover or NOL carryback to any taxable year in determining the taxable income limitation under section 199(a)(1)(B). Thus, in the previous example, solely for purposes of determining the EAG's 2011 taxable income limitation under section 199(a)(1)(B), Y would not have an NOL carryover from 2010, because the entire \$100 NOL was used in 2010 to reduce the EAG's taxable income. Therefore, for purposes of determining the EAG's taxable income limitation in 2011, Y would have taxable income of \$300 and the EAG would have aggregate taxable income of \$400. The temporary regulations provide examples to illustrate this provision.

Effective Date

Section 199 applies to taxable years beginning after December 31, 2004. These temporary regulations are applicable for taxable years beginning on or after October 19, 2006. A taxpayer may apply §§ 1.199-2T(e)(2), 1.199-3T(i)(7) and (8), and 1.199-5T to taxable years beginning after May 17, 2006, and before October 19, 2006 regardless of whether the taxpayer otherwise relied upon Notice 2005-14 (2005-1 CB 498) (see § 601.601(d)(2)), the provisions of REG-105847-05 (2005-47 IRB 987) (see § 601.601(d)(2)), or §§ 1.199-1 through

1.199–8. A taxpayer may apply § 1.199–7T(b)(4) to taxable years beginning after December 31, 2004, and before October 19, 2006 regardless of whether the taxpayer otherwise relied upon Notice 2005–14, the provisions of REG–105847–05, or §§ 1.199–1 through 1.199–9. The applicability of these temporary regulations expires on October 19, 2009.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Paul Handleman and Lauren Ross Taylor, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

■ **Par. 2.** Section 1.199–0 is amended by adding the following entries for §§ 1.199–7(b)(4) and 1.199–8(i)(5) and (6):

§ 1.199–0 Table of contents.

* * * * *

§ 1.199–7 Expanded affiliated groups.

* * * * *

(b) * * *

(4) Losses used to reduce taxable income of expanded affiliated group. [Reserved].

§ 1.199–8 Other rules.

* * * * *

(i) * * *

(5) Tax Increase Prevention and Reconciliation Act of 2005. [Reserved].

(6) Losses used to reduce taxable income of expanded affiliated group. [Reserved].

* * * * *

■ **Par. 3.** Section 1.199–2 is amended by adding a sentence at the end of paragraph (e)(2) to read as follows:

1.199–2 Wage limitation.

* * * * *

(e) * * *

(2) *Limitation on W–2 wages for taxable years beginning after May 17, 2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005.* * * * For further guidance, see § 1.199–2T(e)(2).

* * * * *

■ **Par. 4.** Section 1.199–2T is added to read as follows:

1.199–2T Wage limitation (temporary).

(a) through (d) [Reserved]. For further guidance, see § 1.199–2(a) through (d).

(e) *Definition of W–2 wages—(1) In general.* [Reserved]. For further guidance, see § 1.199–2(e)(1).

(2) *Limitation on W–2 wages for taxable years beginning after May 17, 2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005—(i) In general.* The term *W–2 wages* includes only amounts described in § 1.199–2(e)(1) (paragraph (e)(1) wages) that are properly allocable to domestic production gross receipts (DPGR) (as defined in § 1.199–3) for purposes of section 199(c)(1). A taxpayer may determine the amount of paragraph (e)(1) wages that is properly allocable to DPGR using any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances.

(ii) *Wage expense safe harbor—(A) In general.* A taxpayer using either the section 861 method of cost allocation under § 1.199–4(d) or the simplified deduction method under § 1.199–4(e) may determine the amount of paragraph (e)(1) wages that is properly allocable to DPGR for a taxable year by multiplying the amount of paragraph (e)(1) wages for the taxable year by the ratio of the taxpayer's wage expense included in calculating qualified production activities income (QPAI) (as defined in § 1.199–1(c)) for the taxable year to the taxpayer's total wage expense used in calculating the taxpayer's taxable income (or adjusted gross income, if

applicable) for the taxable year, without regard to any wage expense disallowed by section 465, 469, 704(d), or 1366(d). A taxpayer that uses the section 861 method of cost allocation under § 1.199–4(d) or the simplified deduction method under § 1.199–4(e) to determine QPAI must use the same expense allocation and apportionment methods that it uses to determine QPAI to allocate and apportion wage expense for purposes of this safe harbor. For purposes of this paragraph (e)(2)(ii), the term *wage expense* means wages (that is, compensation paid by the employer in the active conduct of a trade or business to its employees) that are properly taken into account under the taxpayer's method of accounting.

(B) *Wage expense included in cost of goods sold.* For purposes of paragraph (e)(2)(ii)(A) of this section, a taxpayer may determine its wage expense included in cost of goods sold (CGS) using any reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances, such as using the amount of direct labor included in CGS or using section 263A labor costs (as defined in § 1.263A–1(h)(4)(ii)) included in CGS.

(iii) *Small business simplified overall method safe harbor.* A taxpayer that uses the small business simplified overall method under § 1.199–4(f) may use the small business simplified overall method safe harbor for determining the amount of paragraph (e)(1) wages that is properly allocable to DPGR. Under this safe harbor, the amount of paragraph (e)(1) wages that is properly allocable to DPGR is equal to the same proportion of paragraph (e)(1) wages that the amount of DPGR bears to the taxpayer's total gross receipts.

(iv) *Examples.* The following examples illustrate the application of this paragraph (e)(2). See § 1.199–5T for an example of the application of paragraph (e)(2)(ii) of this section to a trust or estate.

Example 1. Section 861 method and no EAG. (i) *Facts.* X, a United States corporation that is not a member of an expanded affiliated group (EAG) (as defined in § 1.199–7) or an affiliated group as defined in the regulations under section 861, engages in activities that generate both DPGR and non-DPGR. X's taxable year ends on April 30, 2011. For X's taxable year ending April 30, 2011, X has \$3,000 of paragraph (e)(1) wages reported on 2010 Forms W–2. All of X's production activities that generate DPGR are within Standard Industrial Classification (SIC) Industry Group AAA (SIC AAA). All of X's production activities that generate non-DPGR are within SIC Industry Group BBB (SIC BBB). X is able to specifically identify CGS allocable to DPGR and to non-DPGR. X incurs \$900 of research and experimentation

expenses (R&E) that are deductible under section 174, \$300 of which are performed with respect to SIC AAA and \$600 of which are performed with respect to SIC BBB. None of the R&E is legally mandated R&E as described in § 1.861-17(a)(4) and none of the R&E is included in CGS. X incurs section 162 selling expenses that are not includible in

CGS and are definitely related to all of X's gross income. For X's taxable year ending April 30, 2011, the adjusted basis of X's assets is \$50,000, \$40,000 of which generate gross income attributable to DPGR and \$10,000 of which generate gross income attributable to non-DPGR. For X's taxable year ending April 30, 2011, the total square

footage of X's headquarters is 8,000 square feet, of which 2,000 square feet is set aside for domestic production activities. For its taxable year ending April 30, 2011, X's taxable income is \$1,380 based on the following Federal income tax items:

DPGR (all from sales of products within SIC AAA)	\$3,000
Non-DPGR (all from sales of products within SIC BBB)	3,000
CGS allocable to DPGR (includes \$200 of wage expense)	(600)
CGS allocable to non-DPGR (includes \$600 of wage expense)	(1,800)
Section 162 selling expenses (includes \$600 of wage expense)	(840)
Section 174 R&E—SIC AAA (includes \$100 of wage expense)	(300)
Section 174 R&E—SIC BBB (includes \$200 of wage expense)	(600)
Interest expense (not included in CGS)	(300)
Headquarters overhead expense (includes \$100 of wage expense)	(180)
X's taxable income	1,380

(ii) *X's QPAI.* X allocates and apports its deductions to gross income attributable to DPGR under the section 861 method in § 1.199-4(d). In this case, the section 162 selling expenses and overhead expense are definitely related to all of X's gross income. Based on the facts and circumstances of this specific case, apportionment of the section 162 selling expenses between DPGR and non-

DPGR on the basis of X's gross receipts is appropriate. In addition, based on the facts and circumstances of this specific case, apportionment of the headquarters overhead expense between DPGR and non-DPGR on the basis of the square footage of X's headquarters is appropriate. For purposes of apportioning R&E, X elects to use the sales method as described in § 1.861-17(c). X

elects to apportion interest expense under the tax book value method of § 1.861-9T(g). X has \$2,400 of gross income attributable to DPGR (DPGR of \$3,000—CGS of \$600 allocated based on X's books and records). X's QPAI for its taxable year ending April 30, 2011, is \$1,395, as shown in the following table:

DPGR (all from sales of products within SIC AAA)	\$3,000
CGS allocable to DPGR	(600)
Section 162 selling expenses (\$840 × (\$3,000 DPGR/\$6,000 total gross receipts))	(420)
Section 174 R&E—SIC AAA	(300)
Interest expense (not included in CGS) (\$300 × (\$40,000 (X's DPGR assets)/\$50,000 (X's total assets)))	(240)
Headquarters overhead expense (\$180 × (2,000 square feet attributable to DPGR activity/total 8,000 square feet))	(45)
X's QPAI	1,395

(iii) *W-2 wages.* X chooses to use the wage expense safe harbor under paragraph (e)(2)(ii) of this section to determine its W-2 wages, as shown in the following steps:

(A) *Step one.* X determines that \$625 of wage expense were taken into account in determining its QPAI in paragraph (ii) of this *Example 1*, as shown in the following table:

CGS wage expense	\$200
Section 162 selling expenses wage expense (\$600 × (\$3,000 DPGR/\$6,000 total gross receipts))	300
Section 174 R&E—SIC AAA wage expense	100
Headquarters overhead wage expense (\$100 × (2,000 square feet attributable to DPGR activity/8,000 total square feet))	25
Total wage expense taken into account	625

(B) *Step two.* X determines that \$1,042 of the \$3,000 in paragraph (e)(1) wages are properly allocable to DPGR, and are therefore

W-2 wages, as shown in the following calculation:

$$\frac{\text{Step one wage expense}}{\text{X's total wage expense for taxable year ending April 30, 2011}} \times \text{X's paragraph (e)(1) wages}$$

$$\frac{\$625}{\$1,800} \times \$3,000 = \$1,042$$

(iv) *Section 199 deduction determination.* X's tentative deduction under § 1.199-1(a) (section 199 deduction) is \$124 (.09 × (lesser of QPAI of \$1,395 or taxable income of \$1,380)) subject to the wage limitation under section 199(b)(1) (W-2 wage limitation) of \$521 (50% × \$1,042). Accordingly, X's section 199 deduction for its taxable year ending April 30, 2011, is \$124.

Example 2. Section 861 method and EAG. (i) *Facts.* The facts are the same as in *Example 1* except that X owns stock in Y, a United States corporation, equal to 75% of the total voting power of stock of Y and 80% of the total value of stock of Y. X and Y are not members of an affiliated group as defined in section 1504(a). Accordingly, the rules of § 1.861-14T do not apply to X's and Y's

selling expenses, R&E, and charitable contributions. X and Y are, however, members of an affiliated group for purposes of allocating and apportioning interest expense (see § 1.861-11T(d)(6)) and are also members of an EAG. Y's taxable year ends April 30, 2011. For Y's taxable year ending April 30, 2011, Y has \$2,000 of paragraph (e)(1) wages reported on 2010 Forms W-2.

For Y's taxable year ending April 30, 2011, the adjusted basis of Y's assets is \$50,000, \$20,000 of which generate gross income attributable to DPGR and \$30,000 of which generate gross income attributable to non-DPGR. All of Y's activities that generate DPGR are within SIC Industry Group AAA (SIC AAA). All of Y's activities that generate non-DPGR are within SIC Industry Group

BBB (SIC BBB). None of X's and Y's sales are to each other. Y is not able to specifically identify CGS allocable to DPGR and non-DPGR. In this case, because CGS is definitely related under the facts and circumstances to all of Y's gross receipts, apportionment of CGS between DPGR and non-DPGR based on gross receipts is appropriate. For Y's taxable year ending April 30, 2011, the total square

footage of Y's headquarters is 8,000 square feet, of which, 2,000 square feet is set aside for domestic production activities. Y incurs section 162 selling expenses that are not includible in CGS and are definitely related to all of Y's gross income. For Y's taxable year ending April 30, 2011, Y's taxable income is \$1,710 based on the following Federal income tax items:

DPGR (all from sales of products within SIC AAA)	\$3,000
Non-DPGR (all from sales of products within SIC BBB)	3,000
CGS allocated to DPGR (includes \$300 of wage expense)	(1,200)
CGS allocated to non-DPGR (includes \$300 of wage expense)	(1,200)
Section 162 selling expenses (includes \$300 of wage expense)	(840)
Section 174 R&E—SIC AAA (includes \$20 of wage expense)	(100)
Section 174 R&E—SIC BBB (includes \$60 of wage expense)	(200)
Interest expense (not included in CGS and not subject to § 1.861-10T)	(500)
Charitable contributions	(50)
Headquarters overhead expense (includes \$40 of wage expense)	(200)
Y's taxable income	1,710

(ii) *QPAI*. (A) X's *QPAI*. Determination of X's *QPAI* is the same as in *Example 1* except that interest is apportioned to gross income

attributable to DPGR based on the combined adjusted bases of X's and Y's assets. See § 1.861-11T(c). Accordingly, X's *QPAI* for its

taxable year ending April 30, 2011, is \$1,455, as shown in the following table:

DPGR (all from sales of products within SIC AAA)	\$3,000
CGS allocated to DPGR	(600)
Section 162 selling expenses (\$840 × (\$3,000 DPGR/\$6,000 total gross receipts))	(420)
Section 174 R&E—SIC AAA	(300)
Interest expense (not included in CGS and not subject to § 1.861-10T) (\$300 × (\$60,000 (tax book value of X's and Y's DPGR assets)/\$100,000 (tax book value of X's and Y's total assets)))	(180)
Headquarters overhead expense (\$180 × (2,000 square feet attributable to DPGR activity/total 8,000 square feet))	(45)
X's QPAI	1,455

(B) Y's *QPAI*. Y makes the same elections under the section 861 method as does X. Y has \$1,800 of gross income attributable to

DPGR (DPGR of \$3,000—CGS of \$1,200 allocated based on Y's gross receipts). Y's *QPAI* for its taxable year ending April 30,

2011, is \$905, as shown in the following table:

DPGR (all from sales of products within SIC AAA)	\$3,000
CGS allocated to DPGR	(1,200)
Section 162 selling expenses (\$840 × (\$3,000 DPGR/\$6,000 total gross receipts))	(420)
Section 174 R&E—SIC AAA	(100)
Interest expense (not included in CGS and not subject to § 1.861-10T) (\$500 × (\$60,000 (tax book value of X's and Y's DPGR assets)/\$100,000 (tax book value of X's and Y's total assets)))	(300)
Charitable contributions (not included in CGS) (\$50 × (\$1,800 gross income attributable to DPGR/\$3,600 total gross income))	(25)
Headquarters overhead expense (\$200 × (2,000 square feet attributable to DPGR activity/total 8,000 square feet))	(50)
Y's QPAI	905

(iii) *W-2 wages*. (A) X's *W-2 wages*. X's *W-2 wages* are \$1,042, the same as in *Example 1*.

(e)(2)(ii) of this section to determine its *W-2 wages*, as shown in the following steps:
(1) *Step one*. Y determines that \$480 of wage expense were taken into account in determining its *QPAI* in paragraph (ii)(B) of

this *Example 2*, as shown in the following table:

CGS wage expense	\$300
Section 162 selling expenses wage expense (\$300 × (\$3,000 DPGR/\$6,000 total gross receipts))	150
Section 174 R&E—SIC AAA wage expense	20
Headquarters overhead wage expense (\$40 × (2,000 square feet attributable to DPGR activity/8,000 total square feet))	10
Total wage expense taken into account	480

(2) *Step two*. Y determines that \$941 of the \$2,000 paragraph (e)(1) wages are properly

allocable to DPGR, and are therefore *W-2 wages*, as shown in the following calculation:

$$\frac{\text{Step one wage expense}}{\text{Y's total wage expense for taxable year ending April 30, 2011}} \times \text{Y's paragraph (e)(1) wages}$$

$$\frac{\$480}{\$1,020} \times \$2,000 = \$941$$

(iv) *Section 199 deduction determination.* The section 199 deduction of the X and Y EAG is determined by aggregating the separately determined taxable income, QPAI, and W-2 wages of X and Y. See § 1.199-7(b). Accordingly, the X and Y EAG's tentative section 199 deduction is \$212 (.09 × (lesser of combined QPAI of X and Y of \$2,360 (X's QPAI of \$1,455 plus Y's QPAI of \$905) or combined taxable incomes of X and Y of

\$3,090 (X's taxable income of \$1,380 plus Y's taxable income of \$1,710)) subject to the combined W-2 wage limitation of X and Y of \$992 (50% × (\$1,042 (X's W-2 wages) + \$941 (Y's W-2 wages))). Accordingly, the X and Y EAG's section 199 deduction is \$212. The \$212 is allocated to X and Y in proportion to their QPAI. See § 1.199-7(c).

member of an EAG, engages in activities that generate both DPGR and non-DPGR. Z is able to specifically identify CGS allocable to DPGR and to non-DPGR. Z's taxable year ends on April 30, 2011. For Z's taxable year ending April 30, 2011, Z has \$3,000 of paragraph (e)(1) wages reported on 2010 Forms W-2, and Z's taxable income is \$1,380 based on the following Federal income tax items:

Example 3. Simplified deduction method.
(i) *Facts.* Z, a corporation that is not a

DPGR	\$3,000
Non-DPGR	3,000
CGS allocable to DPGR (includes \$200 of wage expense)	(600)
CGS allocable to non-DPGR (includes \$600 of wage expense)	(1,800)
Expenses, losses, or deductions (deductions) (includes \$1,000 of wage expense)	(2,220)
Z's taxable income	1,380

(ii) *Z's QPAI.* Z uses the simplified deduction method under § 1.199-4(e) to

apportion deductions between DPGR and non-DPGR. Z's QPAI for its taxable year

ending April 30, 2011, is \$1,290, as shown in the following table:

DPGR	\$3,000
CGS allocable to DPGR	(600)
Deductions apportioned to DPGR (\$2,220 × (\$3,000 DPGR/\$6,000 total gross receipts))	(1,110)
Z's QPAI	1,290

(iii) *W-2 wages.* Z chooses to use the wage expense safe harbor under paragraph (e)(2)(ii) of this section to determine its W-2 wages, as shown in the following steps:

(A) *Step one.* Z determines that \$700 of wage expense were taken into account in determining its QPAI in paragraph (ii) of this *Example 3*, as shown in the following table:

Wage expense included in CGS allocable to DPGR	\$200
Wage expense included in deductions (\$1,000 in wage expense × (\$3,000 DPGR/\$6,000 total gross receipts))	500
Wage expense allocable to DPGR	700

(B) *Step two.* Z determines that \$1,167 of the \$3,000 paragraph (e)(1) wages are properly allocable to DPGR, and are therefore

W-2 wages, as shown in the following calculation:

$$\frac{\text{Step one wage expense}}{\text{Z's total wage expense for taxable year ending April 30, 2011}} \times \text{Z's paragraph (e)(1) wages}$$

$$\frac{\$700}{\$1,800} \times \$3,000 = \$1,167$$

(iv) *Section 199 deduction determination.* Z's tentative section 199 deduction is \$116 (.09 × (lesser of QPAI of \$1,290 or taxable income of \$1,380)) subject to the W-2 wage limitation of \$584 (50% × \$1,167).

Accordingly, Z's section 199 deduction for its taxable year ending April 30, 2011, is \$116.

Example 4. Small business simplified overall method. (i) *Facts.* Z, a corporation that is not a member of an EAG, engages in activities that generate both DPGR and non-

DPGR. Z's taxable year ends on April 30, 2011. For Z's taxable year ending April 30, 2011, Z has \$3,000 of paragraph (e)(1) wages reported on 2010 Forms W-2, and Z's taxable income is \$1,380 based on the following Federal income tax items:

DPGR	\$3,000
Non-DPGR	3,000
CGS and deductions	(4,620)
Z's taxable income	1,380

(ii) Z's QPAI. Z uses the small business simplified overall method under § 1.199-4(f) to apportion CGS and

deductions between DPGR and non-DPGR. Z's QPAI for its taxable year

ending April 30, 2011, is \$690, as shown in the following table:

DPGR	\$3,000
CGS and deductions apportioned to DPGR (\$4,620 × (\$3,000 DPGR/\$6,000 total gross receipts))	(2,310)
Z's QPAI	690

(iii) W-2 wages. Z's W-2 wages under paragraph (e)(2)(iii) of this section are \$1,500, as shown in the following calculation:
\$3,000 in paragraph (e)(1) wages × (\$3,000 DPGR/\$6,000 total gross receipts) = \$1,500

(iv) Section 199 deduction determination. Z's tentative section 199 deduction is \$62 (.09 × (lesser of QPAI of \$690 or taxable income of \$1,380)) subject to the W-2 wage limitation of \$750 (50% × \$1,500). Accordingly, Z's section 199 deduction for its taxable year ending April 30, 2011, is \$62.

Example 5. Corporation uses employees of non-consolidated EAG member. (i) *Facts.* Corporations S and B are members of the same EAG but are not members of a consolidated group. S and B are both calendar year taxpayers. All the activities described in this example take place during the same taxable year and they are the only activities of S and B. S and B each use the section 861 method described in § 1.199-4(d) for allocating and apportioning their deductions. B is a manufacturer but has only three employees of its own. S employs the remainder of the personnel who perform the manufacturing activities for B. S's only receipts are from supplying employees to B. In 2010, B manufactures qualifying production property (QPP) (as defined in § 1.199-3(f)(1)), using its three employees and S's employees, and sells the QPP for \$10,000,000. B's total CGS and other deductions are \$6,000,000, including \$1,000,000 paid to S for the use of S's employees and \$100,000 paid to its own employees. B reports the \$100,000 paid to its employees on the 2010 Forms W-2 issued to its employees. S pays its employees \$800,000 that is reported on the 2010 Forms W-2 issued to the employees.

(ii) B's W-2 wages. In determining its W-2 wages, B utilizes the wage expense safe harbor described in paragraph (e)(2)(ii) of this section. The entire \$100,000 paid by B to its employees is included in B's wage expense included in calculating its QPAI and is the only wage expense used in calculating B's taxable income. Thus, under the wage expense safe harbor described in paragraph (e)(2)(ii) of this section, B's W-2 wages are \$100,000 (\$100,000 (paragraph (e)(1) wages) × (\$100,000 (wage expense used in calculating B's QPAI)/\$100,000 (wage expense used in calculating B's taxable income))).

(iii) S's W-2 wages. In determining its W-2 wages, S utilizes the wage expense safe harbor described in paragraph (e)(2)(ii) of this section. Because S's \$1,000,000 in receipts from B do not qualify as DPGR and are S's only gross receipts, none of the \$800,000 paid by S to its employees is included in S's wage expense included in calculating its

QPAI. However, the entire \$800,000 is included in calculating S's taxable income. Thus, under the wage expense safe harbor described in paragraph (e)(2)(ii)(A) of this section, S's W-2 wages are \$0 (\$800,000 (paragraph (e)(1) wages) × (\$0 (wage expense used in calculating S's QPAI)/\$800,000 (wage expense used in calculating S's taxable income))).

(iv) *Determination of EAG's section 199 deduction.* The section 199 deduction of the S and B EAG is determined by aggregating the separately determined taxable income or loss, QPAI, and W-2 wages of S and B. See § 1.199-7(b). B's taxable income and QPAI are each \$4,000,000 (\$10,000,000 DPGR - \$6,000,000 CGS and other deductions). S's taxable income is \$200,000 (\$1,000,000 gross receipts - \$800,000 total deductions). S's QPAI is \$0 (\$0 DPGR - \$0 CGS and other deductions). B's W-2 wages (as calculated in paragraph (ii) of this *Example 5*) are \$100,000 and S's W-2 wages (as calculated in paragraph (iii) of this *Example 5*) are \$0. The EAG's tentative section 199 deduction is \$360,000 (.09 × (lesser of combined QPAI of \$4,000,000 (B's QPAI of \$4,000,000 + S's QPAI of \$0) or combined taxable income of \$4,200,000 (B's taxable income of \$4,000,000 + S's taxable income of \$200,000)) subject to the W-2 wage limitation of \$50,000 (50% × (\$100,000 (B's W-2 wages) + \$0 (S's W-2 wages))). Accordingly, the S and B EAG's section 199 deduction for 2010 is \$50,000. The \$50,000 is allocated to S and B in proportion to their QPAI. See § 1.199-7(c). Because S has no QPAI, the entire \$50,000 is allocated to B.

Example 6. Corporation using employees of consolidated EAG member. The facts are the same as in *Example 5* except that B and S are members of the same consolidated group. Ordinarily, as demonstrated in *Example 5*, S's \$1,000,000 of receipts would not be DPGR and its \$800,000 paid to its employees would not be W-2 wages (because the \$800,000 would not be properly allocable to DPGR). However, because S and B are members of the same consolidated group, § 1.1502-13(c)(1)(i) provides that the separate entity attributes of S's intercompany items or B's corresponding items, or both, may be redetermined in order to produce the same effect as if S and B were divisions of a single corporation. If S and B were divisions of a single corporation, S and B would have QPAI and taxable income of \$4,200,000 (\$10,000,000 DPGR received from the sale of the QPP - \$5,800,000 CGS and other deductions) and, under the wage expense safe harbor described in paragraph (e)(2)(ii) of this section, would have \$900,000 of W-2 wages (\$900,000 combined paragraph (e)(1) wages of S and B) × (\$900,000 (wage expense used in calculating QPAI)/\$900,000 (wage

expense used in calculating taxable income)). The single corporation would have a tentative section 199 deduction equal to 9% of \$4,200,000, or \$378,000, subject to the W-2 wage limitation of 50% of \$900,000, or \$450,000. Thus, the single corporation would have a section 199 deduction of \$378,000. To obtain this same result for the consolidated group, S's \$1,000,000 of receipts from the intercompany transaction are redetermined as DPGR. Thus, S's \$800,000 paid to its employees are costs properly allocable to DPGR and S's W-2 wages are \$800,000. Accordingly, the consolidated group has QPAI and taxable income of \$4,200,000 (\$11,000,000 DPGR (from the sale of the QPP and the redetermined intercompany transaction) - \$6,800,000 CGS and other deductions) and W-2 wages of \$900,000. The consolidated group's section 199 deduction is \$378,000, the same as the single corporation. However, for purposes of allocating the section 199 deduction between S and B, the redetermination of S's income as DPGR under § 1.1502-13(c)(1)(i) is not taken into account. See § 1.199-7(d)(5). Accordingly, the consolidated group's entire section 199 deduction of \$378,000 is allocated to B.

■ **Par. 5.** Section 1.199-3 is amended by adding a sentence at the end of each of paragraphs (i)(7) and (8) to read as follows:

§ 1.199-3 Domestic production gross receipts.

* * * * *

(i) * * *
(7) *Qualifying in-kind partnership for taxable years beginning after May 17, 2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005.* * * * For further guidance, see § 1.199-3T(i)(7).

(8) *Partnerships owned by members of a single expanded affiliated group for taxable years beginning after May 17, 2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005.* * * * For further guidance, see § 1.199-3T(i)(8).

* * * * *

■ **Par. 6.** Section 1.199-3T is amended by adding paragraphs (i)(7) and (8) to read as follows:

§ 1.199-3T Domestic production gross receipts (temporary).

* * * * *

(i) * * *
(7) *Qualifying in-kind partnership for taxable years beginning after May 17,*

2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005—(i) *In general.* If a partnership is a qualifying in-kind partnership described in paragraph (i)(7)(ii) of this section, then each partner is treated as having manufactured, produced, grown, or extracted (MPGE) (as defined in § 1.199-3(e)) or produced the property MPGE or produced by the partnership that is distributed to that partner. If a partner of a qualifying in-kind partnership derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of the property that was MPGE or produced by the qualifying in-kind partnership and distributed to that partner, then, provided such partner is a partner of the qualifying in-kind partnership at the time the partner disposes of the property, the partner is treated as conducting the MPGE or production activities previously conducted by the qualifying in-kind partnership with respect to that property. With respect to a lease, rental, or license, the partner is treated as having disposed of the property on the date or dates on which it takes into account its gross receipts derived from the lease, rental, or license under its method of accounting. With respect to a sale, exchange, or other disposition, the partner is treated as having disposed of the property on the date it ceases to own the property for Federal income tax purposes, even if no gain or loss is taken into account.

(ii) *Definition of qualifying in-kind partnership.* For purposes of this paragraph (i)(7), a qualifying in-kind partnership is a partnership engaged solely in—

(A) The extraction, refining, or processing of oil, natural gas (as described in § 1.199-3(l)(2)), petrochemicals, or products derived from oil, natural gas, or petrochemicals in whole or in significant part within the United States;

(B) The production or generation of electricity in the United States; or

(C) An activity or industry designated by the Secretary by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(iii) *Other rules.* Except as provided in this paragraph (i)(7), a qualifying in-kind partnership is treated the same as other partnerships for purposes of section 199. Accordingly, a qualifying in-kind partnership is subject to the rules of this section regarding the application of section 199 to pass-thru entities, including application of the section 199(d)(1)(A)(iii) wage limitation under § 1.199-5T(b)(3). In determining whether a qualifying in-kind

partnership or its partners MPGE qualifying production property (QPP) (as defined in § 1.199-3(j)) in whole or in significant part within the United States (as defined in § 1.199-3(h)), see § 1.199-3(g)(2) and (3).

(iv) *Example.* The following example illustrates the application of this paragraph (i)(7). Assume that PRS and X are calendar year taxpayers.

Example. X, Y and Z are partners in PRS, a qualifying in-kind partnership described in paragraph (i)(7)(ii) of this section. X, Y, and Z are corporations. In 2007, PRS distributes oil to X that PRS derived from its oil extraction. PRS incurred \$600 of CGS extracting the oil distributed to X, and X's adjusted basis in the distributed oil is \$600. X incurs \$200 of CGS in refining the oil within the United States. In 2007, X, while it is a partner in PRS, sells the oil to a customer for \$1,500. X is treated as having disposed of the property on the date it ceases to own the property for Federal income tax purposes. Under paragraph (i)(7)(i) of this section, X is treated as having extracted the oil. The extraction and refining of the oil qualify as an MPGE activity under § 1.199-3(e)(1). Therefore, X's \$1,500 of gross receipts qualify as DPGR. X subtracts from the \$1,500 of DPGR the \$600 of CGS incurred by PRS and the \$200 of refining costs it incurred. Thus, X's QPAI is \$700 for 2007.

(8) *Partnerships owned by members of a single expanded affiliated group for taxable years beginning after May 17, 2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005—(i) In general.* For purposes of this section, if all of the interests in the capital and profits of a partnership are owned by members of a single expanded affiliated group (EAG) at all times during the taxable year of the partnership (EAG partnership), then the EAG partnership and all members of that EAG are treated as a single taxpayer for purposes of section 199(c)(4) during that taxable year.

(ii) *Attribution of activities—(A) In general.* If a member of an EAG (disposing member) derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of property that was MPGE or produced by an EAG partnership, all the partners of which are members of the same EAG to which the disposing member belongs at the time that the disposing member disposes of such property, then the disposing member is treated as conducting the MPGE or production activities previously conducted by the EAG partnership with respect to that property. The previous sentence applies only for those taxable years in which the disposing member is a member of the EAG of which all the partners of the EAG partnership are members for the entire taxable year of the EAG

partnership. With respect to a lease, rental, or license, the disposing member is treated as having disposed of the property on the date or dates on which it takes into account its gross receipts from the lease, rental, or license under its method of accounting. With respect to a sale, exchange, or other disposition, the disposing member is treated as having disposed of the property on the date it ceases to own the property for Federal income tax purposes, even if no gain or loss is taken into account. Likewise, if an EAG partnership derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of property that was MPGE or produced by a member (or members) of the same EAG (the producing member) to which all the partners of the EAG partnership belong at the time that the EAG partnership disposes of such property, then the EAG partnership is treated as conducting the MPGE or production activities previously conducted by the producing member with respect to that property. The previous sentence applies only for those taxable years in which the producing member is a member of the EAG of which all the partners of the EAG partnership are members for the entire taxable year of the EAG partnership. With respect to a lease, rental, or license, the EAG partnership is treated as having disposed of the property on the date or dates on which it takes into account its gross receipts derived from the lease, rental, or license under its method of accounting. With respect to a sale, exchange, or other disposition, the EAG partnership is treated as having disposed of the property on the date it ceases to own the property for Federal income tax purposes, even if no gain or loss is taken into account. See paragraph (i)(8)(iv) *Example 3* of this section.

(B) *Attribution between EAG partnerships.* If an EAG partnership (disposing partnership) derives gross receipts from the lease, rental, license, sale, exchange, or other disposition of property that was MPGE or produced by another EAG partnership (producing partnership), then the disposing partnership is treated as conducting the MPGE or production activities previously conducted by the producing partnership with respect to that property, provided that each of these partnerships (the producing partnership and the disposing partnership) is owned for its entire taxable year in which the disposing partnership disposes of such property by members of the same EAG. With respect to a lease, rental, or license, the disposing partnership is treated as having disposed of the

property on the date or dates on which it takes into account its gross receipts from the lease, rental, or license under its method of accounting. With respect to a sale, exchange, or other disposition, the disposing partnership is treated as having disposed of the property on the date it ceases to own the property for Federal income tax purposes, even if no gain or loss is taken into account.

(C) *Exceptions to attribution.*

Attribution of activities does not apply for purposes of the construction of real property under § 1.199-3(m)(1) and the performance of engineering and architectural services under § 1.199-3(n)(2) and (3), respectively.

(iii) *Other rules.* Except as provided in this paragraph (i)(8), an EAG partnership is treated the same as other partnerships for purposes of section 199. Accordingly, an EAG partnership is subject to the rules of this section regarding the application of section 199 to pass-thru entities, including the section 199(d)(1)(A)(iii) wage limitation under § 1.199-5T(b)(3). In determining whether a member of an EAG or an EAG partnership MPGE QPP in whole or in significant part within the United States or produced a qualified film or produced utilities within the United States, see § 1.199-3(g)(2) and (3) and *Example 5* of paragraph (i)(8)(iv) of this section.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (i)(8). Assume that PRS, X, Y, and Z all are calendar year taxpayers.

Example 1. Contribution. X and Y are the only partners in PRS, a partnership, for PRS's entire 2007 taxable year. X and Y are both members of a single EAG for the entire 2007 year. In 2007, X MPGE QPP within the United States and contributes the QPP to PRS. In 2007, PRS sells the QPP for \$1,000. Under this paragraph (i)(8), PRS is treated as having MPGE the QPP within the United States, and PRS's \$1,000 gross receipts constitute DPGR. PRS, X, and Y must apply the rules of this section regarding the application of section 199 to pass-thru entities with respect to the activity of PRS, including the section 199(d)(1)(A)(iii) wage limitation under § 1.199-5T(b)(3).

Example 2. Sale. X, Y, and Z are the only members of a single EAG for the entire 2007 year. X and Y each own 50% of the capital and profits interests in PRS, a partnership, for PRS's entire 2007 taxable year. In 2007, PRS MPGE QPP within the United States and then sells the QPP to X for \$6,000, its fair market value at the time of the sale. PRS's gross receipts of \$6,000 qualify as DPGR. In 2007, X sells the QPP to customers for \$10,000, incurring selling expenses of \$2,000. Under paragraph (i)(8)(ii)(A) of this section, X is treated as having MPGE the QPP within the United States, and X's \$10,000 of gross receipts qualify as DPGR. PRS, X and Y must apply the rules of this section regarding the

application of section 199 to pass-thru entities with respect to the activity of PRS, including application of the section 199(d)(1)(A)(iii) wage limitation under § 1.199-5T(b)(3). The results would be the same if PRS sold the QPP to Z rather than to X. However, if PRS did sell the QPP to Z, and Z was not a member of the EAG for PRS's entire taxable year, the activities previously conducted by PRS with respect to the QPP would not be attributed to Z, and none of Z's \$10,000 of gross receipts would qualify as DPGR.

Example 3. Lease. X, Y, and Z are the only members of a single EAG for the entire 2007 year. X and Y each own 50% of the capital and profits interests in PRS, a partnership, for PRS's entire 2007 taxable year. In 2007, PRS MPGE QPP within the United States and then sells the QPP to X for \$6,000, its fair market value at the time of the sale. PRS's gross receipts of \$6,000 qualify as DPGR. In 2007, X rents the QPP it acquired from PRS to customers unrelated to X. X takes the gross receipts attributable to the rental of the QPP into account under its method of accounting in 2007 and 2008. On July 1, 2008, X ceases to be a member of the same EAG to which Y, the other partner in PRS, belongs. For 2007, X is treated as having MPGE the QPP within the United States under paragraph (i)(8)(ii)(A) of this section, and its gross receipts derived from the rental of the QPP qualify as DPGR. For 2008, however, because X and Y, partners in PRS, are no longer members of the same EAG for the entire year, the gross rental receipts X takes into account in 2008 do not qualify as DPGR.

Example 4. Distribution. X and Y are the only partners in PRS, a partnership, for PRS's entire 2007 taxable year. X and Y are both members of a single EAG for the entire 2007 year. In 2007, PRS MPGE QPP within the United States, incurring \$600 of CGS, and then distributes the QPP to X. X's adjusted basis in the QPP is \$600. X incurs \$200 of directly allocable costs to further MPGE the QPP within the United States. In 2007, X sells the QPP for \$1,500 to an unrelated customer. X is treated as having disposed of the QPP on the date it ceases to own the QPP for Federal income tax purposes. Under paragraph (i)(8)(ii)(A) of this section, X is treated as having MPGE the QPP within the United States, and X's \$1,500 of gross receipts qualify as DPGR.

Example 5. Multiple sales. (i) *Facts.* X and Y are the only partners in PRS, a partnership, for PRS's entire 2007 taxable year. X and Y are both non-consolidated members of a single EAG for the entire 2007 year. PRS produces in bulk form in the United States the active ingredient for a drug. Assume that PRS's own MPGE activity with respect to the active ingredient is not substantial in nature, taking into account all of the facts and circumstances, and PRS's direct labor and overhead to MPGE the active ingredient within the United States are \$15 and account for 15% of PRS's \$100 CGS of the active ingredient. In 2007, PRS sells the active ingredient in bulk form to X. X uses the active ingredient to produce the finished dosage form drug. Assume that X's own MPGE activity with respect to the drug is not substantial in nature, taking into account all

of the facts and circumstances, and X's direct labor and overhead to MPGE the drug within the United States are \$12 and account for 10% of X's \$120 CGS of the drug. In 2007, X sells the drug in finished dosage to Y and Y sells the drug to customers. Assume that Y's own MPGE activity with respect to the drug is not substantial in nature, taking into account all of the facts and circumstances, and Y incurs \$2 of direct labor and overhead and Y's CGS in selling the drug to customers is \$130.

(ii) *Analysis.* PRS's gross receipts from the sale of the active ingredient to X are non-DPGR because PRS's MPGE activity is not substantial in nature and PRS does not satisfy the safe harbor described in § 1.199-3(g)(3) because PRS's direct labor and overhead account for less than 20% of PRS's CGS of the active ingredient. X's gross receipts from the sale of the drug to Y are DPGR because X is considered to have MPGE the drug in significant part in the United States pursuant to the safe harbor described in § 1.199-3(g)(3) because the \$27 (\$15 + \$12) of direct labor and overhead incurred by PRS and X equals or exceeds 20% of X's total CGS (\$120) of the drug at the time X disposes of the drug to Y. Similarly, Y's gross receipts from the sale of the drug to customers are DPGR because Y is considered to have MPGE the drug in significant part in the United States pursuant to the safe harbor described in § 1.199-3(g)(3) because the \$29 (\$15 + \$12 + \$2) of direct labor and overhead incurred by PRS, X, and Y equals or exceeds 20% of Y's total CGS (\$130) of the drug at the time Y disposes of the drug to Y's customers.

■ **Par. 7.** Section 1.199-5 is amended by adding a sentence at the end to read as follows:

§ 1.199-5 Application of section 199 to pass-thru entities for taxable years beginning after May 17, 2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005.

* * * For further guidance, see § 1.199-5T.

■ **Par. 8.** Section 1.199-5T is added to read as follows:

§ 1.199-5T Application of section 199 to pass-thru entities for taxable years beginning after May 17, 2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005 (temporary).

(a) *In general.* The provisions of this section apply solely for purposes of section 199 of the Internal Revenue Code (Code).

(b) *Partnerships—(1) In general—(i) Determination at partner level.* The deduction with respect to the qualified production activities of the partnership allowable under § 1.199-1(a) (section 199 deduction) is determined at the partner level. As a result, each partner must compute its deduction separately. The section 199 deduction has no effect on the adjusted basis of the partner's interest in the partnership. Except as provided by publication pursuant to

paragraph (b)(1)(ii) of this section, for purposes of this section, each partner is allocated, in accordance with sections 702 and 704, its share of partnership items (including items of income, gain, loss, and deduction), cost of goods sold (CGS) allocated to such items of income, and gross receipts that are included in such items of income, even if the partner's share of CGS and other deductions and losses exceeds domestic production gross receipts (DPGR) (as defined in § 1.199-3(a)). A partnership may specially allocate items of income, gain, loss, or deduction to its partners, subject to the rules of section 704(b) and the supporting regulations. Guaranteed payments under section 707(c) are not considered allocations of partnership income for purposes of this section. Guaranteed payments under section 707(c) are deductions by the partnership that must be taken into account under the rules of § 1.199-4. See § 1.199-3(p) and paragraph (b)(6) *Example 5* of this section. Except as provided in paragraph (b)(1)(ii) of this section, to determine its section 199 deduction for the taxable year, a partner aggregates its distributive share of such items, to the extent they are not otherwise disallowed by the Code, with those items it incurs outside the partnership (whether directly or indirectly) for purposes of allocating and apportioning deductions to DPGR and computing its qualified production activities income (QPAI) (as defined in § 1.199-1(c)).

(ii) *Determination at entity level.* The Secretary may, by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), permit a partnership to calculate a partner's share of QPAI and W-2 wages as defined in § 1.199-2T(e)(2) (W-2 wages) at the entity level, instead of allocating to the partner, in accordance with sections 702 and 704, the partner's share of partnership items (including items of income, gain, loss, and deduction) and amounts described in § 1.199-2(e)(1) (paragraph (e)(1) wages). If a partnership does calculate QPAI at the entity level—

(A) Each partner is allocated its share of QPAI (subject to the limitations of paragraph (b)(2) of this section) and W-2 wages from the partnership, which are combined with the partner's QPAI and W-2 wages from other sources, if any;

(B) For purposes of computing QPAI under §§ 1.199-1 through 1.199-8, a partner does not take into account the items from the partnership (for example, a partner does not take into account items from the partnership in determining whether a threshold or de minimis rule applies or in allocating

and apportioning deductions in calculating its QPAI from other sources);

(C) A partner generally does not recompute its share of QPAI from the partnership using another method; however, the partner might have to adjust its share of QPAI from the partnership to take into account certain disallowed losses or deductions, or the allowance of suspended losses or deductions; and

(D) A partner's distributive share of QPAI from a partnership may be less than zero.

(2) *Disallowed losses or deductions.* Except as provided by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), losses or deductions of a partnership are taken into account in computing the partner's section 199 deduction for a taxable year only if, and to the extent that, the partner's distributive share of those losses or deductions from all of the partnership's activities is not disallowed by section 465, 469, or 704(d), or any other provision of the Code. If only a portion of the partner's distributive share of the losses or deductions from a partnership is allowed for a taxable year, a proportionate share of those allowable losses or deductions that are allocated to the partnership's qualified production activities, determined in a manner consistent with sections 465, 469, and 704(d), and any other applicable provision of the Code, is taken into account in computing QPAI for that taxable year. To the extent that any of the disallowed losses or deductions are allowed in a later taxable year under section 465, 469, or 704(d), or any other provision of the Code, the partner takes into account a proportionate share of those allowed losses or deductions that are allocated to the partnership's qualified production activities in computing the partner's QPAI for that later taxable year. Losses or deductions of the partnership that are disallowed for taxable years beginning on or before December 31, 2004, are not taken into account in a later taxable year for purposes of computing the partner's QPAI for that later taxable year, whether or not the losses or deductions are allowed for other purposes.

(3) *Partner's share of paragraph (e)(1) wages.* Under section 199(d)(1)(A)(iii), a partner's share of paragraph (e)(1) wages of a partnership for purposes of determining the partner's wage limitation under section 199(b)(1) (W-2 wage limitation) equals the partner's allocable share of those wages. Except as provided by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), the

partnership must allocate the amount of paragraph (e)(1) wages among the partners in the same manner it allocates wage expense among those partners. The partner must add its share of the paragraph (e)(1) wages from the partnership to the partner's paragraph (e)(1) wages from other sources, if any. The partner (other than a partner that itself is a partnership or S corporation) then must calculate its W-2 wages by determining the amount of the partner's total paragraph (e)(1) wages properly allocable to DPGR. If the partner is a partnership or S corporation, the partner must allocate its paragraph (e)(1) wages (including the paragraph (e)(1) wages from a lower-tier partnership) among its partners or shareholders in the same manner it allocates wage expense among those partners or shareholders. See § 1.199-2T(e)(2) for the computation of W-2 wages and for the proper allocation of any such wages to DPGR.

(4) *Transition rule for definition of W-2 wages and for W-2 wage limitation.* If a partnership and any partner in that partnership have different taxable years, only one of which begins on or before May 17, 2006, the definition of W-2 wages of the partnership and the section 199(d)(1)(A)(iii) limitation on W-2 wages from that partnership is determined under the law applicable to partnerships based on the beginning date of the partnership's taxable year. Thus, for example, for the taxable year of a partnership beginning on or before May 17, 2006, a partner's share of W-2 wages from the partnership is determined under section 199(d)(1)(A)(iii) as in effect for taxable years beginning on or before May 17, 2006, even if the taxable year of that partner in which those wages are taken into account begins after May 17, 2006.

(5) *Partnerships electing out of subchapter K.* For purposes of §§ 1.199-1 through 1.199-8, the rules of paragraph (b) of this section apply to all partnerships, including those partnerships electing under section 761(a) to be excluded, in whole or in part, from the application of subchapter K of chapter 1 of the Code.

(6) *Examples.* The following examples illustrate the application of this paragraph (b). Assume that each partner has sufficient adjusted gross income or taxable income so that the section 199 deduction is not limited under section 199(a)(1)(B). Assume also that the partnership and each of its partners (whether individual or corporate) are calendar year taxpayers.

Example 1. Section 861 method with interest expense. (i) *Partnership Federal income tax items.* X and Y, unrelated United States corporations, are each 50% partners in

PRS, a partnership that engages in production activities that generate both DPGR and non-DPGR. X and Y share all items of income, gain, loss, deduction, and credit equally. Both X and Y are engaged in a trade or business. PRS is not able to identify from its books and records CGS

allocable to DPGR and non-DPGR. In this case, because CGS is definitely related under the facts and circumstances to all of PRS's gross receipts, apportionment of CGS between DPGR and non-DPGR based on gross receipts is appropriate. For 2010, the adjusted basis of PRS's business assets is

\$5,000, \$4,000 of which generate gross income attributable to DPGR and \$1,000 of which generate gross income attributable to non-DPGR. For 2010, PRS has the following Federal income tax items:

DPGR	\$3,000
Non-DPGR	3,000
CGS	3,240
Section 162 selling expenses	1,200
Interest expense (not included in CGS)	300

(ii) *Allocation of PRS's Federal income tax items.* X and Y each receive the following distributive share of PRS's Federal income tax items, as determined under the principles of § 1.704-1(b)(1)(vii):

Gross income attributable to DPGR (\$1,500 (DPGR)—\$810 (allocable CGS))	\$690
Gross income attributable to non-DPGR (\$1,500 (non-DPGR)—\$810 (allocable CGS))	690
Section 162 selling expenses	600
Interest expense (not included in CGS)	150

(iii) *Determination of QPAI.* (A) X's QPAI. Because the section 199 deduction is determined at the partner level, X determines its QPAI by aggregating its distributive share of PRS's Federal income tax items with all other such items from all other, non-PRS-related activities. For 2010, X does not have any other such items. For 2010, the adjusted basis of X's non-PRS assets,

all of which are investment assets, is \$10,000. X's only gross receipts for 2010 are those attributable to the allocation of gross income from PRS. X allocates and apportions its deductible items to gross income attributable to DPGR under the section 861 method of § 1.199-4(d). In this case, the section 162 selling expenses are not included in CGS and are definitely related to all of PRS's

gross income. Based on the facts and circumstances of this specific case, apportionment of those expenses between DPGR and non-DPGR on the basis of PRS's gross receipts is appropriate. X elects to apportion its distributive share of interest expense under the tax book value method of § 1.861-9T(g). X's QPAI for 2010 is \$366, as shown in the following table:

DPGR	\$1,500
CGS allocable to DPGR	(810)
Section 162 selling expenses (\$600 × (\$1,500 DPGR/\$3,000 total gross receipts))	(300)
Interest expense (not included in CGS) (\$150 × (\$2,000 (X's share of PRS's DPGR assets)/\$12,500 (X's non-PRS assets (\$10,000) + X's share of PRS assets (\$2,500))))	(24)
X's QPAI	366

(B) Y's QPAI. (1) For 2010, in addition to the activities of PRS, Y engages in production activities that generate both DPGR and non-DPGR. Y is able to identify from its books and records CGS

allocable to DPGR and to non-DPGR. For 2010, the adjusted basis of Y's non-PRS assets attributable to its production activities that generate DPGR is \$8,000 and to other production activities that

generate non-DPGR is \$2,000. Y has no other assets. Y has the following Federal income tax items relating to its non-PRS activities:

Gross income attributable to DPGR (\$1,500 (DPGR)—\$900 (allocable CGS))	\$600
Gross income attributable to non-DPGR (\$3,000 (other gross receipts)—\$1,620 (allocable CGS))	1,380
Section 162 selling expenses	540
Interest expense (not included in CGS)	90

(2) Y determines its QPAI in the same general manner as X. However, because Y has other trade or business activities outside of PRS, Y must aggregate its distributive share of PRS's Federal income tax items with its own such items. Y allocates and apportions its deductible items to gross income attributable to DPGR under the section 861 method of § 1.199-4(d). In this case,

Y's distributive share of PRS's section 162 selling expenses, as well as those selling expenses from Y's non-PRS activities, are definitely related to all of its gross income. Based on the facts and circumstances of this specific case, apportionment of those expenses between DPGR and non-DPGR on the basis of Y's gross receipts (including Y's share of PRS's gross receipts) is

appropriate. Y elects to apportion its distributive share of interest expense under the tax book value method of § 1.861-9T(g). Y has \$1,290 of gross income attributable to DPGR (\$3,000 DPGR (\$1,500 from PRS and \$1,500 from non-PRS activities)—\$1,710 CGS (\$810 from PRS and \$900 from non-PRS activities)). Y's QPAI for 2010 is \$642, as shown in the following table:

DPGR (\$1,500 from PRS and \$1,500 from non-PRS activities)	\$3,000
CGS allocable to DPGR (\$810 from PRS and \$900 from non-PRS activities)	(1,710)

Section 162 selling expenses (\$1,140 (\$600 from PRS and \$540 from non-PRS activities) × \$3,000 (\$1,500 PRS DPGR + \$1,500 non-PRS DPGR)/ \$7,500 (\$3,000 PRS total gross receipts + \$4,500 non-PRS total gross receipts))	(456)
Interest expense (not included in CGS) (\$240 (\$150 from PRS and \$90 from non-PRS activities) × \$10,000 (Y's non-PRS DPGR assets (\$8,000) + Y's share of PRS DPGR assets (\$2,000))/ \$12,500 (Y's non-PRS assets (\$10,000) + Y's share of PRS assets (\$2,500)))	(192)
Y's QPAI	642

(iv) *Determination of section 199 deduction.* X's tentative section 199 deduction is \$33 (.09 × \$366, that is, QPAI determined at the partner level) subject to the W-2 wage limitation (50% of W-2 wages). Y's tentative section 199 deduction is \$58 (.09 × \$642) subject to the W-2 wage limitation.

Example 2. Section 861 method with R&E expense. (i) *Partnership Federal income tax items.* X and Y, unrelated United States corporations each of which is engaged in a trade or business, are partners in PRS, a partnership that engages in production

activities that generate both DPGR and non-DPGR. Neither X nor Y is a member of an affiliated group. X and Y share all items of income, gain, loss, deduction, and credit equally. All of PRS's domestic production activities that generate DPGR are within Standard Industrial Classification (SIC) Industry Group AAA (SIC AAA). All of PRS's production activities that generate non-DPGR are within SIC Industry Group BBB (SIC BBB). PRS is not able to identify from its books and records CGS allocable to DPGR and to non-DPGR. In this case, because CGS is definitely related under the facts and

circumstances to all of PRS's gross receipts, apportionment of CGS between DPGR and non-DPGR based on gross receipts is appropriate. PRS incurs \$900 of research and experimentation expenses (R&E) that are deductible under section 174, \$300 of which are performed with respect to SIC AAA and \$600 of which are performed with respect to SIC BBB. None of the R&E is legally mandated R&E as described in § 1.861-17(a)(4) and none is included in CGS. For 2010, PRS has the following Federal income tax items:

DPGR (all from sales of products within SIC AAA)	\$3,000
Non-DPGR (all from sales of products within SIC BBB)	3,000
CGS	2,400
Section 162 selling expenses	840
Section 174 R&E-SIC AAA	300
Section 174 R&E-SIC BBB	600

(ii) *Allocation of PRS's Federal income tax items.* X and Y each receive the following distributive share of PRS's Federal income

tax items, as determined under the principles of § 1.704-1(b)(1)(vii):

Gross income attributable to DPGR (\$1,500 (DPGR)—\$600 (CGS))	\$900
Gross income attributable to non-DPGR (\$1,500 (other gross receipts)—\$600 (CGS))	900
Section 162 selling expenses	420
Section 174 R&E-SIC AAA	150
Section 174 R&E-SIC BBB	300

(iii) *Determination of QPAI.* (A) *X's QPAI.* Because the section 199 deduction is determined at the partner level, X determines its QPAI by aggregating its distributive share of PRS's Federal income tax items with all other such items from all other, non-PRS-related activities. For 2010, X does not have any other such tax items. X's only gross receipts for 2010 are those attributable to the allocation of gross income from PRS. As stated, all of PRS's domestic production

activities that generate DPGR are within SIC AAA. X allocates and apportions its deductible items to gross income attributable to DPGR under the section 861 method of § 1.199-4(d). In this case, the section 162 selling expenses are definitely related to all of PRS's gross income. Based on the facts and circumstances of this specific case, apportionment of those expenses between DPGR and non-DPGR on the basis of PRS's gross receipts is appropriate. For purposes of

apportioning R&E, X elects to use the sales method as described in § 1.861-17(c). Because X has no direct sales of products, and because all of PRS's SIC AAA sales attributable to X's share of PRS's gross income generate DPGR, all of X's share of PRS's section 174 R&E attributable to SIC AAA is taken into account for purposes of determining X's QPAI. Thus, X's total QPAI for 2010 is \$540, as shown in the following table:

DPGR (all from sales of products within SIC AAA)	\$1,500
CGS	(600)
Section 162 selling expenses (\$420 × (\$1,500 DPGR/\$3,000 total gross receipts))	(210)
Section 174 R&E-SIC AAA	(150)
X's QPAI	540

(B) *Y's QPAI.* (1) For 2010, in addition to the activities of PRS, Y engages in domestic production activities that generate both DPGR and non-DPGR. With respect to those non-PRS activities, Y is not able to identify

from its books and records CGS allocable to DPGR and to non-DPGR. In this case, because non-PRS CGS is definitely related under the facts and circumstances to all of Y's non-PRS gross receipts, apportionment of non-PRS

CGS between DPGR and non-DPGR based on Y's non-PRS gross receipts is appropriate. For 2010, Y has the following non-PRS Federal income tax items:

DPGR (from sales of products within SIC AAA)	\$1,500
DPGR (from sales of products within SIC BBB)	1,500
Non-DPGR (from sales of products within SIC BBB)	3,000
CGS (allocated to DPGR within SIC AAA)	750

CGS (allocated to DPGR within SIC BBB)	750
CGS (allocated to non-DPGR within SIC BBB)	1,500
Section 162 selling expenses	540
Section 174 R&E—SIC AAA	300
Section 174 R&E—SIC BBB	450

(2) Because Y has DPGR as a result of activities outside PRS, Y must aggregate its distributive share of PRS's Federal income tax items with such items from all its other, non-PRS-related activities. Y allocates and apportions its deductible items to gross income attributable to DPGR under the section 861 method of § 1.199-4(d). In this case, the section 162 selling expenses are definitely related to all of Y's gross income. Based on the facts and circumstances of the specific case, apportionment of such

expenses between DPGR and non-DPGR on the basis of Y's gross receipts (including Y's share of PRS's gross receipts) is appropriate. For purposes of apportioning R&E, Y elects to use the sales method as described in § 1.861-17(c).

(3) With respect to sales that generate DPGR, Y has gross income of \$2,400 (\$4,500 DPGR (\$1,500 from PRS and \$3,000 from non-PRS activities) – \$2,100 CGS (\$600 from sales of products by PRS and \$1,500 from non-PRS activities)). Because all of the sales

in SIC AAA generate DPGR, all of Y's share of PRS's section 174 R&E attributable to SIC AAA and the section 174 R&E attributable to SIC AAA that Y incurs in its non-PRS activities are taken into account for purposes of determining Y's QPAI. Because only a portion of the sales within SIC BBB generate DPGR, only a portion of the section 174 R&E attributable to SIC BBB is taken into account in determining Y's QPAI. Thus, Y's QPAI for 2010 is \$1,282, as shown in the following table:

DPGR (\$4,500 DPGR (\$1,500 from PRS and \$3,000 from non-PRS activities))	\$4,500
CGS (\$600 from sales of products by PRS and \$1,500 from non-PRS activities)	(2,100)
Section 162 selling expenses (\$960 (\$420 from PRS + \$540 from non-PRS activities) × (\$4,500 DPGR/\$9,000 total gross receipts))	(480)
Section 174 R&E SIC AAA (\$150 from PRS and \$300 from non-PRS activities)	(450)
Section 174 R&E—SIC BBB (\$750 (\$300 from PRS + \$450 from non-PRS activities) × (\$1,500 DPGR/\$6,000 total gross receipts allocated to SIC BBB (\$1,500 from PRS + \$4,500 from non-PRS activities)))	(188)
Y's QPAI	1,282

(iv) *Determination of section 199 deduction.* X's tentative section 199 deduction is \$49 (.09 × \$540, that is, QPAI determined at the partner level) subject to the W-2 wage limitation (50% of W-2 wages). Y's tentative section 199 deduction is \$115 (.09 × \$1,282) subject to the W-2 wage limitation.

Example 3. Partnership with special allocations. (i) *In general.* X and Y are unrelated corporate partners in PRS and each is engaged in a trade or business. PRS is a partnership that engages in a domestic production activity and other activities. In general, X and Y share all partnership items of income, gain, loss, deduction, and credit equally, except that 80% of the wage expense of PRS and 20% of PRS's other expenses are specially allocated to X. Under all the facts and circumstances, these special allocations have substantial economic effect under section 704(b). In the 2010 taxable year, PRS's only wage expense is \$2,000 for marketing, which is not included in CGS. PRS has \$8,000 of gross receipts (\$6,000 of which is DPGR), \$4,000 of CGS (\$3,500 of which is allocable to DPGR), and \$3,000 of deductions (comprised of \$2,000 of wage expense for marketing and \$1,000 of other expenses). X qualifies for and uses the simplified deduction method under § 1.199-4(e). Y does not qualify to use that method and, therefore, must use the section 861 method under § 1.199-4(d). In the 2010 taxable year, X has gross receipts attributable to non-partnership trade or business activities of \$1,000 and wage expense of \$200. None of X's non-PRS gross receipts is DPGR. For purposes of this example, with regard to both X and PRS, paragraph (e)(1) wages equal wage expense for the 2010 taxable year.

(ii) *Allocation and apportionment of costs.* Under the partnership agreement, X's

distributive share of the Federal income tax items of PRS is \$1,250 of gross income attributable to DPGR (\$3,000 DPGR – \$1,750 allocable CGS), \$750 of gross income attributable to non-DPGR (\$1,000 non-DPGR – \$250 allocable CGS), and \$1,800 of deductions (comprised of X's special allocations of \$1,600 of wage expense (\$2,000 × 80%) for marketing and \$200 of other expenses (\$1,000 × 20%). Under the simplified deduction method, X apportions \$1,200 of other deductions to DPGR (\$2,000 (\$1,800 from the partnership and \$200 from non-partnership activities) × (\$3,000 DPGR/\$5,000 total gross receipts)). Accordingly, X's QPAI is \$50 (\$3,000 DPGR – \$1,750 CGS – \$1,200 of deductions). X has \$1,800 of paragraph (e)(1) wages (\$1,600 (X's 80% share) from PRS + \$200 (X's own non-PRS paragraph (e)(1) wages)). To calculate its W-2 wages, X must determine how much of this \$1,800 is properly allocable under § 1.199-2T(e)(2) to X's total DPGR (including X's share of DPGR from PRS). Thus, X's tentative section 199 deduction for the 2010 taxable year is \$5 (.09 × \$50), subject to the W-2 wage limitation (50% of X's W-2 wages).

Example 4. Partnership with no paragraph (e)(1) wages. (i) *Facts.* A and B, both individuals, are partners in PRS. PRS is a partnership that engages in manufacturing activities that generate both DPGR and non-DPGR. A and B share all items of income, gain, loss, deduction, and credit equally. For the 2010 taxable year, PRS has total gross receipts of \$2,000 (\$1,000 of which is DPGR), CGS of \$400 and deductions of \$800. PRS has no paragraph (e)(1) wages. Each partner's distributive share of PRS's Federal income tax items is \$500 DPGR, \$500 non-DPGR, \$200 CGS, and \$400 of deductions. A has trade or business activities outside of PRS (non-PRS activities). With respect to those activities, A has total gross receipts of \$1,000

(\$500 of which is DPGR), CGS of \$400 (including \$50 of paragraph (e)(1) wages), and deductions of \$200 for the 2010 taxable year. B has no trade or business activities outside of PRS. A and B each use the small business simplified overall method under § 1.199-4(f).

(ii) *A's QPAI.* A's total CGS and deductions apportioned to DPGR equal \$600 ((\$1,200 (\$200 PRS CGS + \$400 non-PRS CGS + \$400 PRS deductions + \$200 non-PRS trade or business deductions)) × (\$1,000 total DPGR (\$500 from PRS + \$500 from non-PRS activities)/\$2,000 total gross receipts (\$1,000 from PRS + \$1,000 from non-PRS activities))). Accordingly, A's QPAI is \$400 (\$1,000 DPGR (\$500 from PRS + \$500 from non-PRS activities) – \$600 CGS and deductions).

(iii) *A's W-2 wages and section 199 deduction.* A has \$50 of paragraph (e)(1) wages (\$0 from PRS + \$50 from A's non-PRS activities). To calculate A's W-2 wages, A determines, under a reasonable method satisfactory to the Secretary, that \$40 of this \$50 is properly allocable under § 1.199-2T(e)(2) to A's DPGR from PRS and non-PRS activities. A's tentative section 199 deduction is \$36 (.09 × \$400), subject to the W-2 wage limitation of \$20 (50% of W-2 wages of \$40). Thus, A's section 199 deduction is \$20.

(iv) *B's QPAI and section 199 deduction.* B's CGS and deductions apportioned to DPGR equal \$300 ((\$200 PRS CGS + \$400 PRS deductions) × (\$500 DPGR from PRS / \$1,000 total gross receipts from PRS)). Accordingly, B's QPAI is \$200 (\$500 DPGR – \$300 CGS and deductions). B's tentative section 199 deduction is \$18 (.09 × \$200), subject to the W-2 wage limitation. In this case, however, the limitation is \$0, because B has no paragraph (e)(1) wages. Thus, B's section 199 deduction is \$0.

Example 5. Guaranteed payment. (i) *Facts.* The facts are the same as in *Example 4*,

except that in 2010 PRS also makes a guaranteed payment of \$200 to A for services rendered by A (see section 707(c)), and PRS incurs \$200 of wage expense for employees' salary, which is included within the \$400 of CGS (in this case the wage expense of \$200 equals PRS's paragraph (e)(1) wages). The guaranteed payment is taxable to A as ordinary income and is properly deducted by PRS under section 162. Pursuant to § 1.199-3(p), A may not treat any part of this payment as DPGR. Accordingly, PRS has total gross receipts of \$2,000 (\$1,000 of which is DPGR), CGS of \$400 (including \$200 of wage expense) and deductions of \$1,000 (including the \$200 guaranteed payment) for the 2010 taxable year. Each partner's distributive share of the items of the partnership is \$500 DPGR, \$500 non-DPGR, \$200 CGS (including \$100 of wage expense), and \$500 of deductions.

(ii) *A's QPAI and W-2 wages.* A's total CGS and deductions apportioned to DPGR equal \$591 (\$1,300 (\$200 PRS CGS + \$400 non-PRS CGS + \$500 PRS deductions + \$200 non-PRS trade or business deductions) × (\$1,000 total DPGR (\$500 from PRS + \$500 from non-PRS activities) / \$2,200 total gross receipts (\$1,000 from PRS + \$200 guaranteed payment + \$1,000 from non-PRS activities)). Accordingly, A's QPAI is \$409 (\$1,000 DPGR - \$591 CGS and other deductions). A's total paragraph (e)(1) wages are \$150 (\$100 from PRS + \$50 from non-PRS activities). To calculate its W-2 wages, A must determine how much of this \$150 is properly allocable under § 1.199-2T(e)(2) to A's total DPGR from PRS and non-PRS activities. A's tentative section 199 deduction is \$37 (.09 × \$409), subject to the W-2 wage limitation (50% of W-2 wages).

(iii) *B's QPAI and W-2 wages.* B's QPAI is \$150 (\$500 DPGR - \$350 CGS and other deductions). B has \$100 of paragraph (e)(1) wages (all from PRS). To calculate its W-2 wages, B must determine how much of this \$100 is properly allocable under § 1.199-2T(e)(2) to B's total DPGR. B's tentative section 199 deduction is \$14 (.09 × \$150), subject to the W-2 wage limitation (50% of B's W-2 wages).

(c) *S corporations—(1) In general—(i) Determination at shareholder level.* The section 199 deduction with respect to the qualified production activities of an S corporation is determined at the shareholder level. As a result, each shareholder must compute its deduction separately. The section 199 deduction has no effect on the adjusted basis of a shareholder's stock in an S corporation. Except as provided by publication pursuant to paragraph (c)(1)(ii) of this section, for purposes of this section, each shareholder is allocated, in accordance with section 1366, its pro rata share of S corporation items (including items of income, gain, loss, and deduction), CGS allocated to such items of income, and gross receipts included in such items of income, even if the shareholder's share of CGS and other deductions and losses exceeds DPGR. Except as provided by

publication under paragraph (c)(1)(ii) of this section, to determine its section 199 deduction for the taxable year, the shareholder aggregates its pro rata share of such items, to the extent they are not otherwise disallowed by the Code, with those items it incurs outside the S corporation (whether directly or indirectly) for purposes of allocating and apportioning deductions to DPGR and computing its QPAI.

(ii) *Determination at entity level.* The Secretary may, by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), permit an S corporation to calculate a shareholder's share of QPAI and W-2 wages at the entity level, instead of allocating to the shareholder, in accordance with section 1366, the shareholder's pro rata share of S corporation items (including items of income, gain, loss, and deduction) and paragraph (e)(1) wages. If an S corporation does calculate QPAI at the entity level—

(A) Each shareholder is allocated its share of QPAI (subject to the limitations of paragraph (c)(2) of this section) and W-2 wages from the S corporation, which are combined with the shareholder's QPAI and W-2 wages from other sources, if any;

(B) For purposes of computing QPAI under §§ 1.199-1 through 1.199-8, a shareholder does not take into account the items from the S corporation (for example, a shareholder does not take into account items from the S corporation in determining whether a threshold or *de minimis* rule applies or in allocating and apportioning deductions in calculating its QPAI from other sources);

(C) A shareholder generally does not recompute its share of QPAI from the S corporation using another method; however, the shareholder might have to adjust its share of QPAI from the S corporation to take into account certain disallowed losses or deductions, or the allowance of suspended losses or deductions; and

(D) A shareholder's share of QPAI from an S corporation may be less than zero.

(2) *Disallowed losses or deductions.* Except as provided by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), losses or deductions of the S corporation are taken into account in computing the shareholder's section 199 deduction for a taxable year only if, and to the extent that, the shareholder's pro rata share of the losses or deductions from all of the S corporation's activities is not disallowed by section 465, 469, or 1366(d), or any other provision of the

Code. If only a portion of the shareholder's share of the losses or deductions from an S corporation is allowed for a taxable year, a proportionate share of those allowable losses or deductions that are allocated to the S corporation's qualified production activities, determined in a manner consistent with sections 465, 469, and 1366(d), and any other applicable provision of the Code, is taken into account in computing QPAI for that taxable year. To the extent that any of the disallowed losses or deductions are allowed in a later taxable year under section 465, 469, or 704(d), or any other provision of the Code, the shareholder takes into account a proportionate share of those allowed losses or deductions that are allocated to the S corporation's qualified production activities in computing the shareholder's QPAI for that later taxable year. Losses or deductions of the S corporation that are disallowed for taxable years beginning on or before December 31, 2004, are not taken into account in a later taxable year for purposes of computing the shareholder's QPAI for that later taxable year, whether or not the losses or deductions are allowed for other purposes.

(3) *Shareholder's share of paragraph (e)(1) wages.* Under section 199(d)(1)(A)(iii), an S corporation shareholder's share of the paragraph (e)(1) wages of the S corporation for purposes of determining the shareholder's W-2 wage limitation equals the shareholder's allocable share of those wages. Except as provided by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), the S corporation must allocate the paragraph (e)(1) wages among the shareholders in the same manner it allocates wage expense among those shareholders. The shareholder then must add its share of the paragraph (e)(1) wages from the S corporation to the shareholder's paragraph (e)(1) wages from other sources, if any, and then must determine the portion of those total paragraph (e)(1) wages allocable to DPGR to compute the shareholder's W-2 wages. See § 1.199-2T(e)(2) for the computation of W-2 wages and for the proper allocation of such wages to DPGR.

(4) *Transition rule for definition of W-2 wages and for W-2 wage limitation.* If an S corporation and any of its shareholders have different taxable years, only one of which begins on or before May 17, 2006, the definition of W-2 wages of the S corporation and the section 199(d)(1)(A)(iii) limitation on W-2 wages from that S corporation is determined under the law applicable to

S corporations based on the beginning date of the S corporation's taxable year. Thus, for example, for the short taxable year of an S corporation beginning after May 17, 2006, and ending in 2006, a shareholder's share of W-2 wages from the S corporation is determined under section 199(d)(1)(A)(iii) for taxable years beginning after May 17, 2006, even if that shareholder's taxable year began on or before May 17, 2006.

(d) *Grantor trusts.* To the extent that the grantor or another person is treated as owning all or part (the owned portion) of a trust under sections 671 through 679, such person (owner) computes its QPAI with respect to the owned portion of the trust as if that QPAI had been generated by activities performed directly by the owner. Similarly, for purposes of the W-2 wage limitation, the owner of the trust takes into account the owner's share of the paragraph (e)(1) wages of the trust that are attributable to the owned portion of the trust. The provisions of paragraph (e) of this section do not apply to the owned portion of a trust.

(e) *Non-grantor trusts and estates—(1) Allocation of costs.* The trust or estate calculates each beneficiary's share (as well as the trust's or estate's own share, if any) of QPAI and W-2 wages from the trust or estate at the trust or estate level. The beneficiary of a trust or estate may not recompute its share of QPAI or W-2 wages from the trust or estate by using another method to reallocate the trust's or estate's qualified production costs or paragraph (e)(1) wages, or otherwise. Except as provided in paragraph (d) of this section, the QPAI of a trust or estate must be computed by allocating expenses described in section 199(d)(5) in one of two ways, depending on the classification of those expenses under § 1.652(b)-3. Specifically, directly attributable expenses within the meaning of § 1.652(b)-3 are allocated pursuant to § 1.652(b)-3, and expenses not directly attributable within the meaning of § 1.652(b)-3 (other expenses) are allocated under the simplified deduction method of § 1.199-4(e) (unless the trust or estate does not

qualify to use the simplified deduction method, in which case it must use the section 861 method of § 1.199-4(d) with respect to such other expenses). For this purpose, depletion and depreciation deductions described in section 642(e) and amortization deductions described in section 642(f) are treated as other expenses described in section 199(d)(5). Also for this purpose, the trust's or estate's share of other expenses from a lower-tier pass-thru entity is not directly attributable to any class of income (whether or not those other expenses are directly attributable to the aggregate pass-thru gross income as a class for purposes other than section 199). A trust or estate may not use the small business simplified overall method for computing its QPAI. See § 1.199-4(f)(5).

(2) *Allocation among trust or estate and beneficiaries—(i) In general.* The QPAI of a trust or estate (which will be less than zero if the CGS and deductions allocated and apportioned to DPGR exceed the trust's or estate's DPGR) and W-2 wages of a trust or estate are allocated to each beneficiary and to the trust or estate based on the relative proportion of the trust's or estate's distributable net income (DNI), as defined by section 643(a), for the taxable year that is distributed or required to be distributed to the beneficiary or is retained by the trust or estate. To the extent that the trust or estate has no DNI for the taxable year, any QPAI and W-2 wages are allocated entirely to the trust or estate. A trust or estate is allowed the section 199 deduction in computing its taxable income to the extent that QPAI and W-2 wages are allocated to the trust or estate. A beneficiary of a trust or estate is allowed the section 199 deduction in computing its taxable income based on its share of QPAI and W-2 wages from the trust or estate, which are aggregated with the beneficiary's QPAI and W-2 wages from other sources, if any.

(ii) *Treatment of items from a trust or estate reporting qualified production activities income.* When, pursuant to this paragraph (e), a taxpayer must combine QPAI and W-2 wages from a

trust or estate with the taxpayer's total QPAI and W-2 wages from other sources, the taxpayer, when applying §§ 1.199-1 through 1.199-8 to determine the taxpayer's total QPAI and W-2 wages from such other sources, does not take into account the items from such trust or estate. Thus, for example, a beneficiary of an estate that receives QPAI from the estate does not take into account the beneficiary's distributive share of the estate's gross receipts, gross income, or deductions when the beneficiary determines whether a threshold or *de minimis* rule applies or when the beneficiary allocates and apportions deductions in calculating its QPAI from other sources. Similarly, in determining the portion of the beneficiary's paragraph (e)(1) wages from other sources that is attributable to DPGR (thus, the W-2 wages from other sources), the beneficiary does not take into account DPGR and non-DPGR from the trust or estate.

(3) *Transition rule for definition of W-2 wages and for W-2 wage limitation.* The definition of W-2 wages of a trust or estate and the section 199(d)(1)(A)(iii) limitation on W-2 wages from that trust or estate, and thus the beneficiary's share of W-2 wages from that trust or estate, is determined under the law applicable to pass-thru entities based on the beginning date of the taxable year of the trust or estate, regardless of the beginning date of the taxable year of the beneficiary.

(4) *Example.* The following example illustrates the application of this paragraph (e). Assume that the partnership, trust, and trust beneficiary all are calendar year taxpayers.

Example. (i) *Computation of DNI and inclusion and deduction amounts.* (A) *Trust's distributive share of partnership items.* Trust, a complex trust, is a partner in PRS, a partnership that engages in activities that generate DPGR and non-DPGR. In 2010, PRS distributes \$10,000 cash to Trust. PRS properly allocates (in the same manner as wage expense) paragraph (e)(1) wages of \$3,000 to Trust. Trust's distributive share of PRS items, which are properly included in Trust's DNI, is as follows:

Gross income attributable to DPGR (\$15,000 DPGR—\$5,000 CGS (including wage expense of \$1,000))	\$10,000
Gross income attributable to non-DPGR (\$5,000 other gross receipts—\$0 CGS)	5,000
Selling expenses attributable to DPGR (includes wage expense of \$2,000)	3,000
Other expenses (includes wage expense of \$1,000)	2,000

(B) *Trust's direct activities.* Trust has direct paragraph (e)(1) wages of \$2,000 for the 2010

taxable year. In addition to its cash distribution in 2010 from PRS, Trust also

directly has the following items which are properly included in Trust's DNI:

Dividends	\$10,000
Tax-exempt interest	10,000
Rents from commercial real property operated by Trust as a business	10,000
Real estate taxes	1,000

Trustee commissions	3,000
State income and personal property taxes	5,000
Wage expense for rental business	2,000
Other business expenses	1,000

(C) Allocation of deductions under § 1.652(b)-3. (1) Directly attributable expenses. In computing Trust's DNI for the taxable year, the distributive share of expenses of PRS are directly attributable under § 1.652(b)-3(a) to the distributive share of income of PRS. Accordingly, the \$5,000 of CGS, \$3,000 of selling expenses, and \$2,000 of other expenses are subtracted from the gross receipts from PRS (\$20,000), resulting in net income from PRS of \$10,000. With respect to the Trust's direct expenses, \$1,000 of the trustee commissions, the \$1,000 of real estate taxes, and the \$2,000 of wage expense are directly attributable under § 1.652(b)-3(a) to the rental income.

(2) Non-directly attributable expenses. Under § 1.652(b)-3(b), the trustee must allocate a portion of the sum of the balance of the trustee commissions (\$2,000), state income and personal property taxes (\$5,000), and the other business expenses (\$1,000) to the \$10,000 of tax-exempt interest. The portion to be attributed to tax-exempt interest is \$2,222 ($\$8,000 \times (\$10,000 \text{ tax exempt interest} / \$36,000 \text{ gross receipts net of direct expenses})$), resulting in \$7,778 ($\$10,000 - \$2,222$) of net tax-exempt interest. Pursuant to its authority recognized under § 1.652(b)-3(b), the trustee allocates the entire amount of the remaining \$5,778 of trustee commissions, state income and personal property taxes, and other business expenses to the \$6,000 of net rental income, resulting in \$222 ($\$6,000 - \$5,778$) of net rental income.

(D) Amounts included in taxable income. For 2010, Trust has DNI of \$28,000 (net dividend income of \$10,000 + net PRS income of \$10,000 + net rental income of \$222 + net tax-exempt income of \$7,778). Pursuant to Trust's governing instrument, Trustee distributes 50%, or \$14,000, of that DNI to B, an individual who is a discretionary beneficiary of Trust. Assume that there are no separate shares under Trust, and no distributions are made to any other

beneficiary that year. Consequently, with respect to the \$14,000 distribution B receives from Trust, B properly includes in B's gross income \$5,000 of income from PRS, \$111 of rents, and \$5,000 of dividends, and properly excludes from B's gross income \$3,889 of tax-exempt interest. Trust includes \$20,222 in its adjusted total income and deducts \$10,111 under section 661(a) in computing its taxable income.

(ii) Section 199 deduction. (A) Simplified deduction method. For purposes of computing the section 199 deduction for the taxable year, assume Trust qualifies for the simplified deduction method under § 1.199-4(e). The determination of Trust's QPAI under the simplified deduction method requires multiple steps to allocate costs. First, the Trust's expenses directly attributable to DPGR under § 1.652(b)-3(a) are subtracted from the Trust's DPGR. In this step, the directly attributable \$5,000 of CGS and selling expenses of \$3,000 are subtracted from the \$15,000 of DPGR from PRS. Second, the Trust's expenses directly attributable under § 1.652(b)-3(a) to non-DPGR from a trade or business are subtracted from the Trust's trade or business non-DPGR. In this step, \$4,000 of Trust expenses directly allocable to the real property rental activity (\$1,000 of real estate taxes, \$1,000 of Trustee commissions, and \$2,000 of wages) are subtracted from the \$10,000 of rental income. Third, Trust must identify the portion of its other expenses that is attributable to Trust's trade or business activities, if any, because expenses not attributable to trade or business activities are not taken into account in computing QPAI. In this step, in this example, the portion of the trustee commissions not directly attributable to the rental operation (\$2,000) are directly attributable to non-trade or business activities. In addition, the state income and personal property taxes are not directly attributable under § 1.652(b)-3(a) to either trade or business or non-trade or business

activities, so the portion of those taxes not attributable to either the PRS interests or the rental operation are not trade or business expenses and, thus, are not taken into account in computing QPAI. The portion of the state income and personal property taxes that is treated as other trade or business expenses is \$3,000 ($\$5,000 \times \$30,000 \text{ total trade or business gross receipts} / \$50,000 \text{ total gross receipts}$). Fourth, Trust then allocates its other trade or business expenses (not directly attributable under § 1.652(b)-3(a)) between DPGR and non-DPGR on the basis of its total gross receipts from the conduct of a trade or business (\$20,000 from PRS + \$10,000 rental income). Thus, Trust combines its non-directly attributable (other) business expenses (\$2,000 from PRS + \$4,000 (\$1,000 of other business expenses + \$3,000 of income and property taxes allocated to a trade or business) from its own activities) and then apportions this total (\$6,000) between DPGR and other receipts on the basis of Trust's total trade or business gross receipts (\$6,000 of such expenses \times \$15,000 DPGR / \$30,000 total trade or business gross receipts = \$3,000). Thus, for purposes of computing Trust's and B's section 199 deduction, Trust's QPAI is \$4,000 ($\$7,000 - \$3,000$). Because the distribution of Trust's DNI to B equals one-half of Trust's DNI, Trust and B each has QPAI from PRS for purposes of the section 199 deduction of \$2,000. B has \$1,000 of QPAI from non-Trust activities that is added to the \$2,000 QPAI from Trust for a total of \$3,000 of QPAI.

(B) W-2 wages. For the 2010 taxable year, Trust chooses to use the wage expense safe harbor under § 1.199-2T(e)(2)(ii) to determine its W-2 wages. For its taxable year ending December 31, 2010, Trust has \$5,000 of paragraph (e)(1) wages reported on 2010 Forms W-2. Trust's W-2 wages are \$2,917, as shown in the following table:

Wage expense included in CGS directly attributable to DPGR	\$1,000
Wage expense included in selling expense directly attributable to DPGR	2,000
Wage expense included in non-directly attributable deductions (\$1,000 in wage expense \times ($\$15,000 \text{ DPGR} / \$30,000 \text{ total trade or business gross receipts}$))	500
Wage expense allocable to DPGR	3,500
W-2 wages ($(\$3,500 \text{ of wage expense allocable to DPGR} / \$6,000 \text{ of total wage expense}) \times \$5,000 \text{ in paragraph (e)(1) wages}$)	\$2,917

(C) Section 199 deduction computation. (1) B's computation. B is eligible to use the small business simplified overall method. Assume that B has sufficient adjusted gross income so that the section 199 deduction is not limited under section 199(a)(1)(B). Because the \$14,000 Trust distribution to B equals one-half of Trust's DNI, B has W-2 wages from Trust of \$1,459 ($50\% \times \$2,917$). B has W-2 wages of \$100 from non-Trust trade or business activities (computed without regard to B's interest in Trust pursuant to § 1.199-

2(e)) for a total of \$1,559 of W-2 wages. B has \$1,000 of QPAI from non-Trust activities that is added to the \$2,000 QPAI from Trust for a total of \$3,000 of QPAI. B's tentative deduction is \$270 ($.09 \times \$3,000$), limited under the W-2 wage limitation to \$780 ($50\% \times \$1,559 \text{ W-2 wages}$). Accordingly, B's section 199 deduction for 2010 is \$270.

(2) Trust's computation. Trust has sufficient adjusted gross income so that the section 199 deduction is not limited under section 199(a)(1)(B). Because the \$14,000

Trust distribution to B equals one-half of Trust's DNI, Trust has W-2 wages of \$1,459 ($50\% \times \$2,917$). Trust's tentative deduction is \$180 ($.09 \times \$2,000 \text{ QPAI}$), limited under the W-2 wage limitation to \$730 ($50\% \times \$1,459 \text{ W-2 wages}$). Accordingly, Trust's section 199 deduction for 2010 is \$180.

(f) Gain or loss from the disposition of an interest in a pass-thru entity. DPGR generally does not include gain or loss recognized on the sale, exchange, or

other disposition of an interest in a pass-thru entity. However, with respect to a partnership, if section 751(a) or (b) applies, then gain or loss attributable to assets of the partnership giving rise to ordinary income under section 751(a) or (b), the sale, exchange, or other disposition of which would give rise to DPGR, is taken into account in computing the partner's section 199 deduction. Accordingly, to the extent that cash or property received by a partner in a sale or exchange of all or part of its partnership interest is attributable to unrealized receivables or inventory items within the meaning of section 751(c) or (d), respectively, and the sale or exchange of the unrealized receivable or inventory items would give rise to DPGR if sold, exchanged, or otherwise disposed of by the partnership, the cash or property received by the partner is taken into account by the partner in determining its DPGR for the taxable year. Likewise, to the extent that a distribution of property to a partner is treated under section 751(b) as a sale or exchange of property between the partnership and the distributee partner, and any property deemed sold or exchanged would give rise to DPGR if sold, exchanged, or otherwise disposed of by the partnership, the deemed sale or exchange of the property must be taken into account in determining the partnership's and distributee partner's DPGR to the extent not taken into account under the qualifying in-kind partnership rules. See §§ 1.751-1(b) and 1.199-3T(i)(7).

(g) *No attribution of qualified activities.* Except as provided in § 1.199-3T(i)(7) regarding qualifying in-kind partnerships and § 1.199-3T(i)(8) regarding EAG partnerships, an owner of a pass-thru entity is not treated as conducting the qualified production activities of the pass-thru entity, and vice versa. For example, if a partnership manufactures QPP within the United States, or produces a qualified film or produces utilities in the United States, and distributes or leases, rents, licenses, sells, exchanges, or otherwise disposes of such property to a partner who then, without performing its own qualifying activity, leases, rents, licenses, sells, exchanges, or otherwise disposes of such property, then the partner's gross receipts from this latter lease, rental, license, sale, exchange, or other disposition are treated as non-DPGR. In addition, if a partner manufactures QPP within the United States, or produces a qualified film or produces utilities in the United States, and contributes or leases, rents, licenses, sells, exchanges,

or otherwise disposes of such property to a partnership which then, without performing its own qualifying activity, leases, rents, licenses, sells, exchanges, or otherwise disposes of such property, then the partnership's gross receipts from this latter disposition are treated as non-DPGR.

■ **Par. 9.** Section 1.199-7 is amended by adding new paragraph (b)(4) to read as follows:

§ 1.199-7 Expanded affiliated groups.

* * * * *

(b) * * *

(4) *Losses used to reduce taxable income of expanded affiliated group.* [Reserved]. For further guidance, see § 1.199-7T(b)(4).

* * * * *

■ **Par. 10.** Section 1.199-7T is added to read as follows:

§ 1.199-7T Expanded affiliated groups (temporary).

(a) [Reserved]. For further guidance, see § 1.199-7(a).

(b) *Computation of expanded affiliated group's section 199 deduction.*

(1) through (3) [Reserved]. For further guidance, see § 1.199-7(b)(1) through (3).

(4) *Losses used to reduce taxable income of expanded affiliated group—*

(i) *In general.* The amount of a net operating loss (NOL) sustained by any member of an expanded affiliated group (EAG) (as defined in § 1.199-7) that is used in the year sustained in determining an EAG's taxable income limitation under section 199(a)(1)(B) is not treated as an NOL carryover or NOL carryback to any taxable year in determining the taxable income limitation under section 199(a)(1)(B). For purposes of this paragraph (b)(4), an NOL is considered to be used if it reduces an EAG's aggregate taxable income, regardless of whether the use of the NOL actually reduces the amount of the deduction under § 1.199-1(a) (section 199 deduction) that the EAG would otherwise derive. An NOL is not considered to be used to the extent that it reduces an EAG's aggregate taxable income to an amount less than zero. If more than one member of an EAG has an NOL used in the same taxable year to reduce the EAG's taxable income, the members' respective NOLs are deemed used in proportion to the amount of their NOLs.

(ii) *Examples.* The following examples illustrate the application of this paragraph (b)(4). For purposes of these examples, assume that all relevant parties have sufficient W-2 wages so that the section 199 deduction is not limited under section 199(b)(1).

Example 1. (i) *Facts.* Corporations A and B are the only two members of an EAG. A and B are both calendar year taxpayers and they do not join in the filing of a consolidated Federal income tax return. Neither A nor B had taxable income or loss prior to 2010. In 2010, A has qualified production activities income (QPAI) (as defined in § 1.199-1(c)) and taxable income of \$1,000 and B has QPAI of \$1,000 and an NOL of \$1,500. In 2011, A has QPAI of \$2,000 and taxable income of \$1,000 and B has QPAI of \$2,000 and taxable income prior to the NOL deduction allowed under section 172 of \$2,000.

(ii) *Section 199 deduction for 2010.* In determining the EAG's section 199 deduction for 2010, A's \$1,000 of QPAI and B's \$1,000 of QPAI are aggregated, as are A's \$1,000 of taxable income and B's \$1,500 NOL. Thus, for 2010, the EAG has QPAI of \$2,000 and taxable income of (\$500). The EAG's section 199 deduction for 2010 is 9% of the lesser of its QPAI or its taxable income. Because the EAG has a taxable loss in 2010, the EAG's section 199 deduction is \$0.

(iii) *Section 199 deduction for 2011.* In determining the EAG's section 199 deduction for 2011, A's \$2,000 of QPAI and B's \$2,000 of QPAI are aggregated, giving the EAG QPAI of \$4,000. Also, \$1,000 of B's NOL from 2010 was used in 2010 to reduce the EAG's taxable income to \$0. The remaining \$500 of B's 2010 NOL is not considered to have been used in 2010 because it reduced the EAG's taxable income below \$0. Accordingly, for purposes of determining the EAG's taxable income limitation under section 199(a)(1)(B) in 2011, B is deemed to have only a \$500 NOL carryover from 2010 to offset a portion of its 2011 taxable income. Thus, B's taxable income in 2011 is \$1,500 which is aggregated with A's \$1,000 of taxable income. The EAG's taxable income limitation in 2011 is \$2,500. The EAG's section 199 deduction is 9% of the lesser of its QPAI of \$4,000 or its taxable income of \$2,500. Thus, the EAG's section 199 deduction in 2011 is 9% of \$2,500, or \$225. The results would be the same if neither A nor B had QPAI in 2010.

Example 2. The facts are the same as in *Example 1* except that in 2010 B was not a member of the same EAG as A, but instead was a member of an EAG with Corporation X, which had QPAI and taxable income of \$1,000 in 2010, and had neither taxable income nor loss in any other year. There were no other members of the EAG in 2010 besides B and X, and B and X did not file a consolidated Federal income tax return. As \$1,000 of B's NOL was used in 2010 to reduce the B and X EAG's taxable income to \$0, B is considered to have only a \$500 NOL carryover from 2010 to offset a portion of its 2011 taxable income for purposes of the taxable income limitation under section 199(a)(1)(B), just as in *Example 1*. Accordingly, the results for the A and B EAG in 2011 are the same as in *Example 1*.

Example 3. The facts are the same as in *Example 1* except that B is not a member of any EAG in 2011. Because \$1,000 of B's NOL was used in 2010 to reduce the EAG's taxable income to \$0, B is considered to have only a \$500 NOL carryover from 2010 to offset a portion of its 2011 taxable income for

purposes of the taxable income limitation under section 199(a)(1)(B), just as in *Example 1*. Thus, for purposes of determining B's taxable income limitation in 2011, B is considered to have taxable income of \$1,500, and B has a section 199 deduction of 9% of \$1,500, or \$135.

Example 4. Corporations A, B, and C are the only members of an EAG. A, B, and C are all calendar year taxpayers and they do not join in the filing of a consolidated Federal income tax return. None of the EAG members (A, B, or C) had taxable income or loss prior to 2010. In 2010, A has QPAI of \$2,000 and taxable income of \$1,000, B has QPAI of \$1,000 and an NOL of \$1,000, and C has QPAI of \$1,000 and an NOL of \$3,000. In 2011, prior to the NOL deduction allowed under section 172, A and B each has taxable income of \$200 and C has taxable income of \$5,000. In determining the EAG's section 199 deduction for 2010, A's QPAI of \$2,000, B's QPAI of \$1,000, and C's QPAI of \$1,000 are aggregated, as are A's taxable income of \$1,000, B's NOL of \$1,000, and C's NOL of \$3,000. Thus, for 2010, the EAG has QPAI of \$4,000 and taxable income of (\$3,000). In determining the EAG's taxable income limitation under section 199(a)(1)(B) in 2011, \$1,000 of B's and C's aggregate NOLs in 2010 of \$4,000 are considered to have been used in 2010 to reduce the EAG's taxable income to \$0, in proportion to their NOLs. Thus, \$250 of B's NOL from 2010 (\$1,000 x \$1,000/\$4,000) and \$750 of C's NOL from 2010 (\$1,000 x \$3,000/\$4,000) are deemed to have been used in 2010. The remaining \$750 of B's NOL and the remaining \$2,250 of C's NOL are not deemed to have been used because so doing would have reduced the EAG's taxable income in 2010 below \$0. Accordingly, for purposes of determining the EAG's taxable income limitation in 2011, B is deemed to have a \$750 NOL carryover from 2010 and C is deemed to have a \$2,250 NOL carryover from 2010. Thus, for purposes of determining the EAG's taxable income limitation, B's taxable income in 2011 is \$0 and C's taxable income in 2011 is \$2,750, which are aggregated with A's \$200 taxable income. B's unused NOL carryover from 2010 cannot be used to reduce either A's or C's 2011 taxable income. Thus, the EAG's taxable income limitation in 2011 is \$2,950, A's taxable income of \$200 plus B's taxable income of \$0 plus C's taxable income of \$2,750.

■ **Par. 11.** Section 1.199-8 is amended by adding new paragraphs (i)(5) and (6) to read as follows:

§ 1.199-8 Other rules.

* * * * *

(i) * * *
(5) *Tax Increase Prevention and Reconciliation Act of 2005.* [Reserved]. For further guidance, see § 1.199-8T(i)(5).

(6) *Losses used to reduce taxable income of expanded affiliated group.* [Reserved]. For further guidance, see § 1.199-8T(i)(6).

■ **Par. 12.** Section 1.199-8T is amended by adding new paragraphs (i)(5) and (6) to read as follows:

§ 1.199-8T Other rules (temporary).

* * * * *

(i) * * *
(5) *Tax Increase Prevention and Reconciliation Act of 2005.* Sections 1.199-2T(e)(2), 1.199-3T(i)(7) and (8), and 1.199-5T are applicable for taxable years beginning on or after October 19, 2006. A taxpayer may apply §§ 1.199-2T(e)(2), 1.199-3T(i)(7) and (8), and 1.199-5T to taxable years beginning after May 17, 2006, and before October 19, 2006 regardless of whether the taxpayer otherwise relied upon Notice 2005-14 (2005-1 CB 498) (see § 601.601(d)(2) of this chapter), the provisions of REG-105847-05 (2005-47 IRB 987) (see § 601.601(d)(2) of this chapter), or §§ 1.199-1 through 1.199-8. The applicability of §§ 1.199-2T(e)(2), 1.199-3T(i)(7) and (8), and 1.199-5T expires on October 19, 2009.

(6) *Losses used to reduce taxable income of expanded affiliated group.* Section 1.199-7T(b)(4) is applicable for taxable years beginning on or after October 19, 2006. A taxpayer may apply § 1.199-7T(b)(4) to taxable years beginning after December 31, 2004, and before October 19, 2006 regardless of whether the taxpayer otherwise relied upon Notice 2005-14 (2005-1 CB 498) (see § 601.601(d)(2) of this chapter), the provisions of REG-105847-05 (2005-47 IRB 987) (see § 601.601(d)(2) of this chapter), or §§ 1.199-1 through 1.199-9. The applicability of § 1.199-7T(b)(4) expires on October 19, 2009.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: October 12, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM-045-FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the New Mexico regulatory program (the "New Mexico program") under the Surface Mining

Control and Reclamation Act of 1977 (SMCRA or the Act). New Mexico proposed revisions to and additions of rules and revisions to statutes concerning the administrative appeals process and revisions to statutes concerning an extension of time for the authority of the Coal Surface Mining Commission (Commission). New Mexico revised its program to be consistent with SMCRA and the corresponding Federal regulations, streamline and clarify the administrative and judicial appeals process and ensure continuing authority for the New Mexico program.

EFFECTIVE DATE: October 19, 2006.

FOR FURTHER INFORMATION CONTACT: Willis Gainer, Telephone: (505) 248-5096, E-mail address: wgainer@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the New Mexico Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Submission of the Proposed Amendment

By letter dated November 18, 2005, New Mexico sent us an amendment to its program (Administrative Record No. 874) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment to include the changes made at its own

initiative to (1) Streamline and clarify the administrative and judicial appeals process and (2) extend the time for the authority of the Commission to operate.

We announced receipt of the proposed amendment in the February 13, 2006, **Federal Register** (71 FR 7477; Administrative Record No. NM-882). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 15, 2006. We received one agency comment from the State Historic Preservation Officer and one public comment from the Zuni Tribe.

During our review of the amendment, we identified one non-substantive editorial concern with an incorrect statutory citation referenced in a proposed rule. We notified New Mexico of this concern by letter dated March 24, 2006 (Administrative Record No. NM-887).

New Mexico responded in a letter dated March 27, 2006, by sending us a revised amendment (Administrative Record No. NM-888). New Mexico responded with a revision to correct the statutory cite, from the New Mexico Surface Mining Act of 1978 (NMSA), section 69-25A-30.G to NMSA, section 69-25A-29.A, referenced at proposed rule New Mexico Annotated Code (NMAC), section 19.8.12.1203.K. Because the correction was editorial in nature and did not substantively revise New Mexico's proposed amendment, we did not reopen the opportunity for public comment and we are proceeding with the final rule **Federal Register** document.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Minor Revisions to New Mexico's Rules and Statute

New Mexico proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved statutes in NMSA, and rules in the NMAC.

NMSA, sections 69-25A-18.A, B, C, D and F concerning the decisions of the Director of the New Mexico program and appeals;

NMSA, sections 69-25A-29.A, B, C, D and F concerning the administrative

review of a notice or order by the Director of the New Mexico program;

NMAC, sections 19.8.11.1100.A(3), D, and D(2), concerning public notices of filing of permit applications;

NMAC, section 19.8.11.1101.C, concerning opportunity for submission of written comments on permit applications;

NMAC, sections 19.8.11.1102.A and B(2), concerning the right to file written objections;

NMAC, sections 19.8.11.1103.A(3), B, B(1), D, E(1), and F, concerning hearings and conferences;

NMAC, section 19.8.11.1104.B, concerning public availability of information in permit applications on file with the Director;

NMAC, sections 19.8.11.1105.C(2), D, E, and F, concerning review of permit applications;

NMAC, sections 19.8.11.1106.C, D(3), F, G(1) and (2), and N, concerning criteria for permit approval or denial;

NMAC, sections 19.8.11.1107.A, B, B(1), B(1)(b), B(3), C, D, E, and F, concerning general procedures for imprudently issued permits;

NMAC, section 19.8.11.1108.B, concerning existing structures and criteria for permit approval or denial;

NMAC, sections 19.8.11.1109.A(4), B, B(1) and (2), B(2)(b), B(3), and D, concerning permit approval or denial actions;

NMAC, section 19.8.11.1110.A(1), concerning the rescission process for imprudently issued permits;

NMAC, section 19.8.11.1111.B, concerning permit terms;

NMAC, section 19.8.11.1113.C(2), concerning conditions of permit for environment, public health and safety;

NMAC, section 19.8.11.1114, concerning conformance of permit;

NMAC, sections 19.8.11.1115.A, B, and C, concerning verification of ownership or control application information;

NMAC, sections 19.8.11.1116.B and B(2)(b), concerning review of ownership or control and violation information;

NMAC, sections 19.8.11.1117.A, A(1), (2) and (3), B, C, D, D(1) and (2), and D(2)(a) and (b), concerning procedures for challenging ownership or control links shown in the applicant violator system;

NMAC, sections 19.8.11.1118.B, B(1), (2) and (3), B(3)(1), C, C(1)(a) through (c), and C(2), concerning standards for challenging ownership or control links and the status of violations; and

NMAC, sections 19.8.12.1203.A through J and L, concerning formal review of notices of violations, cessation orders and show cause orders.

Because these changes are minor, we find that they will not make New

Mexico's rules and statutes less effective than the corresponding Federal regulations or less stringent than SMCRA.

B. Revisions to New Mexico's Statutes and Rules That Require an Explanation and Basis for Approval

The Federal regulations at 30 CFR 732.15(b) require, among other things, that a State program include provisions that provide for (1) Administrative review of State program actions, in accordance with section 525 of SMCRA and 30 CFR Subchapter L, and (2) judicial review of State program actions in accordance with State law, as provided in section 526(e) of SMCRA, except that judicial review of State enforcement actions shall be in accordance with section 526 of SMCRA.

The Federal definitions at 30 CFR 730.5 set forth the standards for review of State program provisions which must be consistent with and in accordance with the Act and the counterpart Federal regulations. OSM defines consistent with and in accordance with to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal regulations in meeting the requirements of SMCRA.

As discussed below, New Mexico's proposed revisions of NMSA and the State's implementing regulations are in accordance with the corresponding sections of SMCRA and consistent with the Federal regulations.

1. NMSA, Section 69-25A-29.G, and NMAC, Section 19.8.12.1201, Elimination of Appeals for Review by the Commission of Decisions of the Director of the New Mexico Program

At its own initiative, New Mexico proposes to eliminate the provisions in NMSA at 69-25A-29.G and in NMAC, section 19.8.12.1201 that require administrative review by the Commission of decisions by the Director of the New Mexico program.

States must provide for administrative review of State program actions, in accordance with section 525 of SMCRA and 30 CFR subchapter L. States must also have a permit system which provides for review of decisions consistent with 30 CFR subchapter G. Section 525 of SMCRA and subchapter G require one level of administrative review. New Mexico is retaining its statutory provisions for administrative review of enforcement actions by the

Director of the New Mexico program in NMSA section 69–25A–29 and permitting decisions in NMSA section 69–25A–18. New Mexico also is retaining regulations at NMAC, section 19.8.12.1203, for administrative review of enforcement actions by the Director of the New Mexico program. The elimination of administrative review by the Commission leaves in place existing provisions for administrative review conducted by the Director of the New Mexico program for decisions concerning permitting and enforcement actions.

OSM finds that New Mexico's proposed revisions concerning administrative review at NMSA, section 69–25A–29.G, and NMAC, section 19.8.12.1201, are consistent with the Act and the Federal regulations, and the revisions will not make New Mexico's statutes and rules less stringent than section 525 of SMCRA or less effective than 30 CFR subchapters L and G.

2. NMSA, Section 69–25A–30.A, and NMAC, Sections 19.8.12.1202.A and 19.8.12.1203.K, Appeals of Decisions by the Director of the New Mexico Program to the State District Court

New Mexico proposes revisions of NMSA, section 69–25A–30.A, concerning judicial review, to clarify that appeals to a State District Court may be made by a party who is aggrieved by a decision of the Director, rather than the Commission, of the New Mexico program. Likewise, New Mexico proposes to revise NMAC, sections 10.8.12.1202.A and 19.8.12.1203.K, concerning judicial review, to state respectively that (1) A party to a proceeding before the Director who is aggrieved by a Director's decision issued after a hearing may obtain a review of that decision pursuant to NMSA section 39–3–1.1, and (2) the State District Court may review decisions concerning formal review of notices of violation, cessation orders, and show cause orders issued by the Director of the New Mexico program, pursuant to Subsection G of section 69–25A–30, NMSA, and NMAC 19.8.12.1202.

Existing NMAC 19.8.12.1202.A through D established procedures for judicial review of administrative decisions under the New Mexico program. New Mexico proposes to eliminate the procedures in NMAC 19.8.12.1202.A through D and revise NMAC 19.8.12.1202.A to require that appeals to State District Court will be subject to section 39–3–1.1 of the NMSA. Section 39–3–1.1 is applicable to all New Mexico State agencies for appeal of final agency decisions to the State District Court and covers

procedures for application and scope of review.

The Federal regulation at 30 CFR 732.15(b)(15) requires State programs to provide for judicial review of State program actions in accordance with State laws, as provided in section 526(e) of SMCRA, except that judicial review of State enforcement actions shall be in accordance with section 526 of SMCRA. Section 526(e) of SMCRA requires that actions of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law. Sections 526(a) through (d) of SMCRA establish procedures for such judicial review of enforcement actions. Section 526(a) specifies that actions constituting rulemaking and orders or decisions in a civil penalty proceeding, issued by the Secretary of the Interior, may be subject to judicial review; it also provides the location and timeframe for filing of a petition for judicial review. Section 526(b) specifies the actions of the court hearing such a petition. Section 526(c) specifies the circumstances necessary for a court to grant temporary relief in the case of a proceeding to review any order or decision for cessation of coal mining and reclamation operations. Section 526(d) specifies that the commencement of a proceeding for judicial review shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the Secretary. There are no Federal regulations that set forth procedures for judicial review.

The procedures set forth in NMSA 39–3–1.1 apply to judicial review of any final decision by a New Mexico agency, and among other things, specify how final agency decisions must be documented and published, provide for appeal of a decision by any person aggrieved by the decision, specify the actions that may be taken by the district court, and provide for review of the State District Court decision by a party to the appeal.

The procedures set forth by New Mexico in NMSA 39–3–1.1 provide for similar procedures concerning judicial review set forth in SMCRA at sections 526(a) through (d) and demonstrate the ability for a person to obtain judicial review of all agency decisions as required by SMCRA at section 526(e).

These proposed revisions are also consistent with New Mexico's revisions discussed in finding B.1 above that eliminate administrative review by the Commission of decisions, other than those concerning promulgation of rules, by the Director. (See finding No. 3 below for New Mexico's provisions

concerning judicial review of agency rulemaking decisions.)

Therefore, OSM finds that the proposed revisions concerning judicial review at NMSA, section 69–25A–30.A, and at NMAC, sections 10.8.12.1202.A and 19.8.12.1203.K are consistent with the Act and the Federal regulations and the revisions will not make New Mexico's statutes and rules less stringent than section 526 of SMCRA or less effective than 30 CFR subchapters L and G.

3. NMAC, Section 19.8.12.1202.B, Judicial Review of Decisions by the Commission Concerning Adoption of a Rule, Amendment of a Rule or Repeal of a Rule

Existing NMAC 19.8.12.1202.E provides that persons aggrieved by a rule or amendment or repeal of a rule the Commission adopts may appeal to the State Court of Appeals. The existing regulation also includes procedures and timeframes for such an appeal as well as the standards for review by the court. As described in finding B.2 above, New Mexico proposes to eliminate existing NMAC 19.8.12.1202.B, C and D so that New Mexico's existing NMAC 19.8.12.1202.E becomes NMAC 19.8.12.1202.B. New Mexico proposes to eliminate the existing procedures, timeframe and standards in proposed NMAC 19.8.12.1202.B and instead proposes to cross-reference the statutory provision at NMSA, Subsection B of 69–25A–30, which sets forth the same procedures, timeframes and standards for judicial review.

30 CFR 732.15(b)(15) requires that State programs provide for judicial review of State program actions in accordance with State law, as provided in section 526(e) of the Act. Section 526(e) states that actions of the State regulatory authority shall be subject to judicial review by a court of competent jurisdiction in accordance with State law. There are no Federal regulations for section 526(e) of the Act.

OSM finds that New Mexico's proposed NMAC 19.8.12.1202.B, concerning judicial review of rulemaking by the Commission, and the reference to NMSA, subsection B of 69–25A–30, are in accordance with the requirements of section 526(e) of SMCRA for judicial review.

4. NMSA, Section 69–25A–29.F, Administrative Review of a Notice or Order by the Director of the New Mexico Program

New Mexico proposes to revise NMSA, section 69–25A–29.F, concerning administrative review, by deleting references to the Commission.

With these revisions, New Mexico removed authority from the Commission and left authority with the Director of the New Mexico program to determine whether expenses (that have been reasonably incurred for or in connection with participation in administrative proceedings, including any judicial review of agency actions) may be assessed against any party.

Section 525(e) of SMCRA allows for an award of a sum equal to the aggregate amount of all costs, expenses, and attorney fees determined by the Secretary of the Interior to have been reasonably incurred by a person for or in connection with his participation in administrative proceedings, including any judicial review of agency actions.

As discussed in finding No. B.1. above, New Mexico's proposed revisions to delete the additional administrative review by the Commission of the Director's decisions, is consistent with section 525 of SMCRA. OSM finds that New Mexico's proposed revisions to NMSA, section 69-25A-29.F, deleting references to the Commission, are consistent with and no less stringent than section 525(e) of SMCRA.

5. NMSA, Section 69-25A-36, Termination of Agency Life

New Mexico proposes revisions of NMSA at section 69-25A-36, concerning termination of agency life, to extend the authority of the Commission to operate according to the provisions of NMSA from July 1, 2005, until July 1, 2012.

The Commission, created in NMSA at section 69-25A-1, meets at least once a year to adopt, amend and repeal rules. SMCRA, at section 503(a), and the Federal regulation at 30 CFR 732.15(a) requires that the State program provide for the State to carry out the provisions and meet the purposes of SMCRA within the State and that the State's laws and regulations are in accordance with the provisions of SMCRA. Because New Mexico's proposed revision extends the authority of the Commission to operate until July 1, 2012, and therefore enables rulemaking for the New Mexico program, OSM approves the proposed revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. NM-876). We received one comment letter.

By letter dated February 2, 2006 (Administrative Record No. NM-879),

we received comments from the Governor of the Zuni Tribe in Zuni, New Mexico. Our response to the Governor's comments regarding New Mexico's proposed rule revisions at NMAC, section 19.8.12.1202.A, concerning judicial review of final agency decisions, is discussed below.

The Governor raised a concern that the proposed revision to NMAC, section 19.8.12.1202.A, would limit a person's ability to challenge agency decisions.

New Mexico's proposed revisions at NMAC, sections 19.8.12.1201 and 19.8.12.1202.A eliminate the need for a second administrative hearing before the Commission prior to allowing an appeal to the State District Court; this rule revision reflects the same statutory revision of the NMSA at section 69-25A-29.G.

As discussed in finding No. B.2 above, New Mexico's proposed elimination of the opportunity for a second administrative hearing is consistent with the counterpart Federal regulations at 30 CFR 775.13.

The Governor also expressed concern that because only certain agency decisions can be the subject of an administrative hearing, some decisions may not therefore be appealed to the State District Court.

As discussed in finding B.1 above, New Mexico's proposed revision of NMSA, section 69-25A-30.A, and NMAC, sections 19.8.12.1202.A and 19.8.12.1203.K, provide for appeals of decisions by the Director to the State District Court. New Mexico's NMSA, section 69-25A-29, provides for administrative review of enforcement actions and NMSA, section 69-25A-18, provides for administrative review of permitting decisions. New Mexico is also retaining regulations at NMAC, section 19.8.12.1203, for administrative review of enforcement actions by the Director. The elimination of administrative review by the Commission leaves in place existing provisions for administrative review conducted by the Director for decisions concerning both permitting and enforcement actions and appeal of these decisions to the State District Court. Therefore, New Mexico's proposed revision is consistent with and in accordance with section 526 of SMCRA and 30 CFR subchapters L and G.

The Governor also correctly noted that the existing New Mexico rule at NMAC, section 19.8.12.1200.A, allows an administrative appeal of, among other final decisions made by the Director of the New Mexico program, a decision concerning a permit modification; this opportunity for review has not been revised. OSM notes

that New Mexico's allowance for an administrative appeal of a decision concerning a permit modification at NMAC section 19.8.12.1200.A is not specifically required under the counterpart Federal regulation at 30 CFR 775.11(a) (see OSM's approval of NMAC, section 19.8.12.1200.A, on April 13, 2004, 69 FR 19321, at 19322, finding No. C.2.).

For the reasons discussed above, we are not requiring any revision of New Mexico's proposed rules in response to these comments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (Administrative Record No. NM-876). We received no comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in this amendment pertains to air or water quality standards. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. NM-876). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 20, 2006, we requested comments on New Mexico's amendment (Administrative Record No. NM-876). The SHPO responded on February 9, 2006, that it had no comments because the proposed amendments do not affect cultural resources (Administrative Record No. NM-881). We did not receive a response from the ACHP.

V. OSM's Decision

Based on the above findings, we approve New Mexico's November 18, 2005, proposed amendment, as revised on March 27, 2006.

We approve New Mexico's proposed statutory revisions as they were enacted by New Mexico (effective on June 17,

2005) and rule revisions as promulgated by New Mexico (effective on April 28, 2006).

To implement this decision, we are amending the Federal regulations at 30 CFR part 931, which codify decisions concerning the New Mexico program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society

and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does 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.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 11, 2006.

Allen D. Klein,
Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 931 is amended as set forth below:

PART 931—NEW MEXICO

■ 1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 931.15 is amended in the table by adding a new entry in

chronological order by “Date of final publication” to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* November 18, 2005, as revised on March 27, 2006.	* October 19, 2006 ...	* NMSA, sections 69–25A–18.A, B, C, D and F, concerning the decisions of the Director and appeals; NMSA, sections 69–25A–29.A, B, C, D, and F, concerning the administrative review of a notice or order by the Director; NMSA, sections 69–25A–29.G, concerning deletion of statutes allowing for review by the Commission of decisions of the Director; NMSA, section 69–25A–30.A, concerning judicial review of final decisions by the Director; NMSA, sections 69–25A–36, concerning termination of agency life; NMAC, sections 19.8.11.1100.A(3), D, and D(2), concerning public notices of filing of permit applications; NMAC, section 19.8.11.1101.C, concerning opportunity for submission of written comments on permit applications; NMAC, sections 19.8.11.1102.A and B(2), concerning the right to file written objections; NMAC, sections 19.8.11.1103.A(3), B, B(1), D, E(1), and F, concerning hearings and conferences; NMAC, section 19.8.11.1104.B, concerning public availability of information in permit applications on file with the Director; NMAC, sections 19.8.11.1105.C(2), D, E, and F, concerning review of permit applications; NMAC, sections 19.8.11.1106.C, D(3), F, G(1) and (2), and N, concerning criteria for permit approval or denial; NMAC, sections 19.8.11.1107.A, B, B(1), B(1)(b), B(3), C, D, E, and F, concerning general procedures for improvidently issued permits; NMAC, section 19.8.11.1108.B, concerning existing structures and criteria for permit approval or denial; NMAC, sections 19.8.11.1109.A(4), B, B(1) and (2), B(2)(b), B(3), and D, concerning permit approval or denial actions; NMAC, section 19.8.11.1110.A(1), concerning the rescission process for improvidently issued permits; NMAC, section 19.8.11.1111.B, concerning permit terms; NMAC, section 19.8.11.1113.C(2), concerning conditions of permit for environment, public health and safety; NMAC, section 19.8.11.1114, concerning conformance of permit; NMAC, sections 19.8.11.1115.A, B, and C, concerning verification of ownership or control application information; NMAC, sections 19.8.11.1116.B and B(2)(b), concerning review of ownership or control and violation information; NMAC, sections 19.8.11.1117.A, A(1), (2) and (3), B, C, D, D(1) and (2), and D(2)(a) and (b), concerning procedures for challenging ownership or control links shown in the applicant violator system; NMAC, sections 19.8.11.1118.B, B(1), (2) and (3), B(3)(1), C, C(1)(a) through (c), and C(2), concerning standards for challenging ownership or control links and the status of violations; NMAC, section 19.8.12.1201, deletion of rules allowing for review by the Commission of decisions of the Director; NMAC, sections 19.8.12.1202.A, concerning judicial review of final decisions by the Director; NMAC, sections 19.8.12.1202.B, concerning judicial review of decisions by the Commission; and NMAC, sections 19.8.12.1203.A through L, concerning formal review of notices of violations, cessation orders, and show cause orders.

[FR Doc. E6–17521 Filed 10–18–06; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law)

has determined that USS HAWAII (SSN 776) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: Effective Date: October 5, 2006.

FOR FURTHER INFORMATION CONTACT: Commander C. J. Spain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This

amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS HAWAII(SSN 776) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(c) pertaining to the arc of visibility of the stern light; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k) pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance

with the applicable 72 COLREGS requirements. All other previously certified deviations from the 72 COLREGS not affected by this amendment remain in effect.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table One of § 706.2 is amended by adding, in numerical order, the following entry for the USS HAWAII (SSN 776):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS HAWAII	SSN 776	2.90

■ 3. Table Three of § 706.2 is amended by adding, in numerical order, the following entry for USS HAWAII:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE 3

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance in-board of ship's sides in meters § 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light height above hull in meters; 2(K) annex 1	Anchor lights relation ship of aft light to forward light in meters 2(K) annex 1
USS HAWAII	SSN 776 ....	.....	.....	205°	4.37	11.05	2.8	0.30 below.

Approved: October 5, 2006.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. E6-17431 Filed 10-18-06; 8:45 am]

BILLING CODE 3810-FF-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2006-0399; FRL-8232-1]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of Allen County 8-hour Ozone Nonattainment Area to Attainment for Ozone; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the EPA is withdrawing the August 30, 2006 (71 FR 51489), direct final rule approving the

State of Indiana's May 30, 2006, request to redesignate the 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area of Allen County, Indiana, to attainment for the 8-hour ozone NAAQS; and for EPA approval of an Indiana State Implementation Plan (SIP) revision containing a 14-year maintenance plan for Allen County. In the direct final rule, EPA stated that if adverse comments were submitted by September 29, 2006, the rule would be withdrawn and not take effect. On September 4, 2006, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on August 30, 2006 (71 FR 51546). EPA

will not institute a second comment period on this action.

DATES: The direct final rule published at 71 FR 51489 on August 30, 2006 is withdrawn as of October 19, 2006.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886-6052, Rosenthal.steven@epa.gov.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, and Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: October 6, 2006.

Gary Gulezian,

Acting Regional Administrator, Region 5.

PART 40—[AMENDED]

■ Accordingly, the amendments to 40 CFR 52.777 and 81.315 published in the **Federal Register** on August 30, 2006 (71 FR 51489) on pages 51489–51500 is withdrawn as of October 19, 2006.

[FR Doc. E6-17432 Filed 10-18-06; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819 and 1852

RIN 2700-AD17

Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Contractor Recertification of Program Compliance

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts the proposed rule published in the **Federal Register** on September 30, 2005 as final with minor, non-substantive editorial changes. The final rule amends the NASA FAR Supplement (NFS) to include a requirement for NASA's Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) program contractors to complete a recertification of program

compliance prior to final payment. This requirement is being established to facilitate the Government's ability to hold contractors accountable for compliance with Federal statute, regulation, and requirements associated with the SBIR and STTR programs. In addition, the final rule corrects the following in the proposed rule: Revises the section numbering of the prescription identified in NFS 1832.12 of the proposed rule from NFS 1832.1200 to NFS 1819.7302(f); revises the numbering of the clause from NFS 1852.232-83 in the proposed rule to NFS 1852.219-85 in the final rule; makes minor revisions to conform clause titles with those in the clause prescriptions; revises the Supplementary Information, Paragraph B. Regulatory Flexibility Act to expand the justification that the rule does not have a significant economic impact on small entities; and makes other minor editorial corrections.

DATES: *Effective Date:* October 19, 2006.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Seppi, NASA, Office of Procurement, Contract Management Division, (202) 358-0447, e-mail: Marilyn.Seppi-1@nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

NASA published a proposed rule in the **Federal Register** on September 30, 2005 (70 FR 57240-57242). The public comment period ended on November 29, 2005. One public comment was received. The comment stated that the proposed rule constituted an undue burden and would have a significant (adverse) impact on small businesses. The respondent also objected to long-standing SBIR/STTR program requirements relating to limitations on subcontracting. NASA's Response: Regarding the issue of additional burden, NASA believes that it is in the Government's best interest to implement the proposed rule requiring SBIR/STTR contractors to recertify their compliance with Program requirements prior to final payment to hold contractors accountable for Program compliance and to enable the pursuit of criminal and civil cases when noncompliance constitutes a fraud against the Government. NASA believes that the additional burden resulting from the recertification statement requirement is minimal. The respondent's comment objecting to current SBIR/STTR program requirements relating to limitations on subcontracting is noted; however, these are existing program requirements that apply regardless of this rule. Therefore, this final rule amends NASA FAR

Supplement Parts 1819 and 1852 to require that all research and development contracts awarded under the SBIR and STTR Programs include the clause at 1852.219-85, Conditions for Final Payment—SBIR and STTR Contracts. This clause provides direction to the contractor regarding completion and submission of a recertification requirement prior to and as a condition of final payment. In addition, the rule requires use of the clauses at 1852.219-80, Limitation on Subcontracting—SBIR Phase I Program, 1852.219-81, Limitation on Subcontracting—SBIR Phase II Program, and 1852.219-82, Limitation on Subcontracting—STTR Program, in the respective SBIR and STTR contracts to delineate the subcontracting limitations necessary for contract performance. The rule also requires the use of clauses at 1852.219-83, Limitation of the Principal Investigator—SBIR Program, and 1852.219-84, Limitation of the Principal Investigator—STTR Program, respectively, to describe the employment requirements of the principal investigator.

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

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the recertification prior to final payment to awardees is merely an updated statement by the contractor provided in the representations and certifications submitted with the proposal in accordance with the Small Business Administration's SBIR Program Directive. The information included in the contractor's statement addresses subcontracting limitations and contracting officer consent requirements which are part of a contractor's normal contract administration responsibilities in monitoring compliance with contract and program requirements. Accordingly, the recertification is not considered to have a significant impact.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the changes to the NFS impose recordkeeping or information collections, or collection of information from offerors or contractors. The Office of Management and Budget under 44

U.S.C. 3501, *et seq.*, has approved this as a new collection under OMB Control Number 2700-0124.

List of Subjects in 48 CFR 1819 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1819 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1819 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS PROGRAMS

■ 2. Add Subpart 1819.73 to read as follows:

Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs 1819.7301 Scope of subpart.

Sec.
1819.7301 Scope of subpart.
1819.7302 NASA contract clauses.

Subpart 1819.73—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

1819.7301 Scope of subpart.

The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs were established and issued under the authority of the Small Business Act codified at 15 U.S.C. 631, as amended, and the Small Business Innovation Development Act of 1982 (Pub. L. 97-219), codified with amendments at 15 U.S.C. 638. The Small Business Act requires that the Small Business Administration (SBA) issue SBIR and STTR Program Policy Directives for the general conduct of the SBIR/STTR Programs within the Federal Government. The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in federally-funded research or research and development (R/R&D). Specific program purposes are to: Stimulate technological innovation; use small business to meet Federal R/R&D needs; foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51-percent owned and controlled by women, in technological innovation; and increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity and economic growth. Federal agencies

participating in the SBIR/STTR Programs (SBIR/STTR agencies) are obligated to follow the guidance provided by the SBA Policy Directive. NASA is required to ensure its policies, regulations, and guidance on the SBIR/STTR Programs are consistent with SBA's Policy Directive. Contracting officers are required to insert the applicable clauses identified in 1819.7302 in all SBIR and STTR contracts.

1819.7302 NASA contract clauses.

(a) Contracting officers shall insert the clause at 1852.219-80, Limitation on Subcontracting—SBIR Phase I Program, in all Phase I contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(b) Contracting officers shall insert the clause at 1852.219-81, Limitation on Subcontracting—SBIR Phase II Program, in all Phase II contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(c) Contracting officers shall insert the clause at 1852.219-82, Limitation on Subcontracting—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(d) Contracting officers shall insert the clause at 1852.219-83, Limitation of the Principal Investigator—SBIR Program, in all contracts awarded under the Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(e) Contracting officers shall insert the clause at 1852.219-84, Limitation of the Principal Investigator—STTR Program, in all contracts awarded under the Small Business Technology Transfer (STTR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

(f) Contracting officers shall insert the clause at 1852.219-85, Conditions for Final Payment—SBIR and STTR Contracts, in all contracts awarded under the Small Business Technology Transfer (STTR) Program and in all Phase I and Phase II contracts awarded under the Small Business Technology Transfer (STTR) Small Business Innovation Research (SBIR) Program established pursuant to Public Law 97-219 (the Small Business Innovation Development Act of 1982).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add sections 1852.219-80, 1852.219-81, 1852.219-82, 1852.219-83, 1852.219-84, and 1852.219-85 to read as follows:

1852.219-80 Limitation on Subcontracting—SBIR Phase I Program.

As prescribed in 1819.7302(a), insert the following clause:

Limitation on Subcontracting—SBIR Phase I Program(Oct 2006)

The Contractor shall perform a minimum of two-thirds of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer.

(End of clause)

1852.219-81 Limitation on Subcontracting—SBIR Phase II Program.

As prescribed in 1819.7302(b), insert the following clause:

Limitation on Subcontracting—SBIR Phase II Program (Oct 2006)

The Contractor shall perform a minimum of one-half of the research and/or analytical effort (total contract price less profit) conducted under this contract. Any deviation from this requirement must be approved in advance and in writing by the Contracting Officer. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

1852.219-82 Limitation on Subcontracting—STTR Program.

As prescribed in 1819.7302(c), insert the following clause:

Limitation on Subcontracting—STTR Program(Oct 2006)

The Contractor shall perform a minimum of 40 percent of the work under this contract (total contract price including cost sharing if any, less profit if any). A minimum of 30 percent of the work under this contract shall be performed by the research institution. Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the Contractor not subcontract technical or scientific work without the Contracting Officer's advance approval.

(End of clause)

1852.219-83 Limitation of the Principal Investigator—SBIR Program.

As prescribed in 1819.7302(d), insert the following clause:

Limitation of the Principal Investigator—SBIR Program(Oct 2006)

The primary employment of the principal investigator (PI) shall be with the small business concern (SBC)/Contractor during the conduct of this contract. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor. This precludes full-time employment with another organization. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of Clause)

1852.219–84 Limitation of the Principal Investigator—STTR Program.

As prescribed in 1819.7302(e), insert the following clause:

Limitation of the Principal Investigator—STTR Program (Oct 2006)

(a) The primary employment of the principal investigator (PI) identified in paragraph (b) of this clause is with the small business concern (SBC)/Contractor or the research institution (RI). Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC/Contractor or RI.

(b) The PI is considered to be key personnel in the performance of this contract. The SBC/Contractor, whether or not the

employer of the PI, shall exercise primary management direction and control over the PI and be overall responsible for the PI's performance under this contract. Deviations from these requirements must be approved in advance and in writing by the Contracting Officer and are not subject to a change in the firm-fixed price of the contract. The PI for this contract is (*insert name*).

(End of Clause)

1852.219–85 Conditions for Final Payment—SBIR and STTR Contracts.

As prescribed in 1819.7302(f), insert the following clause:

Conditions for Final Payment—SBIR AND STTR Contracts(Oct 2006)

As a condition for final payment under this contract, the Contractor shall provide the following certifications as part of its final payment invoice request:

During performance of this contract—

1. Essentially equivalent work performed under this contract has not been proposed for funding to another Federal agency;
2. No other Federal funding award has been received for essentially equivalent work performed under this contract;
3. Deliverable items submitted under this contract have not been submitted as deliverable items under another Federal funding award;
4. *For SBIR contracts:* The subcontracting limitation set forth in this contract was not exceeded except as approved in writing by

the Contracting Officer on (*insert date of approval or modification number*);

5. *For STTR contracts:* The subcontracting limitation set forth in this contract was not exceeded;

6. *For SBIR contracts:* The primary employment of the principal investigator (PI) identified in this SBIR contract was with the Contractor, except as approved in writing by the Contracting Officer on (*insert date of approval or modification number*); and

7. *For STTR contracts:* The primary employment of the principal investigator (PI) identified in this STTR contract was the SBC/Contractor or the research institution (RI). The PI identified in the STTR contract was considered key in the performance of this contract. The SBC/Contractor, whether or not the employer of the PI, did exercise primary management direction and control over the PI and was overall responsible for the PI's performance under this contract. Any substitutions of this individual were approved in writing by the Contracting Officer on (*insert date of approval or modification number*).

I understand that the willful provision of false information or concealing a material fact in this representation is a criminal offense under Title 18 USC, Section 1001, False Statements, as well as Title 18 U.S.C., Section 287, False Claims.

(End of Clause)

[FR Doc. E6–17043 Filed 10–18–06; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register

Vol. 71, No. 202

Thursday, October 19, 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-2006-26084; Directorate Identifier 2006-NM-063-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-8-62, DC-8-63, DC-8-62F, and DC-8-63F 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 McDonnell Douglas Model DC-8-62, DC-8-63, DC-8-62F, and DC-8-63F airplanes. This proposed AD would require revising the wiring for the engine thrust brake circuit and indicating circuit and other specified actions, or rerouting the wiring at plug P1-1762A on the electrical power center generator control panel, as necessary. This proposed AD results from the determination that the thrust reverser systems on these airplanes do not adequately preclude inadvertent deployment of the thrust reversers. We are proposing this AD to prevent inadvertent deployment of the thrust reversers during takeoff or landing, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by December 4, 2006.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

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

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

FOR FURTHER INFORMATION CONTACT:

William Bond, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5253; 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 in the **ADDRESSES** section. Include the docket number "FAA-2006-26084; Directorate Identifier 2006-NM-063-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

In April 1992, the FAA issued a document titled "Criteria for Assessing Transport Turbojet Fleet Thrust Reverser Safety." This document is based upon the premise that no failure of thrust reverser components anticipated to occur in service should prevent continued safe flight and landing of an airplane. In order to comply with the criteria in the document, Boeing recommends incorporating a wiring modification of the thrust reverser system on McDonnell Douglas Model DC-8-62, DC-8-63, DC-8-62F, and DC-8-63F airplanes. Based upon the Boeing safety evaluations, we have determined that the existing thrust reverser systems on these airplanes do not adequately preclude inadvertent deployment of the thrust reversers. Inadvertent deployment of the thrust reversers during takeoff or landing could result in loss of control of the airplane.

Relevant Service Information

We have reviewed McDonnell Douglas DC-8 Service Bulletin 78-95, Revision 2, dated March 10, 1971; and Revision 1, dated December 29, 1970. The service bulletins describe procedures for either revising the wiring for the engine thrust brake circuit and indicating circuit and doing other specified actions, or rerouting the wiring at plug P1-1762A on the electrical power center (EPC) generator control panel, depending on the configuration of the airplane. The other specified actions include modifying and reidentifying a nameplate and accomplishing the adjustment/test of the thrust reverser system. For certain airplanes, the other specified actions also include installing a new bracket, terminal boards, and clamps.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and Service Bulletin."

Difference Between the Proposed AD and Service Bulletin

Although the service bulletins do not recommend a compliance time for accomplishing the modification, we have coordinated a compliance time of 27 months with Boeing. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, we find a compliance time of 27 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

There are about 70 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 45 airplanes of U.S. registry. The proposed actions would take between 1 and 5 work hours per airplane, depending on airplane configuration, at an average labor rate of \$80 per work hour. For a certain airplane configuration, required parts would cost about \$9 per airplane. For a certain other airplane configuration, required parts would cost about \$2,825 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between \$4,005 and \$145,125, or between \$89 and \$3,225 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):

McDonnell Douglas: Docket No. FAA-2006-26084; Directorate Identifier 2006-NM-063-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 4, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC-8-62 and DC-8-63 airplanes and Model DC-8-62F and DC-8-63F airplanes, certificated in any category; as identified in McDonnell Douglas DC-8 Service Bulletin 78-95, Revision 2, dated March 10, 1971.

Unsafe Condition

(d) This AD results from the determination that the thrust reverser systems on McDonnell Douglas Model DC-8-62, DC-8-63, Model DC-8-62F, and DC-8-63F airplanes do not adequately preclude inadvertent deployment of the thrust reversers. We are issuing this AD to prevent inadvertent deployment of the thrust reversers during takeoff or landing, which could result in loss of control 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.

Modification of Engine Thrust Brake Circuitry

(f) Within 27 months after the effective date of this AD, do the applicable action specified in paragraph (f)(1) or (f)(2) of this AD, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of McDonnell Douglas DC-8 Service Bulletin 78-95, Revision 2, dated March 10, 1971; or Revision 1, dated December 29, 1970.

(1) Revise the wiring for the engine thrust brake circuit and indicating circuit, and do all other specified actions before further flight after revising the wiring.

(2) Reroute the wiring at plug P1-1762A on the electrical power center generator control panel.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on October 10, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17421 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 740, 742, 744 and 748**

[Docket No. 06022180-6266-02]

RIN 0694-AD75

Revisions and Clarification of Export and Reexport Controls for the People's Republic of China (PRC); New Authorization Validated End-User**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period on a July 6, 2006 proposed rule in which the Bureau of Industry and Security (BIS) proposed amending the Export Administration Regulations (EAR) to revise and clarify the United States' policy for exports and reexports of dual-use items to the People's Republic of China (PRC).

DATES: All comments on the proposed rule must be received by no later than December 4, 2006.

ADDRESSES: Written comments on this rule may be sent to the Federal eRulemaking Portal: <http://www.regulations.gov>, or by e-mail to publiccomments@bis.doc.gov. Include RIN 0694-AD75 in the subject line of the message. Comments may be submitted by mail or hand delivery to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694-AD75; or by fax to (202) 482-3355.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice or the proposed rule, contact Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, by telephone at (202) 482-2440 or by fax at (202) 482-3355.

SUPPLEMENTARY INFORMATION: On July 6, 2006, the Bureau of Industry and Security (BIS) published a proposed rule in the **Federal Register** (71 FR 38313) that proposed amending the Export Administration Regulations (EAR) to revise and clarify the United States' policy for exports and reexports of dual-use items to the People's Republic of China (PRC). Specifically, the proposed rule states that it is the policy of the United States Government to prevent exports that would make a material contribution to the military

capability of the PRC, while facilitating U.S. exports to legitimate civil end-users in the PRC. Consistent with this policy, BIS proposed to amend the EAR by revising and clarifying United States licensing requirements and licensing policy on exports and reexports of goods and technology to the PRC. The main amendments in the proposed rule include restrictions on certain exports and reexports for military end-uses in the PRC; a change in scope of end-user certificate requirement for the PRC; and a new Authorization Validated End-User (VEU).

The proposed rule indicated that the deadline for public comments closes on November 3, 2006. BIS is now extending the comment period until December 4, 2006, to allow the public more time to submit comments in light of discussions heard during the public meetings.

Dated: October 13, 2006.

Eileen Albanese,*Director, Office of Exporter Services.*

[FR Doc. E6-17429 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-33-P**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-127819-06]

RIN 1545-BF79

TIPRA Amendments to Section 199**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations concerning the application of section 199 of the Internal Revenue Code, which provides a deduction for income attributable to domestic production activities. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by January 17, 2007. Outlines of topics to be discussed at the public hearing scheduled for February 5, 2007, must be received by January 16, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-127819-06), room 5203, Internal Revenue Service, PO Box

7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-127819-06), Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell St., Arlington, VA, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-127819-06). The public hearing will be held in the auditorium of the New Carrollton Federal Building, 5000 Ellin Rd., Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Paul Handleman or Lauren Ross Taylor, (202) 622-3040; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly D. Banks, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 199. The temporary regulations provide guidance concerning the amendments made by the Tax Increase Prevention and Reconciliation Act of 2005 to section 199 of the Internal Revenue Code. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS.

Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 5, 2007 at 10 a.m., in the auditorium of the New Carrollton Federal Building, 5000 Ellin Rd., Lanham, Maryland 20706. Due to building security procedures, visitors must enter at the main entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by January 16, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Paul Handleman and Lauren Ross Taylor, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.199–2 is amended to read as follows:

§ 1.199–2 Wage limitation.

[The text of proposed § 1.199–2 is the same as the text of § 1.199–2T published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.199–3 is amended to read as follows:

§ 1.199–3 Domestic production gross receipts.

[The text of proposed § 1.199–3 is the same as the text of § 1.199–3T published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.199–5 is amended to read as follows:

§ 1.199–5 Application of section 199 to pass-thru entities for taxable years beginning after May 17, 2006, the enactment date of the Tax Increase Prevention and Reconciliation Act of 2005.

[The text of proposed § 1.199–5 is the same as the text of § 1.199–5T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.199–7 is amended to read as follows:

§ 1.199–7 Expanded affiliated groups.

[The text of proposed § 1.199–7 is the same as the text of § 1.199–7T published elsewhere in this issue of the **Federal Register**.]

Par. 6. Section 1.199–8 is amended to read as follows:

§ 1.199–8 Other rules.

[The text of proposed § 1.199–8 is the same as the text of § 1.199–8T published elsewhere in this issue of the **Federal Register**.]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–17409 Filed 10–18–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–136806–06]

RIN 1545–BF87

Treatment of Payments in Lieu of Taxes Under Section 141

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations modifying the

standards for treating payments in lieu of taxes (PILOTs) as generally applicable taxes for purposes of the private security or payment test under section 141 of the Internal Revenue Code (Code). The proposed regulations provide State and local governmental issuers of tax-exempt bonds with guidance for applying the private security or payment test. The proposed regulations affect State and local governmental issuers of tax-exempt bonds. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by January 16, 2007. Outlines of topics to be discussed at the public hearing scheduled for February 13, 2007, at 10 a.m., must be received by January 16, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–136806–06), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to CC:PA:LPD:PR (REG–136806–06), Courier's Desk, Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell Street, Arlington, Virginia or sent electronically, via the IRS Internet site at <http://www.irs.gov/reg> or via the Federal eRulemaking Portal at www.regulations.gov (IRS REG–136806–06). The public hearing will be held in the auditorium, Internal Revenue Service, New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Vicky Tsilas or Carla Young, at (202) 622–3980; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Kelly Banks, at (202) 622–0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1). Final regulations (TD 8712) under section 141 of the Code were published in the **Federal Register** on January 16, 1997 (62 FR 2275) to provide comprehensive guidance on most aspects of the private activity bond restrictions. This document amends the Income Tax Regulations under section 141 of the Code by proposing modifications to the standards for treating payments in lieu of taxes as generally applicable taxes for purposes of the private security or payment test under section 141. These regulations are published as proposed

regulations to provide an opportunity for public review and comment.

Explanation of Provisions

I. Introduction

In general, interest on State and local governmental bonds is excludable from gross income under section 103 of the Code. Interest on a private activity bond, other than a qualified bond under section 141(e), is not excludable from gross income. Section 141(a) classifies a bond as a private activity bond if it is part of an issue that meets both the private business use test under section 141(b)(1) (the private business use test) and the private security or payment test under section 141(b)(2) (the private payment test). In addition, section 141(a) independently treats a bond as a private activity bond if it is part of an issue that meets the private loan test under section 141(c).

Section 141(b)(2) provides generally that an issue meets the private payment test if the payment of the debt service on more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly (1) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (2) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

II. Private Payment Test in General

Sections 1.141-4(c) and 1.141-4(d) of the Income Tax Regulations provide broad general rules for purposes of application of the private payment test. Private payments generally include any payments made, directly or indirectly, by any nongovernmental person that is a private business user of proceeds during a period of private business use and any payments made with respect to property financed with proceeds of an issue during a period of private business use, whether or not made by a private business user. In addition, private payments include property and payments in respect of property that are used or to be used for private business use to the extent that any interest in that property or payments serves as security for the payment of debt service on an issue.

III. Generally Applicable Taxes Exception

Section 1.141-4(e) provides an exception to the otherwise-broad scope of payments taken into account under the private payment test in the case of "generally applicable taxes." In general,

the purpose of the generally applicable taxes exception is to allow eligible tax payments made with respect to property or services to be used to pay debt service on an issue without causing private payments. For this purpose, § 1.141-4(e)(2) defines a generally applicable tax to mean an enforced contribution exacted pursuant to legislative authority in the exercise of the taxing power that is imposed and collected for the purpose of raising revenue to be used for governmental purposes. To qualify as a generally applicable tax, a tax must have a uniform rate that is applied to all persons of the same classification in the appropriate jurisdiction and the tax must have a generally applicable manner of determination and collection. By contrast, under § 1.141-4(e)(3), a payment does not qualify as a generally applicable tax if it is a special charge for a special privilege granted or service rendered (for example, a payment limited to property or persons benefited by an improvement). Sections 1.141-4(e)(4)(ii) and (iii) set forth certain permissible and impermissible agreements that bear upon whether or not a tax has a generally applicable manner of determination and collection. For example, an agreement to reduce or limit the amount of taxes collected to further a bona fide governmental purpose is a permissible agreement.

IV. Certain Payments in Lieu of Taxes Treated as Generally Applicable Taxes

In addition, existing § 1.141-4(e)(5) treats certain tax equivalency payments or PILOTs as generally applicable taxes if (1) the payments are commensurate with and not greater than the amounts imposed by the statute for a tax of general application, and (2) the payments are designated for a public purpose and are not special charges (as described in § 1.141-4(e)(3)). Existing § 1.141-4(e)(5) further provides an example which states that a PILOT made in consideration for the use of property financed with tax-exempt bonds is treated as a special charge.

The Treasury Department and the IRS are concerned that additional guidance may be needed regarding the existing standards for treating PILOTs as generally applicable taxes and that those existing standards potentially could be interpreted in an unduly broad manner to provide favorable treatment for certain PILOTs which may have an insufficient link to generally applicable taxes. Conversely, the Treasury Department and the IRS are concerned that the last sentence of existing § 1.141-4(e)(5)(ii), which provides as an example of a special charge a PILOT

paid in consideration for the use of property financed with tax-exempt bonds, could be interpreted in an unduly restrictive manner to prevent any PILOTs with respect to property financed with tax-exempt bonds from being treated as generally applicable taxes.

To address these concerns, the Treasury Department and the IRS propose to modify the standards to better assure a reasonably close relationship between eligible PILOT payments and generally applicable taxes. The proposed clarification provides that an eligible PILOT payment must represent a fixed percentage of, or reflect a fixed adjustment to, the amount of generally applicable taxes in each year, based on comparable current valuation assessments. In addition, the Treasury Department and the IRS propose to eliminate the example in the last sentence of § 1.141-4(e)(5)(ii). Regarding this latter proposal, the Treasury Department and the IRS believe that the existing definition of special charge under § 1.141-4(e)(3) adequately addresses this principle.

The proposed standards for treating PILOTs as generally applicable taxes generally contemplate PILOTs based on property taxes. The Treasury Department and the IRS also seek public comment regarding whether any special rules are needed to address PILOTs based on other taxes, including sales taxes.

Proposed Effective Date

The proposed regulations are proposed to apply to bonds that are sold on or after February 16, 2007.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any

written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 13, 2007, at 10 a.m. in the auditorium of the Internal Revenue Service, New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706. Due to building security procedures, visitors must enter at the New Carrollton Federal Building main entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by January 16, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Rebecca L. Harrigal, Vicky Tsilas, and Carla Young, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.141-4(e)(5) is revised to read as follows:

§ 1.141-4 Private Security or Payment Test.

* * * * *

(e) * * *

(5) *Payments in lieu of taxes*—(i) *In general.* A tax equivalency payment or other payment in lieu of a tax (PILOT) is treated as a generally applicable tax if—

(A) The payment is commensurate with and not greater than the amounts imposed by a statute for a generally applicable tax in each year; and

(B) The payment is designated for a public purpose and is not a special charge (as described in paragraph (e)(3) of this section).

(ii) *Commensurate standard.* For purposes of this paragraph (e)(5), a payment is “commensurate” with generally applicable taxes only if the amount of such payment represents a fixed percentage of, or reflects a fixed adjustment to, the amount of generally applicable taxes that otherwise would apply to the property in each year if the property were subject to tax. For example, a payment is commensurate with generally applicable taxes if it is equal to the amount of generally applicable taxes in each year, less a fixed dollar amount or a fixed adjustment determined by reference to characteristics of the property, such as size or employment. A payment does not fail to be a fixed percentage or adjustment as a result of a single change in the level of the percentage or adjustment following completion of development of the subject property. The payment must be based on the current assessed value of the property for property tax purposes for each year in which the PILOTs are paid and that assessed value must be determined in the same manner and with the same frequency as property subject to generally applicable taxes. A payment is not commensurate if it is based in any way on debt service on an issue or is otherwise set at a fixed dollar amount that cannot vary with the assessed value of the property determined in the manner described in this paragraph (e)(5)(ii).

* * * * *

Par. 3. Section 1.141-15 is amended by adding paragraph (m) to read as follows:

§ 1.141-15 Effective dates.

* * * * *

(m) *Effective date for certain regulations relating to payments in lieu of tax.* The rules of § 1.141-4(e)(5) apply to bonds sold on or after [DATE THAT IS 120 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE **Federal Register**] that are subject to section 141.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6-17408 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH-251-FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We (OSM) are announcing receipt of a proposed amendment to the Ohio regulatory program (the “Ohio program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed amendment consists of a request from Ohio to withdraw portions of a prior amendment to the Ohio program that OSM approved. The prior amendment pertained to clarification of certain Conflict of Interest provisions. Although OSM approved the amendment in 1995, Ohio has not promulgated the approved regulations through their rule-making process and has now decided the approved changes are not necessary.

This document gives the times and locations that the Ohio program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., (local time), November 20, 2006. If requested, we will hold a public hearing on the amendment on November 13, 2006. We will accept requests to speak at a hearing until 4 p.m., local time, on November 3, 2006.

ADDRESSES: You may submit comments, identified by OH-251-FOR, by any of the following methods:

- E-mail: grieger@osmre.gov. Include OH-251-FOR in the subject line of the message;

- Mail/Hand Delivery: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pennsylvania 15220; or

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Pittsburgh Field Division listed below.

Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, Pennsylvania 15220. Telephone: (412) 937-2153. E-mail: grieger@osmre.gov.

Mr. Michael Sponsler, Chief, Division of Mineral Resources Management, Ohio Department of Natural Resources, 1855 Fountain Square Court-Bldg. H-2, Columbus, Ohio 43224. Telephone: (614) 265-6633.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Chief, Pittsburgh Field Division, Telephone: (412) 937-2153. E-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program

includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 16, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 16, 1982, **Federal Register** (47 FR 34687). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated August 30, 2006, Ohio sent us a proposed amendment to its program (Administrative Record Number OH-2187-00) under SMCRA (30 U.S.C. 1201 *et seq.*). In its letter, Ohio stated that it has reviewed revisions previously proposed by Ohio in Program Amendment #69. Ohio stated that those components of program amendment #69 related to Conflict of Interest are no longer necessary, and it would like to withdraw those program provisions from consideration at this time. OSM approved the provisions proposed in program amendment #69 (including the subsequent revisions) in the **Federal Register** on July 17, 1995 (60 FR 36352). However, Ohio did not promulgate the approved draft regulations in final form.

Because we have already published our approval of the Conflict of Interest provisions that Ohio has requested be withdrawn from consideration, we are unable to merely withdraw those provisions. Rather, we are seeking public comment on whether the removal of the provisions identified below will render the approved Ohio program less effective than SMCRA and the Federal regulations.

Ohio program amendment #69 was originally submitted by Ohio by letter dated September 22, 1994 (Administrative Record Number OH-2059). Revisions to amendment #69 were subsequently submitted by letters dated March 8, 1995, and May 3, 1995 (Administrative Record Numbers OH-2099 and OH-2115, respectively). We announced receipt of the proposed amendments, and the two revisions, in the October 21, 1994; March 17, 1995; and May 12, 1995; **Federal Register** (59 FR 53122, 60 FR 14401, and 60 FR

25660, respectively). The Conflict of Interest provisions that we approved on July 17, 1995, and that Ohio proposes be removed from the approved Ohio program, are identified below.

Financial Interest Statements (OAC [Ohio Administrative Code] Section 1501:13-1-03)

1. Definition of "Employee"

Ohio proposed to revise paragraph (D)(2) to provide that members of the Ohio Board on Unreclaimed Strip Mined Lands are included under the definition of "employee." Ohio also proposed to revise this paragraph to provide that, for the purposes of OAC Section 1501:13-1-03, hearing officers for the Ohio Reclamation Board of Review shall also be included within the definition of "employee." Ohio also proposed to revise paragraphs (L)(1) and (2) to delete separate references to the Reclamation Board of Review's hearing officers because those hearing officers are to be included under the definition of "employee" in this rule. In our July 17, 1995, approval of these revisions, OSM stated that "the inclusion of these persons under the State definition of "employee" is appropriate and no less effective than the corresponding Federal definition."

2. Use of Financial Interest Statement Form by Members of the Ohio Reclamation Board of Review

Ohio proposed to revise paragraph (I)(1) to require that employees and members of the Ohio Reclamation Board of Review report all required information concerning employment and financial interests on Form OSM-23. In our July 17, 1995, approval of these revisions, OSM stated that "* * * Ohio's requirement that its employees and members of the Ohio Reclamation Board of Review file employment and financial interest statements using OSM Form 23 is no less effective than the corresponding Federal regulations at 30 CFR 705.10 and 705.11."

3. Acceptance of Gifts and Gratuities by Members of the Ohio Reclamation Board of Review

Ohio proposed to revise paragraph (J)(1) to prohibit, with certain exceptions, the solicitation or acceptance of gifts and gratuities by members of the Ohio Reclamation Board of Review from coal companies which are conducting or seeking to conduct regulated activities or which have an interest that may be substantially affected by the performance of the Board members' official duty. In our July 17, 1995, approval of these revisions, OSM

stated that “* * * the State requirement regarding members of the Ohio Reclamation Board of Review is not inconsistent with the Federal regulations at 30 CFR 705.18 or with the revisions which Ohio is making elsewhere in this rule.”

4. Appeal of Remedial Actions

Ohio proposed to revise paragraph (L)(1) to specify that nothing in OAC Section 1501:13-1-03 modifies any right of appeal that any employee may have under State law of a decision by the Chief of the Division of Natural Resources, on an employee's appeal of remedial action for prohibited financial interests. In our July 17, 1995, approval of this revision, OSM stated that “* * * this provision is not inconsistent with the Federal rule at 30 CFR 705.21(a) which allows employees to file an appeal through established procedures within their State.”

Ohio also proposed to revise paragraph (L)(2) to provide that only the Chief of the Division of Reclamation may appeal a remedial action to the Director of OSM. In our July 17, 1995, approval of this revision, OSM stated that “Ohio's proposed paragraph (L)(2) is not less effective than 30 CFR 705.21(b).”

Ohio also added paragraph (L)(3) to provide that members of the Ohio Reclamation Board of Review may request advisory opinions from the Director of OSM on issues pertaining to an apparent prohibited financial interest. However, resolution of conflicts is governed by section 1513.05 and 1513.29 of the Ohio Revised Code. In our July 17, 1995, approval of this new language, OSM stated that “* * * the appeal provision proposed in paragraph (L)(3) is not inconsistent with the Federal regulations at 30 CFR 705.21 or with the revisions which Ohio is making elsewhere in this rule.”

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the removal of these amendments, they will no longer be part of the approved Ohio program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final

rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Appalachian Region office identified above may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include “Attn: SATS No. OH-251-FOR,” your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Region office at (412) 937-2153.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time, on November 3, 2006.

We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. If you are disabled and need a special accommodation to attend a

public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society

and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this 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.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does 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. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 29, 2006.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. E6-17369 Filed 10-18-06; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-06-122]

RIN 1625-AA09

Drawbridge Operation Regulations; Thames River, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Amtrak Bridge across the Thames River, mile 0.8, at New London, Connecticut. This notice of proposed rulemaking (NPRM) would allow the bridge owner to open the bridge on a temporary opening schedule from November 15, 2006 through May 15, 2007. This proposed rule is necessary to facilitate bridge pier repairs.

DATES: Comments must reach the Coast Guard on or before November 1, 2006.

ADDRESSES: You may mail comments to Commander (dpb), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668-7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for publishing an NPRM with a shortened comment period of 15 days, and 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**. Due to the urgency of the repairs, it is essential that this rule becomes effective on November 15, 2006.

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary final rule to facilitate un-scheduled structural bridge repairs.

On June 29, 2006, the bridge owner discovered that one of the main bridge piers had shifted as a result of pile driving for the new adjacent Amtrak Bridge. In order to perform corrective repairs, minimize structural impingement, and continue to provide for rail traffic, the bridge must remain in the closed position, except during specific time periods during which the bridge will remain in the full open position for the passage of vessel traffic.

The Coast Guard published a temporary deviation in the **Federal Register** on July 24, 2006 [71 FR 41730], to allow immediate repairs to the bridge to commence.

On September 6, 2006, Amtrak contacted the Coast Guard and requested a temporary regulation effective from November 15, 2006 through May 15, 2007, to facilitate the completion of the bridge repairs.

The Coast Guard believes this shortened comment period and effective date is reasonable because the bridge repairs facilitated by this temporary rule are vital and necessary, thus, they must be performed with all due speed in order to assure the continued safe and reliable operation of the bridge.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-06-122), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time

and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Amtrak Bridge across the Thames River, mile 3.0, at New London, Connecticut, has a vertical clearance of 30 feet at mean high water and 33 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.224.

The owner of the bridge, Amtrak, requested a temporary change to the drawbridge operation regulations to facilitate repairs to one of the main bridge piers.

On June 29, 2006, the bridge owner discovered that one of the main bridge piers had shifted as a result of pile driving for the new adjacent Amtrak Bridge.

In order to perform corrective repairs, minimize structural impingement, and continue to provide for rail traffic, the bridge must remain in the closed position except during specific time periods during which the bridge will remain in the full open position for the passage of vessel traffic.

Discussion of Proposed Rule

This proposed change would allow the Amtrak Bridge to operate on temporary schedule from November 15, 2006 through May 15, 2007, to facilitate the completion of repairs to one of the main bridge piers damaged by nearby pile driving.

Under this notice of proposed rulemaking, from November 15, 2006 through May 15, 2007, the Amtrak Bridge across the Thames River, mile 3.0, at New London, Connecticut, shall remain in the full open position for the passage of vessel traffic as follows:

Monday through Friday: 5 a.m. to 5:40 a.m.; 11:20 a.m. to 11:55 a.m.; 3:35 p.m. to 4:15 p.m.; and 8:30 p.m. to 8:55 p.m.

Saturday: 8:30 a.m. to 9:10 a.m.; 12:35 p.m. to 1:05 p.m.; 3:40 p.m. to 4:10 p.m.; 5:35 p.m. to 6:05 p.m.; and 7:35 p.m. to 8:40 p.m.

Sunday: 8:30 a.m. to 9:20 a.m.; 11:35 a.m. to 12:15 p.m.; 1:30 p.m. to 1:55 p.m.; 6:30 p.m. to 7:10 p.m.; and 8:30 p.m. to 9:15 p.m.

The bridge shall open on signal at any time for the passage of U.S. Navy submarines and escort vessels. At all other times the draw shall remain in the closed position. Vessels that can pass under the draw without a bridge opening may do so at all times.

The Coast Guard believes this proposed rule is reasonable because the required repair work is vital and necessary in order to ensure the safe and continued reliable operation of the bridge.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This conclusion is based on the fact that the vessel traffic that normally transits this bridge should only be minimally affected as they will still be able to transit the bridge under the temporary opening schedule.

Small Entities

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

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

This notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities for the following reason: The Thames River is navigated predominantly by recreational vessels and U.S. Navy vessels.

The temporary opening schedule should not preclude recreational vessel traffic from transiting the bridge because the recreational vessels that normally use this waterway will be in winter storage for most of the time period this rule is in effect and the U.S. Navy submarines and associated vessels will be provided bridge openings on demand at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact us in writing at, Commander (dpb), First Coast Guard District, Bridge Branch, One South Street, New York, NY 10004. The telephone number is (212) 668–7165. 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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because this action relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e) of the Instruction, an “Environmental Analysis Checklist” is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From November 15, 2006 through May 15, 2006, § 117.224 is amended by suspending paragraphs (a) and (b) and adding a temporary paragraph (c) to read as follows:

§ 117.224 Thames River.

* * * * *

(c)(1) The draw shall remain in the full open position for the passage of vessel traffic as follows: Monday through Friday from 5 a.m. to 5:40 a.m.; 11:20 a.m. to 11:55 a.m.; 3:35 p.m. to 4:15 p.m.; and 8:30 p.m. to 8:55 p.m. Saturday from 8:30 a.m. to 9:10 a.m.; 12:35 p.m. to 1:05 p.m.; 3:40 p.m. to 4:10 p.m.; 5:35 p.m. to 6:05 p.m.; and 7:35 p.m. to 8:40 p.m. Sunday from 8:30 a.m. to 9:20 a.m.; 11:35 a.m. to 12:15 p.m.; 1:30 p.m. to 1:55 p.m.; 6:30 p.m. to 7:10 p.m.; and 8:30 p.m. to 9:15 p.m.

(2) The draw shall open on signal at all times for the passage of U.S. Navy submarines, Navy escort vessels and

commercial vessels. At all other times the draw need not open for the passage of vessel traffic.

Dated: October 13, 2006.

Timothy S. Sullivan,
Rear Admiral, U.S. Coast Guard Commander,
First Coast Guard District.

[FR Doc. 06-8814 Filed 10-17-06; 2:34 pm]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2002-0086, FRL-8231-8]

RIN 2060-AN80

National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for Semiconductor Manufacturing, published on May 22, 2003. We are proposing amendments to the final rule to clarify the emission requirements for process vents by establishing a new maximum achievable control technology (MACT) floor level of control for combined hazardous air pollutants (HAP) process vent streams containing inorganic and organic HAP and adding new source requirements for combined HAP process vents. Requirements for existing combined HAP process vents would be no control, which is the MACT floor. The new source combined HAP process vent limit would be the same level of control as is currently required for new inorganic and organic HAP process vents.

DATES: Comments must be received on or before December 4, 2006.

Public Hearing. If anyone contacts EPA by November 8, 2006 requesting to speak at a public hearing, EPA will hold a public hearing on November 20, 2006. If you are interested in attending the public hearing, contact Lala Alston at (919) 541-5545 to verify that a hearing will be held.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2002-0086, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- E-mail: a-and-r-docket@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2002-0086.

- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket ID No. EPA7-HQ-OAR-2002-0086, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.

- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID No. EPA-HQ-OAR-2002-0086, 1301 Constitution Avenue, NW., Room B-108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2002-0086. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. Send or deliver information identified as CBI to only the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404-02), Attention Docket ID No. EPA-HQ-OAR-2002-0086, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

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

Docket. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Docket ID No. EPA-HQ-OAR-2002-0086, EPA West Building, Room B-102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742. A reasonable fee may be charged for copying docket materials.

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 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 status, locations, and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Measurement Policy Group (D-243-05), Research Triangle Park, NC 27711; telephone number (919) 541-0296; fax number (919) 541-1039; e-mail address schaefer.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially affected by the direct final amendments to the national emission standards for hazardous air pollutants for semiconductor manufacturing are those semiconductor manufacturing facilities. Regulated categories and entities include:

TABLE 1.—REGULATED ENTITIES TABLE

Category	NAICS ¹	Examples of regulated entities
Industry	334413	Semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities.

¹ North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that may potentially be affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 63.7181 of the rule. If you have questions regarding the applicability of the direct final amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit this information through www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address listed in the **ADDRESSES** section of this document. Clearly mark the part or all the information you claim to be CBI. For CBI information submitted on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

EPA has established the official public docket for the proposed rulemaking under docket ID No. EPA-HQ-OAR-2002-0086. Information on how to access the docket is presented

above in the **ADDRESSES** section. In addition, information may be obtained from the Webpage for the proposed rulemaking at: <http://www.epa.gov/ttn/atw/pcem/pcempg.html>.

Outline. The information presented in this preamble is organized as follows:

- I. Background
- II. Summary of the Proposed Amendments
- III. Rationale for the Proposed Amendments
- IV. Impacts of the Proposed Amendments
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer Advancement Act

I. Background

On May 22, 2003 (68 FR 27913), we issued the NESHAP for Semiconductor Manufacturing (40 CFR part 63, subpart BBBBB). The NESHAP implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet emission standards for HAP reflecting application of the maximum achievable control technology (MACT). The NESHAP establish emission limitations for emission sources at operations used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate.

After promulgation of the NESHAP, it was brought to our attention that while the NESHAP established separate emission standards for organic and inorganic HAP from process vents, some plants combine inorganic and organic vent streams into a single atmospheric process vent. This situation was quite different from the process vents examined during the development phase of the rule, which were segregated into strictly organic or inorganic HAP constituents. Therefore, we believe the promulgated rule failed to adequately account for the existence of combined

organic and inorganic HAP process vents, and we are proposing to revise the standards to reflect the actual existing source MACT floor for these process vents.

II. Summary of the Proposed Amendments

The proposed revisions would establish separate process vent definitions for organic HAP, inorganic HAP, and combined HAP process vents. We have not changed the MACT floors calculated in the final rule for inorganic or organic HAP. We have simply added new definitions to clarify the applicability of the rule to inorganic, organic, and combined HAP process vents. Therefore, inorganic HAP process vents will retain the control requirements set for process vents containing inorganic HAP in the promulgated rule. This means that existing and new source requirements for these vents would effectively remain the same. Similarly, organic process vents will retain the control requirements set for process vents containing organic HAP in the promulgated rule and control requirements for these vents will remain unchanged.

However, we have developed a new MACT floor for combined HAP process vents. The MACT floor for these vents was determined to be no reduction in emissions from existing sources, and the final rule is being amended to reflect this. For new and reconstructed combined HAP process vents, however, the requirement for inorganic HAP is the same as the requirement for inorganic HAP process vents and the requirement for organic HAP is the same as the requirement for the organic HAP process vents.

III. Rationale for the Proposed Amendments

Almost all semiconductor manufacturing facilities segregate their process vent emissions into streams containing either inorganic or organic pollutants. This has been common practice in the industry since the early 1980s. Given the prevalence of this practice and the fact that very few semiconductor manufacturing plants pre-dating the mid-1980s were still in operation when we issued the final rule,

the final rule was only intended to regulate emissions from segregated inorganic or organic HAP process vents.

However, there is at least one older semiconductor manufacturing plant in operation that reflects the earlier design philosophy of combining inorganic and organic HAP into a single process vent. This plant combines inorganic and organic process emission streams into four combined HAP atmospheric process vents. In addition, this facility adds process heat into these combined organic/inorganic process vents.

Adding organic HAP streams and process heat into an inorganic HAP emission stream, which is the predominant HAP emission vent type in the industry, increases the difficulty and costs of controlling a semiconductor process vent in two ways. First, wet scrubber technology, which is the typical control technology utilized to control inorganic HAP pollutants by this industry, cannot be used to effectively control organic HAP pollutants at the very low concentrations present in the semiconductor industry. Therefore, a combined HAP vent stream needs a much larger and more expensive scrubber to control a combined HAP process vent than a similar inorganic process vent at a more modern facility. In addition, a wet scrubber is not an effective control option for low volume organic pollutant streams such as those in the semiconductor industry and it would not reduce organic HAP by a significant amount. Combining inorganic and organic HAP streams just increases control costs without providing an additional reduction in pollutant levels.

Second, by adding process heat with combined HAP process vent streams, a facility must cool the process vent air in order to effectively control the inorganic HAP emissions with a wet scrubber. This is a much more significant task than controlling a process vent where the process heat is already separated out and makes a combined HAP process vent with process heat even more difficult and expensive to control. In fact, the most effective way to control an existing combined HAP process vent would be to reconstruct the vent system to segregate the process heat from the inorganic HAP stream, which is the current practice in all semiconductor manufacturing facilities, constructed over the past 20 years.

Based on this information, we believe it is necessary to revise the final rule to separately address combined HAP process vents with process heat. The floor level of control for inorganic process vents and organic process vents is not being changed by this action.

However, for the limited number of existing combined process vents with process heat, the rule is being revised to reflect the actual floor level of control for those vents. The floor level of control for combined HAP process vents has been determined to be no reduction in emissions. We are aware of four combined process vents with added process heat located at major semiconductor sources. We do not know of any existing combined HAP process vents that do not add process heat. Our research indicates that none of those vents are currently subject to any controls to reduce HAP emissions and no work practices are employed that reduce emissions. Control options above the floor for the four existing combined HAP process vents with added process heat were examined. However, we rejected these options because the cost was estimated to be in excess of \$750,000 per ton of HAP emissions reduction, which is not a reasonable beyond the floor control option. Therefore, the rule is being amended with the intention that no emission control is required for existing combined HAP process vents with added process heat.

For new sources, however, we determined that by utilizing proper design, a combined HAP vent stream could achieve reductions similar to those required for inorganic process vents for inorganic HAP and organic process vents for organic HAP. Therefore, for new and reconstructed combined HAP process vents including those with added process heat, the requirement for inorganic HAP components is the same as the current requirement for inorganic HAP process vents and the requirement for organic HAP is the same as the requirement for organic HAP process vents.

IV. Impacts of the Proposed Amendments

The proposed amendments do not affect the level of emissions control required by the existing NESHAP for the nonair, health, environmental, and energy impacts. In the final rule we estimated that no additional control would be required. These amendments do not change the impacts associated with the final rule. The primary purpose of these amendments is to clarify the final rule requirements. Therefore, a re-evaluation of costs associated with the final rule was not necessary.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The information collection requirements in the final rule have not been changed by these proposed amendments. However, OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR part 63, subpart BBBBB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0382, EPA ICR number 2042.03. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendments would not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal

governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected Semiconductor facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on

this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The proposed rule does not have tribal implications as specified in EO 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. No tribal governments own semiconductors and are subject to the proposed standards. Thus, EO 13175 does not apply to the proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety risk of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to the EO because it is not economically significant as defined in EO 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not a "significant energy action" as defined in EO 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under EO 12866.

*I. National Technology Transfer
Advancement Act*

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, 12(d) (15 U.S.C. 272 note)), directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed revisions to the NESHAP for Semiconductor Manufacturing do not include requirements for technical standards beyond what the NESHAP requires. Therefore, the requirements of the NTTAA do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 11, 2006.

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.7184 is amended by revising paragraphs (b) through (e) and adding paragraph (f) to read as follows:

§ 63.7184 What emission limitations, operating limits, and work practice standards must I meet?

* * * * *

(b) *Process vents—organic HAP emissions.* For each organic HAP process vent, other than process vents from storage tanks, you must limit organic HAP emissions to the level specified in paragraph (b)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

(1) Reduce the emissions of organic HAP from the process vent stream by 98 percent by weight.

(2) Reduce or maintain the concentration of emitted organic HAP from the process vent to less than or equal to 20 parts per million by volume (ppmv).

(c) *Process vents—inorganic HAP emissions.* For each inorganic HAP process vent, other than process vents from storage tanks, you must limit inorganic HAP emissions to the level specified in paragraph (c)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and § 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of inorganic HAP from the process vent stream by 95 percent by weight.

(2) Reduce or maintain the concentration of emitted inorganic HAP from the process vent to less than or equal to 0.42 ppmv.

(d) *Process vents—combined HAP emissions.* For each combined HAP process vent at a new or reconstructed source, other than process vents from storage tanks, you must limit inorganic HAP emissions to the level specified in paragraph (d)(1) or (2) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein. You must limit organic HAP emissions to the level specified in paragraph (d)(3) or (4) of this section. These limitations can be met by venting emissions from your process vent through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

(1) Reduce the emissions of inorganic HAP from the process vent stream by 95 percent by weight.

(2) Reduce or maintain the concentration of emitted inorganic HAP

from the process vent to less than or equal to 0.42 ppmv.

(3) Reduce the emissions of organic HAP from the process vent stream by 98 percent by weight.

(4) Reduce or maintain the concentration of emitted organic HAP from the process vent to less than or equal to 20 parts ppmv.

(e) *Storage tanks.* For each storage tank, 1,500 gallons or larger, you must limit total HAP emissions to the level specified in paragraph (e)(1) or (2) of this section if the emissions from the storage tank vent contains greater than 0.42 ppmv inorganic HAP. These limitations can be met by venting emissions from your storage tank through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of inorganic HAP from each storage tank by 95 percent by weight.

(2) Reduce or maintain the concentration of emitted inorganic HAP from the process vent to less than or equal to 0.42 ppmv.

(f) You must comply with the applicable work practice standards and operating limits contained in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.

3. Section 63.7195 is amended by adding a definition for “Combined HAP process vents” and “Inorganic HAP process vents” in alphabetical order to read as follows:

§ 63.7195 What definitions apply to this subpart?

* * * * *

Combined HAP Process Vent means a *process vent* that emits both inorganic and organic HAP to the atmosphere.

* * * * *

Inorganic HAP Process Vent means a *process vent* that emits only inorganic HAP to the atmosphere.

Organic HAP Process Vent means a *process vent* that emits only organic HAP to the atmosphere.

* * * * *

[FR Doc. E6–17224 Filed 10–18–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 71, No. 202

Thursday, October 19, 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

Information Collection; Request for Comment; Operating Plans

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection for Operating Plans.

DATES: Comments must be received in writing on or before December 18, 2006 to be assured of consideration.

Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Lathrop Smith, Forest Management, Mail Stop 1103, Forest Service, USDA, 1400 Independence Ave. SW., Washington, DC 20250-1103.

Comments also may be submitted via facsimile to (202) 205-1045 or by e-mail to: ContractPlans@fs.fed.us.

The public may inspect comments received at the Office of the Director, Forest Management Staff, Forest Service, USDA, Room 3NW, Yates Building, 1400 Independence Ave., SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to (202) 205-1496 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management, 202-205-0858. Individuals who use TDD may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Operating Plans.

OMB Number: 0596-0086.

Expiration Date of Approval: March 31, 2007.

Type of Request: Extension of a currently approved collection.

Abstract: The National Forest Management Act, 16 U.S.C. 472a(14)(c) (Act) requires timber sale operating plans on timber sales that exceed 2 years in length. Operating plans are collected within 60 days of award of a timber sale contract and annually thereafter until contract is complete. Contracts less than 2 years in length only require an annual plan. Each FS-2400-3P, FS-2400-3S, FS-2400-3T, FS-2400-6, FS-2400-6T, timber sale contract, and FS-2400-13 and FS-2400-13T Integrated Resource contract lists the information requirements for the subject contract. The information collection under each contract varies depending on the size, scope and length of the contract but generally includes descriptions showing planned periods for and methods of road maintenance and road construction, timber harvesting, stewardship work (Integrated Resource Contracts only), slash disposal, and erosion control measures. Plans may also be required to address measures contractors will use to protect public safety in work areas, prevent and control fires, and prevent and control spills of petroleum products.

Contracting Officers collect this information from contractors. There is no prescribed format for the collection of this information, which may be submitted in the form of charts or letters.

The information is needed by the agency for a variety of uses associated with the administration of Timber Sale and Integrated Resource contracts including: (1) To plan and schedule contract administration workloads, (2) to plan and schedule the delivery of government furnished materials needed by contractors, (3) to assure public safety in the vicinity of contract work, (4) to identify contractor resources that may be used in emergency fire fighting situations, and (5) to determine contractor eligibility for additional contract time.

Without accurate plans showing when and how a contractor intends to operate, the Forest Service will be hindered in fulfilling its contractual obligations to cooperate with and not hinder the performance of the contractor. Such delays can lead to disputes, claims and possible default, as well as other

problems. The Forest Service needs this information to help determine if a contractor is eligible for additional contract time (if needed).

Estimate of Annual Burden: 1.6 hours per response.

Type of Respondents: Contractors of Timber Sale and/or Integrated Resource contracts.

Estimated Annual Number of Respondents: 2,500.

Estimated Annual Number of Responses per Respondent: 3.8.

Estimated Total Annual Burden on Respondents: 15,200 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: October 9, 2006.

Frederick Norbury,

Associate Deputy Chief, National Forest System.

[FR Doc. E6-17406 Filed 10-18-06; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No: 060920245-6245-01]

Revision to the Unverified List—Guidance as to “Red Flags”

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security (“BIS”) published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks or post-shipment verifications could not be conducted for reasons outside the control of the U.S. Government (“Unverified List”). Additionally, on July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries in transactions where BIS is not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to the transaction. Those notices advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a “red flag” as described in the guidance set forth in Supplement No. 3 to 15 CFR part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. This notice adds fourteen entities to the Unverified List. The entities are: Semicom Technology International LLC, in the UAE, Amiran Trading Company in the UAE, Sarellica (Sar Elica) FZC in the UAE, Fuchs Oil Middle East in the UAE, Parto Abgardan in the UAE, Vitaswiss Limited in the UAE, Al-Thamin General Trading LLC, in the UAE, Reza Nezam Trading in the UAE, Davood Khosrojerdi, dba Al Musafar Tourism and Cargo in the UAE, Part Tech Co., in the UAE, Bazar Trading Co., in the UAE, Al Aarif Factory Equipment Trading LLC in the UAE, Centre Bright Company in Hong Kong, and IC Trading Ltd., in Russia.

DATES: This notice is effective October 19, 2006.

FOR FURTHER INFORMATION CONTACT:

Marcus Cohen, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482-4255.

SUPPLEMENTARY INFORMATION:

In administering export controls under the Export Administration Regulations (15 CFR parts 730 to 774) (“EAR”), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other Federal agencies acting on BIS’s behalf, selectively conduct pre-license checks (“PLCs”) to verify the bona fides of the transaction and the suitability of the

end-user or ultimate consignee. In addition, such officials sometimes carry out post-shipment verifications (“PSVs”) to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other Federal officials acting on BIS’s behalf, have been unable to perform a PLC or PSV with respect to certain export control transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). BIS listed a number of foreign end-users and consignees involved in such transactions in the Unverified List that was included in BIS’s **Federal Register** notice of June 14, 2002. See 67 FR 40910. On July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries where BIS is not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee, or other party to an export transaction. See 69 FR 42652.

The June 14, 2002 and July 16, 2004 notices advised exporters that the involvement of a listed person in a transaction constituted a “red flag” under the “Know Your Customer” guidance set forth in Supplement No. 3 to 15 CFR part 732 of the EAR. Under that guidance, whenever there is a “red flag,” exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR. The **Federal Register** notices further stated that BIS may periodically add persons to the Unverified List based on the criteria set forth above, and remove persons when warranted.

This notice advises exporters that BIS is adding to the Unverified List the following entities: Al Aarif Factory Equipment Trading LLC, Sheikh Fahad Saad Alsbah Bldg., Al Maktoum Street, P.O. Box 28162, Dubai, UAE (also located in Al Quoz district of Dubai), Al-Thamin General Trading LLC, P.O. Box 41364, Dubai, UAE, Amiran Trading Company, Arbif Tower, 1st Floor, Flat No. 1803, Deira, UAE, also P.O. Box 6 1463, Jebel Ali, Dubai, UAE, Bazar Trading Co, Baniyas Tower, Suite 212, Dubai, UAE, Centre Bright Company, Unit 7A, Nathan Commercial Building, 430-436 Nathan Road,

Kowloon City, Hong Kong, Davood Khosrojerdi, dba Al Musafar Tourism and Cargo, Concord Tower, Al Maktoum Street, PO Box 77900, Dubai, UAE, Fuchs Oil Middle East, Sharjah Airport International Free Zone, Sharjah, UAE, IC Trading Ltd, Yauzskaya Str. 8, Bldg 2, Moscow, Russia, Part Tech Co, Baniyas Tower, Suite 212, Dubai, UAE, Parto Abgardan, Showroom #5, Sheikh Rashid bin Khalifa al Maktoum building, Dubai, UAE, Reza Nezam Trading, Al Dana Center, Al Maktoum Street, P.O. Box 41382, Dubai, UAE, Sarellica (Sar Elica) FZC, Bldg. #3, Office No. 3 G-08, P.O. Box 41 71 0, Hamariya Free Zone, Sharjah, UAE, Semicom Technology International LLC, Office No. 18, 6th Floor, Horizons Business Centre, Al-Doha Centre, Al-Maktoum St., P.O. Box 41096, Dubai, UAE, and Vitaswiss Limited, P.O. Box 61069, Office #R/A 8 CB03, UAE, BIS has determined that it is appropriate to add these entities to the Unverified List because BIS was unable to conduct a PLC, a PSV, and/or was unable to verify the existence or authenticity of an end user, intermediate consignee, ultimate consignee, or other party to an export transaction. A “red flag” now exists for transactions involving these entities due to their inclusion on the Unverified List. As a result, exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR.

The Unverified List, as modified by this notice, is set forth below.

Dated: October 11, 2006.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

Unverified List (As of October 19, 2006)

The Unverified List includes names, countries, and last known addresses of foreign persons involved in export transactions with respect to which: the Bureau of Industry and Security (“BIS”) could not conduct a pre license check (“PLC”) or a post shipment verification (“PSV”) for reasons outside of the U.S. Government’s control; and/or BIS was not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee or other party to an export transaction. Any transaction to which a listed person is a party will be deemed to raise a “red flag” with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR part 732. The red flag applies

to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region.	P.O. Box 91150 Tsim Sha Tsui Hong Kong.
Brilliant Interinvest	Malaysia	14-1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN.BHD.	Malaysia	G5/G6, Ground Floor, Jin Gereja Johor Bahru.
Peluang Teguh	Singapore	203 Henderson Road #09-05H Henderson Industrial Park.
Lucktrade International PTE Ltd.	Singapore	35 Tannery Road #01-07 Tannery Block Ruby Industrial Complex Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbifit Tower, Benyas Road Dubai.
Jetpower Industrial Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui Est, Kowloon.
Onion Enterprises Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui Est, Kowloon.
Litchfield Co. Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui Est, Kowloon.
Sunford Trading Ltd	Hong Kong Special Administrative Region.	Unit 2208, 22/F 118 Connaught Road West.
Parrlab Technical Solutions, LTD.	Hong Kong Special Administrative Region.	1204, 12F Shanghai Industrial Building, 48-62 Hennesey Road, Wan Chai.
T.Z.H. International Co. Ltd	Hong Kong Special Administrative Region.	Room 23, 2/F, Kowloon Bay Ind Center, No. 15 Wany Hoi Rd, Kowloon Bay.
Design Engineering Center ..	Pakistan	House 184, Street 36, Sector F-10/1, Islamabad.
Kantry	Russia	13/2 Begovaya Street, Moscow.
Etalon Company	Russia	20B Berezhkovskaya Naberezhnaya, Moscow.
Pskovenergo Service	Russia	47-A Sovetskaya Street, Pskov, Russia Federation, 180000.
Sheeba Import Export	Yemen	Hadda Street, Sanaa.
Aerospace Consumerist Constium FZCO.	United Arab Emirates	Sheikh Zayed Road, P.O. Box 17951, Jebel Ali Free Zone, Dubai and Dubai International Airport, Dubai, 3365.
Medline International LLC ...	United Arab Emirates	P.O. Box 86343 Dubai.
Al Aarif Factory Equipment Trading LLC.	United Arab Emirates	Sheikh Fahad Saad Alsbah Bldg., Al Maktoum Street, P.O. Box 28162, Dubai, UAE (also located in Al Quoz district of Dubai).
Al-Thamin General Trading LLC.	United Arab Emirates	P.O. Box 41364, Dubai, UAE.
Amiran Trading Company ...	United Arab Emirates	Arbifit Tower, 1st Floor, Flat No. 1803, Deira, UAE, also P.O. Box 6 1463, Jebel Ali, Dubai, UAE.
Bazar Trading Co	United Arab Emirates	Baniyas Tower, Suite 212, Dubai, UAE.
Davood Khosrojerdi, dba Al Musafer Tourism and Cargo.	United Arab Emirates	Concord Tower, Al Maktoum Street, PO Box 77900, Dubai, UAE.
Fuchs Oil Middle East	United Arab Emirates	Sharjah Airport International Free Zone, Sharjah, UAE.
Part Tech Co	United Arab Emirates	Baniyas Tower, Suite 212, Dubai, UAE.
Parto Abgardan	United Arab Emirates	Showroom #5, Sheikh Rashid bin Khalifa al Maktoum building, Dubai, UAE.
Reza Nezam Trading	United Arab Emirates	Al Dana Center, Al Maktoum Street, P.O. Box 41382, Dubai, UAE.
Sarelica (Sar Elica) FZC	United Arab Emirates	Bldg. #3, Office No. 3 G-08, P.O. Box 41 71 0, Hamariya Free Zone, Sharjah, UAE.
Semicom Technology International LLC.	United Arab Emirates	Office No. 18, 6th Floor, Horizons Busienss Centre, Al-Doha Centre, Al-Maktoum St., P.O. Box 41096, Dubai, UAE.
Vitaswiss Limited	United Arab Emirates	PO Box 61069, Office #R/A 8 CB03, UAE.
Centre Bright Company	Hong Kong Special Administrative Region.	Unit 7A, Nathan Commercial Building, 430-436 Nathan Road, Kowloon City, Hong Kong.
IC Trading Ltd	Russia	Yauzskaya Str. Bldg 2, Moscow, Russia.

[FR Doc. 06-8771 Filed 10-18-06; 8:45 am]
BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Continuation of Antidumping Duty Order: Fresh Garlic from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce ("Department") and the

International Trade Commission ("Commission") that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department hereby orders the continuation of the antidumping duty order on fresh garlic from the People's Republic of China ("the PRC"). The Department is publishing this notice of continuation of the antidumping duty

order in accordance with 19 CFR 351.218(f)(4).

EFFECTIVE DATE: October 19, 2006.

FOR FURTHER INFORMATION CONTACT:

Hilary E. Sadler, Esq. or Juanita H. Chen, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482-4340 or (202) 482-1904, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2006, the Department initiated and the Commission instituted a sunset review of the antidumping duty order on fresh garlic from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 71 FR 5243 (February 1, 2006). As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the order to be revoked. *See Fresh Garlic from the People's Republic of China: Notice of Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 33279 (June 8, 2006).

The Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on fresh garlic from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Fresh Garlic from China*, 71 FR 58630 (October 4, 2006) and USITC Publication 3886 (September 2006) (Inv. No. 731-TA-683 (Second Review)).

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to Customs and Border Protection to that effect.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to sections 751(d)(2)(A) and (B) of the Act, the Department hereby orders the continuation of the antidumping duty order on fresh garlic from the PRC.

U.S. Customs and Border Protection will continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of this order is the date of publication in the **Federal Register** of this continuation notice. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this antidumping order not later than October 2011.

This sunset review has been conducted in accordance with section 751(c) of the Act, and this continuation notice is published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: October 11, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-17358 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 19, 2006.

FOR FURTHER INFORMATION CONTACT:

Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6312 and (202) 482-0649, respectively.

Background

On February 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** four antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (heavy forged hand tools) from the People's Republic of China (PRC). *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China*, 56 FR 6622 (February 19, 1991). Imports covered by these orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

On February 1, 2006, the Department published in the **Federal Register** (71 FR 5239) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on heavy forged hand tools from the PRC for the period of review (POR) covering February 1, 2005, through January 31, 2006. On February 24, 2006, respondents Shandong Machinery Import and Export Corporation and Tianjin Machinery Import and Export Corporation requested administrative reviews of their companies for this POR. On February 27, 2006, respondents Shanghai Machinery Import & Export Corp., Shandong Huarong Machinery Co., and Shandong Jinma Industrial Group Co., Ltd. requested administrative reviews of their

companies for this POR. On February 28, 2006, petitioner Council Tool Company requested administrative reviews of Shandong Huarong Machinery Co., Ltd., Shandong Machinery Import and Export Corporation, Tianjin Machinery Import and Export Corporation, Shanghai Xinke Trading Company, Iron Bull Industrial Co., Ltd., and Jafsam Metal Products for this POR. Also on February 28, 2006, petitioner Ames True Temper requested administrative reviews of Shandong Huarong Machinery Co., Ltd., Shandong Machinery Import and Export Corporation, Tianjin Machinery Import and Export Corporation, Iron Bull Industrial Co., Ltd., and Truper Herramientas S.A. de C.V. for this POR.

On April 5, 2006, the Department initiated an administrative review of the antidumping duty orders listed below on heavy forged hand tools from the PRC covering the POR February 1, 2005, through January 31, 2006, with respect to the listed companies:

Axes/Adzes A-570-803

Iron Bull Industrial Co., Ltd.
Jafsam Metal Products
Shanghai Machinery Import & Export Corp.
Shanghai Xinke Trading Company
Shandong Huarong Machinery Co., Ltd.
Shandong Jinma Industrial Group Co., Ltd.
Shandong Machinery Import and Export Corporation
Tianjin Machinery Import and Export Corporation
Truper Herramientas S.A. de C.V.

Bars/Wedges A-570-803

Iron Bull Industrial Co., Ltd.
Jafsam Metal Products.
Shanghai Machinery Import & Export Corp.
Shanghai Xinke Trading Company
Shandong Huarong Machinery Co., Ltd.
Shandong Jinma Industrial Group Co., Ltd.
Shandong Machinery Import and Export Corporation
Tianjin Machinery Import and Export Corporation
Truper Herramientas S.A. de C.V.

Hammers/Sledges A-570-803

Iron Bull Industrial Co., Ltd.
Jafsam Metal Products
Shanghai Machinery Import & Export Corp.
Shanghai Xinke Trading Company
Shandong Huarong Machinery Co., Ltd.
Shandong Jinma Industrial Group Co., Ltd.
Shandong Machinery Import and Export Corporation
Tianjin Machinery Import and Export Corporation

Picks/Mattocks A-570-803

Iron Bull Industrial Co., Ltd.
Jafsam Metal Products
Shanghai Machinery Import & Export Corp.
Shanghai Xinke Trading Company
Shandong Huarong Machinery Co., Ltd.
Shandong Jinma Industrial Group Co., Ltd.
Shandong Machinery Import and Export Corporation

See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006).

On September 11, 2006, in accordance with Section 351.213(d)(1) of the Department's regulations and upon the requests of the pertinent parties, the Department rescinded the administrative reviews as follows:

- With regard to Shandong Jinma Industrial Group Co., Ltd., in all classes or kinds.
- With regard to Shanghai Machinery Import & Export Corp., in all classes or kinds.
- With regard to Truper Herramientas S.A. de C.V., in all classes or kinds.
- With regard to Tianjin Machinery Import and Export Corporation, in the classes or kinds axes/adzes, hammers/sledges, and bars/wedges.
- With regard to Shandong Huarong Machinery Co., in the classes or kinds axes/adzes and bars/wedges.
- With regard to Iron Bull Industrial Co., Ltd., in the class or kind bars/wedges.

See *Administrative Review (02/01/2005 01/31/2006) of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Reviews* 71 FR 53403 (September 11, 2006).

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the deadlines for preliminary and final results of this administrative review are October 31, 2005, and February 28, 2006, respectively. The Department, however, may extend the deadline for completion of the preliminary results of a review if it determines it is not practicable to complete the preliminary results within the statutory time limit. See section 751(a)(3)(A) of the Tariff Act and 19 C.F.R. 351.213(h)(2). In this case, the Department has determined it is not practicable to complete this review within the statutory time limit because of significant issues that require additional time to evaluate. These include outstanding questions

concerning the questionnaire responses that require additional supplemental questionnaires.

Therefore, the Department is extending the time limit for completion of the preliminary results for heavy forged hand tools from the People's Republic of China until February 28, 2007, in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will be 120 days after publication of the preliminary results in the **Federal Register**. See section 751(a)(3)(A) of the Tariff Act and 19 C.F.R. 351.213(h)(2).

This notice is issued and published in accordance with sections 751(a)(3)(A), 751(a)(1), and 777(i)(1) of the Tariff Act and 19 CFR 351.213(d)(4).

Dated: October 10, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-17380 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-818/Argentina; A-201-835/Mexico]

Initiation of Antidumping Duty Investigations: Lemon Juice from Argentina and Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 19, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (Argentina) or Hermes Pinilla (Mexico), AD/CVD Operations, Office 6 and Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3148 or (202) 482-3477, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 21, 2006, the Department of Commerce (the Department) received a petition on imports of lemon juice from Argentina and Mexico filed in proper form by Sunkist Growers, Inc. (the petitioner). See *Petition for the Imposition of Antidumping Duties Against Lemon Juice from Argentina and Mexico* (September 21, 2006) (petition). On September 28, 2006, the Department issued a request for additional information and clarification of certain areas of the petition. Based on the

Department's request, the petitioner filed amendments to the petition on October 3, 2006. See *Supplemental Questionnaire: Petition for the Imposition of Antidumping Duties Against Lemon Juice from Argentina and Mexico* (October 3, 2006). On October 6, October 10, and October 11, 2006, the Department discussed further concerns with the petitioner by phone. See *Memorandum to the File: Lemon Juice from Argentina and Mexico - Telephone Conversation with counsel to the Petitioner*, dated October 6, 2006, *Memorandum to the File: Lemon Juice from Argentina and Mexico - Telephone Conversations with counsel to the Petitioner*, dated October 10, 2006, and *Memorandum to the File: Lemon Juice from Argentina and Mexico - Telephone Conversation with counsel to the Petitioner*, dated October 11, 2006. In response to these concerns, the petitioner filed additional petition amendments on October 10, 2006 and October 11, 2006.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of lemon juice from Argentina and Mexico are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act, and the petitioner has demonstrated sufficient industry support with respect to the investigations that the petitioner is requesting the Department to initiate (see "Determination of Industry Support for the Petition" below).

Scope of Investigations

The merchandise covered by each of these investigations includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of

48 GPL; and (2) beverage products such as lemonade that typically contain 20% or less lemon juice as an ingredient.

Lemon juice is classifiable under subheadings 2009.39.6020, 2009.31.6020, 2009.31.4000, 2009.31.6040, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and Customs and Border Patrol purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for (1) at least 25 percent of the total production of the domestic like product and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC) is responsible for determining whether "the domestic

industry" has been injured and must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. See section 771(10) of the Act. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.¹

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, lemon juice, which is defined in the "Scope of Investigations" section above, and we have analyzed industry support in terms of the domestic like product.

We received no opposition to this petition. The petitioner accounts for a sufficient percentage of the total production of the domestic like product, and the requirements of section 732(c)(4)(A) are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See "Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Lemon Juice from Argentina," at Attachment II (October 11, 2006) (*Argentina Initiation Checklist*) and "Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Lemon Juice from Mexico," at Attachment II (October 11, 2006) (*Mexico Initiation Checklist*), on file in the CRU.

¹ See *USEC, Inc. v. United States*, 25 CIT 49, 55-56, 132 F. Supp. 2d 1, 7-8 (Jan. 24, 2001) (citing *Algoma Steel Corp. v. United States*, 12 CIT 518, 523, 688 F. Supp. 639, 642-44 (June 8, 1988)).

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than fair value. The petitioner contends that the industry's injury is evidenced by reduced market share, increased inventories, lost sales, reduced production, lower capacity and capacity utilization rates, decline in prices, lost revenue, reduced employment, decreased capital expenditures, and a decline in financial performance.

These allegations are supported by relevant evidence including import data, evidence of lost sales, and pricing information. We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and have determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. See *Argentina Initiation Checklist* at Attachment III and *Mexico Initiation Checklist* at Attachment III.

Period of Investigation

In accordance with section 351.204(b) of the Department's regulations, because the petition was filed on September 21, 2006, the anticipated period of investigation (POI) is July 1, 2005 through June 30, 2006.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department has based its decision to initiate investigations with respect to Argentina and Mexico. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the *Argentina Initiation Checklist* and *Mexico Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculation, if appropriate.

Use of a Third Country Market and Sales Below Cost Allegation

With respect to normal value (NV), the petitioner stated that home market prices are not reasonably available. According to the petitioner, the Argentine and Mexican lemon juice industry is geared almost exclusively to exports. See, e.g., pages 12 and 22 of the October 3, 2006 petition amendment. The petitioner stated that its personnel most knowledgeable about international

markets inquired about the Argentine and Mexican home markets for lemon juice from their sources but that they were unable to obtain home market prices in Argentina or Mexico. In addition, the petitioner stated that there were no indications of domestic prices for lemon juice in these markets in the several Department of Agriculture and ITC reports which were included in the petition, and which the Department has reviewed.

The petitioner therefore proposed the Netherlands as a third country comparison market for both Argentina and Mexico, and demonstrated the viability of the Netherlands as a third country market. In the case of Argentina, the petitioner provided Argentine figures for exports of lemon juice to the Netherlands and the United States. In the case of Mexico, the petitioner provided European Union lemon juice import data for exports from Mexico into the Netherlands and compared them with U.S. lemon juice import data for imports from Mexico. According to these figures, sales to the Netherlands were greater than 5 percent of sales by volume to the United States for both Argentina and Mexico, and thus the petitioner claims that the Netherlands is an appropriate comparison market in accordance with section 773(a)(1)(B)(ii)(II) of the Act.

The petitioner then claimed that sales prices to the Netherlands are below cost, for both Argentine and Mexican exports. The petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of lemon juice in the comparison market (*i.e.*, the Netherlands) were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct country-wide sales-below-cost investigations for both Argentina and Mexico. Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, financial expenses, and packing expenses (where appropriate). Details regarding the calculation of the COP cost elements (*i.e.*, COM, SG&A, and financial expenses) are included in our discussion of constructed value (CV), in the "*Alleged U.S. Price and Normal Value*" sections below.² The petitioner calculated export prices for the Netherlands using average unit customs values for imports from Argentina and

Mexico. In order to calculate a conservative estimate, the petitioner did not make any deductions to these average unit customs values.

Based upon a comparison of the gross price of the foreign like product in the comparison market to the COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating country-wide cost investigations with regard to both Argentina and Mexico. If we determine during the course of these investigations that the home markets (*i.e.*, Argentina and Mexico) are viable or that the Netherlands is not the appropriate third-country market upon which to base normal value, our initiation of country-wide cost investigations with respect to sales to the Netherlands will be rendered moot. Because it alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner then based NV for sales in the Netherlands on constructed value (CV).

Alleged U.S. Price and Normal Value: Argentina

The petitioner calculated a single export price (EP) using the average unit customs values for import data collected by the U.S. Census Bureau. It used a weighted average of all five HTSUS numbers under which subject merchandise could be imported: 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040. The petitioner deducted amounts for domestic inland freight, storage and other harbor charges, and an export tax to arrive at an EP figure for a product at the same concentration level as the product for which CV was calculated. The deductions are based on an affidavit of one of the petitioner's company officials, and represent the cost of transporting subject merchandise to Buenos Aires and preparing it for export as well as an estimate for the export tax.

We analyzed the five HTSUS numbers used by the petitioner in calculating EP. Four of the five HTSUS categories were comprised solely of subject merchandise; however, one HTSUS number was a basket category, and, therefore, could include significant amounts of merchandise other than subject merchandise. Accordingly, we recalculated EP by removing HTSUS number 2009.31.4000, the basket category. In addition, we did not make the deductions to price made by the petitioner, as the petitioner could not demonstrate that these amounts were

² In this case, the elements of COP and CV are calculated identically. The only difference between the COP figure used to demonstrate sales below cost and the CV figure used as normal value is that CV includes an amount for profit.

not in the SG&A expense figure it calculated. Specifically, it is not clear based on S.A. San Miguel's (an Argentine lemon juice producer) unconsolidated financial statements whether the items which the petitioner subtracted from the average unit value (i.e., export tax, storage, and movement expenses) were included in the reported SG&A expense. Therefore, to avoid possible double counting, we did not make these deductions.

Pursuant to section 773(a)(4) of the Act, the petitioner calculated a single CV as the basis for NV. See "*Use of a Third Country Market and Sales Below Cost Allegation*" above. The petitioner calculated CV based on the price of lemons in Buenos Aires, its own processing and packing costs and by-product offsets, and SG&A, interest, and profit taken from the public financial statements of an Argentine producer of lemon juice. It adjusted its own processing costs for known differences between U.S. and Argentine production costs. It also deducted an amount from CV for export tax, in order to offset the export tax deduction to EP.

Specifically, to value raw materials, the petitioner used the prices quoted on the Mercado Central in Buenos Aires for lemons sold during the POI. The added processing costs were based on the petitioner's fiscal year 2005 experience adjusted for known differences between U.S. and Argentine production costs (electricity rates and manufacturing labor wages). See U.S. Department of Energy: Energy Statistics - Electricity Prices, and International Labor Organization: Labor Statistics - Wages and Manufacturing for Argentina, found in the *Argentina Initiation Checklist* at Attachment VII and Attachment VIII, respectively. Additional information, including by-product offsets and packing expenses, were provided in affidavits from company officials of the petitioner, and reasonably reflect its POI experience. To calculate SG&A, financial expenses, and profit, the petitioner relied upon amounts reported in the 2005 fiscal year financial statements of S.A. San Miguel. See *Argentina Initiation Checklist*.

In making fair value calculations for Argentina, we used the CV calculated by the petitioner, except that we did not make a deduction for export tax from CV, which the petitioner had suggested as a means of offsetting its export tax deduction from EP, as we did not make such a deduction from EP.

Alleged U.S. Price and Normal Value: Mexico

The petitioner calculated a single Mexican EP using the average unit

customs values for import data collected by the U.S. Census Bureau. It used a weighted average of all five HTSUS numbers under which subject merchandise could be imported: 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040. The petitioner did not make any adjustments to U.S. price. We recalculated EP by removing the same basket category as we did for Argentina.

Pursuant to section 773(a)(4) of the Act, the petitioner calculated a single CV as the basis for normal value (NV). See "*Use of a Third Country Market and Sales Below Cost Allegation*" above. The petitioner calculated CV using its own data for some values, published data for other cost values, and costs values from a Mexican lemon juice manufacturer's publicly available financial statement for other factors. It adjusted its own processing costs for known differences between U.S. and Mexican production costs.

Specifically, to value raw materials, the petitioner used the 2005 average Mexican cost of production for lemons (excluding packing costs) from an ITC publication. See ITC publication on *Conditions for Certain Oranges and Lemons in the U.S. Fresh Market*, Table 9-16, p. 9-17. The added processing costs were based on the petitioner's fiscal year 2005 experience adjusted for known differences between U.S. and Mexican production costs (electricity rates and manufacturing labor wages). See *Mexico Initiation Checklist* at Attachments VII and VIII. The petitioner did not adjust for storage, packing and transportation costs in its calculation of processing cost. The petitioner based the SG&A and financial expenses on the most recently available fiscal year 2003 financial statements (the most current statements available) of UniMark Group, a Mexican lemon juice producer. The petitioner assumed a packing cost of zero because there were no packing cost data available to the petitioner. To calculate an amount for profit consistent with section 773(e)(2) of the Act, the petitioner relied upon amounts reported in UniMark Group's income statement for the most recently available fiscal year 2003. Because UniMark Group's income statement for fiscal year 2003 showed a loss, the petitioner assumed a zero profit in the calculation of the constructed value. See *Mexican Initiation Checklist*.

The petitioner did not claim any other adjustments to either EP or CV and we found that no other adjustments were warranted.

Fair Value Comparisons

Based on a comparison of the revised EP to CV, the dumping margin is 102.46 percent with respect to Argentina and 134.22 percent with respect to Mexico. Therefore, in accordance with section 773(a) of the Act, there is reason to believe that imports of lemon juice from Argentina and Mexico are being, or are likely to be, sold in the United States at less than fair value.

Initiation of Antidumping Investigations

Based upon the examination of the petition on lemon juice from Argentina and Mexico and other information reasonably available to the Department, the Department finds that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of lemon juice from Argentina and Mexico are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Governments of Argentina and Mexico. We will attempt to provide a copy of the public version of the petition to the foreign producers/exporters named in the petition.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than November 6, 2006, whether there is a reasonable indication that imports of lemon juice from Argentina and Mexico are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 11, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-17381 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-838]

Notice of Rescission of Antidumping Duty Reviews and Revocation of Antidumping Duty Order: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 12, 2006

FOR FURTHER INFORMATION CONTACT:

David Layton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0371.

SUMMARY: On September 12, 2006, U.S. Trade Representative Susan C. Schwab and Canada's Minister for International Trade, David Emerson, signed the Softwood Lumber Agreement (SLA 2006). On October 12, 2006 the SLA 2006 entered into effect. Pursuant to the settlement of litigation which is a precondition for the entry into force of the SLA 2006, the Department of Commerce (the Department) is revoking the antidumping duty order on certain softwood lumber products from Canada and rescinding all ongoing proceedings related to that order.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2002, the Department published the antidumping duty order on certain softwood lumber from Canada. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36068 (May 22, 2002). The Department subsequently completed the first and second administrative reviews. See *Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004); see also *Notice of Final Results of Antidumping Duty Administrative*

Review: Certain Softwood Lumber Products from Canada, 70 FR 73437 (December 12, 2005). On June 30, 2005, the Department published a notice of initiation of the third administrative review of the antidumping duty order on certain softwood lumber products from Canada, covering the period May 1, 2004, to April 30, 2005 (POR 3). See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749 (June 30, 2005) (*Initiation Notice*). The preliminary results for POR 3 were issued on June 12, 2006. See *Notice of Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission and Postponement of the Final Results: Certain Softwood Lumber Products From Canada*, 71 FR 33964 (June 12, 2006). On July 3, 2006 the Department published a notice of initiation of the fourth administrative review of the order covering the period May 1, 2005, to April 30, 2006 (POR 4). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 37892 (July 3, 2006). In addition, on June 30, 2006, the Department initiated a new shipper review of this order and on July, 13, 2006, the Department initiated a changed circumstances review of this order. See *Certain Softwood Lumber Products from Canada: Notice of Initiation of Antidumping Duty New Shipper Review*, 71 FR 37538 (June 30, 2006); see also *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 71 FR 39661 (July 13, 2006).

On September 12, 2006, U.S. Trade Representative Susan C. Schwab and Canada's Minister for International Trade, David Emerson, signed the SLA 2006. One of the conditions for the entry into force of the SLA 2006 was the settlement of litigation. On October 12, 2006, the government of the United States and the government of Canada exchanged letters indicating that the conditions for the entry into force of the SLA 2006 had been fulfilled.

Rescission Of The Reviews And Revocation Of The Order

Pursuant to the settlement of litigation, the Department hereby revokes the antidumping duty order on softwood lumber from Canada, effective May 22, 2002, without the possibility of reinstatement. Furthermore, as the result of the revocation of the order, which is effective for the periods being reviewed, the Department hereby rescinds all ongoing proceedings related to the antidumping duty order, including the administrative reviews for

POR 3 and POR 4, the new shipper review, and the changed circumstances review.

In accordance with the terms of the SLA 2006, we will instruct U.S. Customs and Border Protection (CBP) to cease collecting cash deposits, as of October 12, 2006, on imports of softwood lumber products from Canada. Moreover, we will instruct CBP to liquidate all entries made on or after May 22, 2002, without regard to antidumping duties, except that, where liquidation of certain entries is enjoined for antidumping purposes, the antidumping liquidation instructions for such entries will be issued upon removal of the injunction. In addition, we will instruct CBP to refund all deposits collected on such entries with accrued interest.

This notice is in accordance with 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4).

Dated: October 12, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-17377 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-839]

Notice of Rescission of Countervailing Duty Reviews and Revocation of Countervailing Duty Order: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 12, 2006.

FOR FURTHER INFORMATION CONTACT: Eric

B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6071.

SUMMARY: On September 12, 2006, U.S. Trade Representative Susan C. Schwab and Canada's Minister for International Trade, David Emerson, signed the Softwood Lumber Agreement (SLA 2006). On October 12, 2006, the SLA 2006 entered into effect. Pursuant to the settlement of litigation which is a precondition for the entry into force of the SLA 2006, the Department of Commerce (the Department) is revoking the countervailing duty order on certain softwood lumber products from Canada

and rescinding all ongoing proceedings related to that order.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2002, the Department published the countervailing duty order on certain softwood lumber from Canada. See *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, as corrected, 67 FR 36070 (May 22, 2002). The Department subsequently completed the first and second administrative reviews. See *Notice of Amended Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 9046 (February 24, 2005); see also *Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005).¹ On June 30, 2005, the Department published a notice of initiation of administrative review of the countervailing duty order on certain softwood lumber products from Canada, covering the period of review (POR) April 1, 2004, to March 31, 2005 (POR 3). See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749 (June 30, 2005) (*Initiation Notice*). The preliminary results for POR 3 were issued on June 12, 2006. See *Notice of Preliminary Results and Extension of Final Result of Countervailing Duty Administrative Review: Certain Softwood Lumber Products From Canada*, 71 FR 33933 (June 12, 2006). On July 3, 2006 the Department published a notice of initiation of the fourth administrative review of the order covering the period April 1, 2005, to March 31, 2006 (POR 4). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 37892 (July 3, 2006).

On September 12, 2006, U.S. Trade Representative Susan C. Schwab and Canada's Minister for International Trade, David Emerson, signed the SLA 2006. One of the conditions for entry into force of the SLA 2006 was the settlement of litigation. On October 12, 2006, the government of the United States and the government of Canada exchanged letters indicating that the

conditions for entry into force of the SLA 2006 had been fulfilled.

Rescission Of The Reviews And Revocation Of The Order

Pursuant to the settlement of litigation, the Department hereby revokes the countervailing duty order on softwood lumber from Canada, effective May 22, 2002, without the possibility of reinstatement. As the result of the revocation of the order, which is effective for the periods being reviewed, the Department hereby rescinds all ongoing proceedings related to the countervailing duty order, including the administrative reviews for POR 3 and POR 4, and all outstanding expedited reviews.

In accordance with the terms of the SLA 2006, we will instruct U.S. Customs and Border Protection (CBP) to cease collecting cash deposits, as of October 12, 2006, on imports of softwood lumber products from Canada. Moreover, we will instruct CBP to liquidate all entries made on or after May 22, 2002, without regard to countervailing duties. In addition, we will instruct CBP to refund all deposits collected on such entries with accrued interest.

This notice is in accordance with 777(i) of the Tariff Act of 1930, as amended and 19 CFR 341.213(d)(4).

Dated: October 12, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-17382 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final Antidumping Duty Determination made by the International Trade Administration, respecting Certain Softwood Lumber Products from Canada, Secretariat File No. USA-CDA-2002-1904-02.

SUMMARY: Pursuant to the negotiated settlement between the United States and Canadian Governments, the panel review of the above noted case is terminated as of October 12, 2006. A

panel has been appointed to this panel review and has been dismissed in accordance with the *Rules of Procedure for Article 1904 Binational Panel Review*, effective October 12, 2006.

FOR FURTHER INFORMATION CONTACT:

Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: October 13, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6-17375 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final determination made by the U.S. International Trade Administration, in the matter of Certain Softwood Lumber Products from Canada, CVD determination, Secretariat File No. USA-CDA-2002-1904-03.

SUMMARY: Pursuant to the negotiated settlement agreement between the United States and Canadian

¹ In addition, the Department has initiated a number of "expedited reviews" to establish company-specific deposit rates and to consider whether company-specific revocation is appropriate. The Department has completed many of those reviews.

Governments, which terminated the Request for an Extraordinary Challenge Committee, this Binational Panel review is completed effective October 12, 2006. The panel appointed to this review has been dismissed in accordance with the *Rules of Procedure for Article 1904 Binational Panel Review*, effective October 12, 2006.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Pursuant to the negotiated settlement agreement between the United States and Canadian Governments, the United States withdrew the request for an Extraordinary Challenge Committee Review, which was filed on April 27, 2006. The negotiated settlement became effective on October 12, 2006. The Extraordinary Challenge Committee was to review the decisions of the Binational Panel that reviewed the final determination and remand determinations by the United States Department of Commerce in "The Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, Countervailing File No. USA-CDA-2002-1904-03". Therefore, on the basis of the negotiated settlement between the United States and Canada, the panel review was completed and the panelists discharged from their duties effective October 12, 2006.

Dated: October 13, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.
[FR Doc. E6-17405 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Announcement of Change in Methodology, Request for Comment

SUMMARY: This notice addresses three methodologies of the Department of Commerce ("the Department") in antidumping proceedings. First, the Department is revising its approach concerning the use of market economy inputs in the calculation of normal value in antidumping proceedings

involving non-market economy ("NME") countries. Specifically, the Department is revising its approach concerning cases where an NME producer sources an input from both market economy suppliers and from within the NME. Second, the Department is revising its methodology for calculating expected NME wages in antidumping proceedings involving NME countries. Third, the Department is requesting comments on its approach concerning the calculation of duty drawback adjustments to export price in antidumping proceedings when a respondent producer obtains an input both from domestic and foreign sources. On this latter issue, the Department is seeking comments on the methodology that should be used when the producer receives duty drawback on certain exports containing the input but not on other exports containing the input.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton with regard to market economy inputs, Shauna Lee-Alaia with regard to expected NME wages, and John Kalitka with regard to duty drawback, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, 202-482-1579, 202-482-2793, or 202-482-2730, respectively.

SUPPLEMENTARY INFORMATION:

Issue One: Market Economy Inputs Background

In antidumping proceedings involving NME countries, the Department calculates normal value by valuing the NME producer's factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. The goal of this surrogate factor valuation is to use the "best available information" to determine normal value. See section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act"); see also *Shangdong Huraong General Corp. v. United States*, 159 F. Supp. 2d 714, 719 (CIT 2001). When an NME producer purchases inputs from market economy suppliers and pays in a market economy currency, the Department normally uses the average actual price paid by the NME producer for these inputs to value the input in question, where possible. See 19 CFR 351.408(c)(1); see also *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 FR 55271, 55274-75 (October 25, 1991). When a portion of the input

is purchased from a market economy supplier and the remainder from a non-market economy supplier, the Department will normally use the price paid for the input sourced from market economy suppliers to value all of the input,¹ provided that the volume of the market economy input as a share of total purchases from all sources is "meaningful," a term used in the Preamble to the Regulations but which is interpreted by the Department on a case-by-case basis. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997) ("*Final Rule*"); see also *Shakeproof v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001) ("*Shakeproof*"). Such market economy input purchases must also constitute arms-length, *bona fide* sales. See *Shakeproof*, 268 F.3d at 1382-83.

Additionally, the Department disregards market economy input purchases when there is evidence that the prices for such inputs may be distorted or when the facts of a particular case otherwise demonstrate that market economy input purchase prices are not the best available information. For example, the Department disregards all input values it has reason to believe or suspect might be dumped or subsidized. See, e.g., *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), as *aff'd per curiam* 04 Fed. Appx. 183 (Federal Circuit, July 9, 2004). The Department has also disregarded the prices of inputs that could not possibly have been used in the production of subject merchandise during the period of investigation or review. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005, and accompanying Issues and Decision Memorandum, at comment 8 (December 8, 2004) ("*Shrimp*"). The Department has further rejected purchase prices from market economies when the input in question was produced within an NME. See *Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 34125 and accompanying Issues and Decision Memorandum, at comment 4 (June 18, 2004).

The Department published on May 26, 2005, August 11, 2005, and March 21, 2006, three notices in the **Federal Register** requesting comment on its market economy inputs methodology in NME cases (70 FR 30418, 70 FR 46816,

¹ See 19 CFR 351.408(c)(1).

and 71 FR 14176, respectively). In these notices, the Department requested comment on various proposals concerning the Department's approach in cases in which NME firms purchase a portion of a given input from a market economy and source the remainder domestically. In such instances, the Department must make a case-specific determination as to what the best available information is for valuing the input: the market-economy purchase price or another surrogate value. The guidance given in the Department's regulations, as described above, is "normally" to use the prices paid for the market economy portion of the input to value the entire input. While the regulations do not elaborate as to what circumstances are "normal," the Preamble states that the Department will disregard market economy purchases if the volume involved is not "meaningful." In response to the Department's March 21, 2006 request for comment, the Department received comments in April 2006 from the following six interested parties: (1) the Committee to Support U.S. Trade Laws ("CSUSTL"); (2) the United States Steel Corporation ("U.S. Steel"); (3) the American Furniture Manufacturers Committee ("Furniture Committee"); (4) Stewart and Stewart; (5) the Ministry of Commerce of the People's Republic of China ("PRC MOFCOM"); and (6) Trade Pacific.

The Department requested comment on its market economy inputs practice for two reasons. First, the undefined nature of what constitutes a "meaningful" quantity of market economy purchases implies that the Department must currently make case-specific decisions as to whether to accept market economy purchase prices to value inputs. This creates unpredictability as to what values would ultimately be used in the dumping calculation. Parties can advocate accepting or disregarding the use of market economy purchase prices in individual cases, but do not have a concrete framework for doing so. Indeed, parties representing NME exporters have argued that market economy purchase prices nearly always constitute the "best available information" to use in the Department's dumping calculations, whereas parties representing domestic industry have argued that market economy purchases should almost never be used to value the portion of an input that was sourced domestically within the NME. This conflicting understanding as to when market economy purchases should be used to value an entire input is also

evident in the submissions the Department received in response to its requests for comment on its market economy inputs approach. Absent an announced threshold as to what quantities are generally considered to be "meaningful," parties would continue to argue this issue without the benefit of any clear guidance from the Department.

The Department's second reason for requesting comment on its market economy inputs approach was its concern that it may, in some cases, have used market economy input purchase prices to value an entire input even when these prices may not have been the "best available information." While the Department has not had a specific threshold for what constitutes a "meaningful" quantity, the Department is concerned that accepting a market economy input value when the portion sourced from a market economy is too low may not constitute the best available information, particularly when no additional scrutiny is applied to ensure that the market economy price is representative of what the total price would have been had the firm purchased solely from market economy suppliers. This is a potential problem because the Department has greater confidence that the market economy purchase price is reflective of total purchase values of the input (and, thus, that it represents the "best available information") when the proportion of the total volume of the input that is sourced from market economies is higher. To take an extreme example, where an NME exporter purchases all of a given input from a market economy supplier, the Department can be confident that this price reflects total purchase value of the input. Conversely, if an NME firm purchases a tiny quantity of the input from market economy suppliers and sources the rest domestically, the Department may have little or no confidence that this purchase price reflects the NME firm's overall purchases of the input. There might be numerous factors that could easily distort a single, small volume market economy purchase price, for example: sample sales, "bundling" of the purchase at a low price with other purchases at higher prices, limited quantities available on the market at an unusually low price, or brief plunges in the market price for the input. Of course, even a single purchase of an input might also, depending on the facts, be representative of what an NME exporter's purchases would have been had it sourced all of the input in question from the market economy

source throughout the period of investigation or review. As a general rule, however, the Department typically rejects purchases of small quantities because "insignificant" quantities are less likely to be representative of a company's cost of sourcing the entire input. See *Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 and accompanying Issues and Decision Memorandum, at comment 12 (April 16, 2004).

This was the intended reasoning in the Preamble to the Regulations, which states that the Department "would not rely on the price paid by an NME producer to a market economy supplier if the quantity of the input purchased was insignificant. Because the amounts purchased from the market economy supplier must be meaningful, this requirement goes some way in addressing the commenter's concern that the NME producer may not be able to fulfill all of its needs at that price." See *Final Rule*, 62 at 27366. By announcing a basic threshold of what constitutes such a "meaningful" quantity, and by making it high enough to reduce the chance of using a distorted price, without setting it too high to routinely prevent the use of market economy input prices, the Department can give greater effect to the intent of the regulations and improve its market economy inputs practice, to the benefit of all parties. This was the reasoning behind some of the proposals the Department put forward in its **Federal Register** notices soliciting comment on its methodology in this area. This decision, along with a discussion of the relevant public comments, is set forth below.

Statement of Policy

Drawing on the many submissions the Department has received in response to its requests for comment, the Department is now revising its methodology. While the Department may still consider amending its regulations to remove the regulatory requirement that the Department "normally" use market economy input prices to value the entire amount of such inputs, the Department is now establishing clearer guidance as to the circumstances in which it will accept market economy purchase prices to value an entire input. The Department is now instituting a rebuttable presumption that market economy input prices are the best available information for valuing an entire input when the total volume of the input purchased

from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average market economy purchase price to value the entire input. Alternatively, when the volume of an NME firm's purchases from market economy suppliers as a percentage of its total volume of purchases during the period of review is below 33 percent, but where these purchases are otherwise valid and meet the Department's existing conditions (described in the *Background* section above), the Department will weight-average the weighted-average market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. In determining whether market economy purchases meet this 33 percent threshold, the Department will compare the volume that the producer purchased from market economy sources during the period of investigation or review with the respondent's total purchases during the period.² When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33 percent threshold. This addresses the comment by Trade Pacific that the Department explain how it intends to calculate whether a given quantity of purchases meets the threshold, and ensures a fair comparison between acceptable market economy purchases and total purchases of the input during the period of investigation or review. Moreover, because this 33 percent threshold constitutes a rebuttable presumption, parties will have an opportunity to

demonstrate that case-specific facts outweigh the presumption.

The practice described above is consistent with our current regulations directing the Department to "normally" use market economy input prices to value an entire input. While, as discussed above, the term "normally" is not defined in the regulations, it has been established in both the Preamble and through the Department's long-standing case precedent that the Department may decline to accept market economy purchases to value an input when the volume involved is insignificant. *See, e.g., Preliminary Results of Administrative Review: Automotive Glass Windshields from China*, 70 FR 24373, 24380 (May 9, 2005) ("*Windshields*") ("here the quantity of the input purchased from market-economy suppliers was insignificant, the Department will not rely on the price paid by an NME producer to a market-economy supplier because it cannot have confidence that a company could fulfill all its needs at that price."). *Windshields* is representative of the Department's consistent standard that it will rely on market economy purchases to value an entire input only when the share of the input sourced from market economy suppliers, relative to the total volume purchased, is high enough that the Department has confidence that the market economy purchase price is reflective of the firm's total purchases of the input.

Accordingly, the Department's decision to introduce a flexible 33 percent threshold represents an extension of its previous practice. This standard of 33 percent is consistent with a threshold that the Department has defended, and the Court has upheld, as constituting a "meaningful" quantity in a prior case. *See Shakeproof*, 268 F.3d at 1382-83. However, the Department is now announcing what will generally constitute a "meaningful" or "significant" quantity, as opposed to making this determination on a strictly case-specific basis and without general guidance. Establishing a proportional, rather than absolute, threshold is also consistent with the logic described in *Windshields*, because the decision of whether to accept market economy input purchases to value an entire input rests on whether market economy purchases are reflective of what the total price would have been had the firm purchased solely from market economy suppliers.

Some commenters (including PRC MOFCOM) have argued that the Department's proposed policy statements provide solutions to what are

only theoretical problems. These parties argue that even if "bundling," price fluctuations or other factors that could distort market economy purchases exist, they have not been shown to be a problem in past cases and so there is no need for a remedy. The Department disagrees with this assertion. The Department cannot be privy to the circumstances governing every purchase of market economy inputs, nor can it be expected to conduct an analysis of each input market to see if given sales were representative of what the total price would have been had the firm purchased solely from market economy suppliers. Instead, the Department has always relied on the quantity of the input sourced from market economies as a proxy to gauge its relative confidence that the market economy purchase price is indeed reflective of the total volume of the input. The only difference is that the Department is now announcing a threshold, rather than making exclusively case-specific decisions.

On this point, PRC MOFCOM and others have argued that the Department should not establish a "bright line" threshold, that any threshold is arbitrary, and that the Department already has sufficient discretion to disregard market economy purchases that are not legitimate or *bona fide*. As described above, however, the Department is not introducing a rigid, "bright line" threshold, but rather a threshold that is amenable to interpretation in the light of case-specific facts and circumstances. Moreover, this threshold is not arbitrary, but is carefully crafted to balance two competing concerns; *i.e.* to ensure that market economy purchases are reflective of total purchases without contravening the regulatory requirement to "normally" accept market economy purchase prices to value an entire input when they are available.

In response to the Department's proposal to weight-average the market economy purchase price with a surrogate value when the share of market economy purchases falls below the Department's flexible threshold, PRC MOFCOM argued that there can be only one single source of the "best available information," and if the market economy purchase price constitutes the best information for valuing the portion of the input sourced from market economy countries, it must also constitute the best information for valuing the entire input. The Department disagrees with this assertion, and considers that the "best available information" in cases in which a respondent purchases a given input both domestically and from market

²Notwithstanding the determination the Department reached in *Shrimp*, at comment 8, the Department will examine if and when the inputs were used in the production process when case-specific conditions demand it. Unless there are case-specific reasons to examine other criteria, the Department will base its decision on whether to accept market economy input purchases to value the entire input on the relative share of market economy purchases during the period of investigation or review to total purchases during the period of investigation or review.

economy sources may be, depending on the circumstances, a weighted-average of a surrogate value and a market economy purchase price. The fact that a given price is valid for a (relatively small) portion of the input in question does not necessarily mean that it is representative of the firm's total purchases of the input. While market economy input purchase prices present a valid price for the market economy purchases that an NME firm actually made, and the Department will use these data, when possible, to value the portion of the input purchased from market economy sources, these prices may not always be the best available information for valuing the portion of the input produced within the NME. When the Department cannot be confident that this price is representative, however, if the price is otherwise valid (as in being *bona fide*, not subsidized, etc.), weight-averaging an appropriate surrogate value with the market economy purchase price would be the most accurate valuation of the input.

Other parties (including U.S. Steel, Stewart and Stewart, and CSUSTL) argue that except in rare cases, the Department should never accept market economy input purchases to value the portion of the input sourced domestically within the NME. Such a policy would contradict the applicable regulation, which clearly directs the Department to "normally" use market economy input purchases to value the entire input, even if the market economy purchases formed only a portion of an NME firm's total purchases of the input. The Department may consider a regulatory change in the future to grant it greater discretion in this area. Nevertheless, the Department disagrees with the assertion that market economy inputs *never* constitute the "best available information" just as it disagrees that these purchases *always* do so. Whether the best available information to value the NME-produced portion of the input is the price of the firm's market economy input purchases or another surrogate value is a decision that should be guided by the relative shares of the two types of purchases, as well as by case-specific facts. U.S. Steel argues that "establishing a bright line threshold for market economy input purchases (*i.e.*, more than 33 percent) would encourage respondents to manipulate the results so as to favorably affect the calculation of their dumping margins." The Department does not agree that a change in respondents' behavior as a result of this policy, by itself, amounts to "manipulation." Moreover, it is the

Department's view that requiring parties, in most cases, to meet a 33 percent threshold actually reduces the opportunity for manipulation.

The Department's flexible percentage threshold of 33 percent for accepting market economy purchase prices to value an entire input will improve the predictability and accuracy of the Department's analysis, while continuing to meet the Department's regulatory requirement to "normally" use market economy purchases to value inputs when they are available. Predictability will be improved because parties will have a clearer idea of when the Department will accept market economy purchase prices to value an entire input. The Department will be able to calculate more accurate dumping margins, because the threshold sets a reasonable ratio of the market economy-sourced portion to that produced in the NME so that the Department can be more confident in the representativeness of the market economy purchase prices. However, this threshold is also not set so high that it would contradict the regulatory guidance on this issue. Finally, the fact that this threshold represents a rebuttable presumption means that it will be flexible, allowing the Department to take into account any case-specific facts that may arise.

The approach detailed above will take effect for all segments of NME proceedings that are initiated after publication of this notice in the **Federal Register**.

Issue Two: Expected NME Wages Background

With regard to its calculation of expected NME wages, the Department stated in its November 17, 2004 final determination in the antidumping duty investigation of sales at less than fair value regarding Wooden Bedroom Furniture from the People's Republic of China, that it would "invite comments from the general public on this matter in a proceeding separate from the (Furniture) investigation." *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 and accompanying Issues and Decision Memorandum, at comment 23 (November 17, 2004). On June 30, 2005, the Department published a detailed description of its methodology for the calculation of expected NME wages and a request for comment. *See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761 (June 30, 2005) ("*Wage Rate FR*"). The Department received comments on

August 1, 2005, from the following six interested parties: (1) CSUSTL; (2) Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt ("*Grunfeld*"); (3) Lacquer Craft Manufacturing Company, Ltd.; (4) Dorbest Limited; (5) PRC MOFCOM; and (6) the Ministry of Trade of the Socialist Republic of Vietnam ("*VN Ministry of Trade*").

The Department's expected NME wages are currently calculated each year in two steps. First, the relationship between hourly wage rates (obtained from the International Labor Organization's ("*ILO*") *Yearbook of Labour Statistics*, relying on data that has been reported within the six-year period described below) and per-capita gross national income ("*GNI*") (obtained from the World Bank) from market-economy countries (the "basket of countries") is estimated using an ordinary least squares ("*OLS*") regression analysis. Second, the GNI of each of the countries designated by the Department as an NME is applied to the regression, which yields an expected hourly wage rate for each NME. For further information, see *Wage Rate FR*.

PRC MOFCOM and the other interested parties (excluding CSUSTL) ("*PRC MOFCOM et al.*") argued that when the Department is valuing any factor of production, including labor, the Department is obliged to use data from economically comparable countries and that the inclusion of countries not considered economically comparable is in contravention of our statute, citing 19 U.S.C. § 1677b(c)(4) and *Antidumping Duties; Countervailing Duties, Part II*, 62 FR 27296, 27367 (May 19, 1997) ("*Final Rule*"). Finally, PRC MOFCOM et al. asserted that the Department's original intention was to limit the regression analysis to economically comparable countries, citing *Antidumping Duties; Countervailing Duties Part II*, 61 FR 7308 (February 27, 1996) ("*Proposed Rule*").

Accordingly, these parties proposed that the Department revert to its former practice of valuing direct labor using a surrogate wage rate from a surrogate country selected in each individual proceeding, or an average of the wage rates for the countries designated by the Department as economically comparable to the NME at the outset of each proceeding. Alternatively, some parties proposed that the Department should estimate the relationship between wage rates and per-capita GNI only for countries that are economically comparable to the NME country in question, defined by either the Import Administration's Office of Policy or by the World Bank's national income

classifications. These parties asserted that the inclusion of non-comparable countries is both distortive and contrary to the Department's statutory directive to use "economically comparable" surrogate values.

Alternatively, acknowledging that the Department has a stated preference for more data when valuing labor, these parties proposed that the Department expand its basket of countries to include all countries for which the required data are available.

Finally, some parties argued that the Department should use a generalized least squares ("GLS") methodology for its regression analysis in order to account for heteroscedasticity in the data set.

CSUSTL argued that the Department is required to value all factors of production for a given respondent, and must therefore capture all labor costs experienced by the respondent. Accordingly, CSUSTL proposed that the Department change its practice to rely on "labor cost" figures from Chapter 6 of the ILO's *Yearbook of Labour Statistics* or, failing that, that the Department should only use data from Chapter 5 that captures "employee earnings" rather than both earnings and wages. CSUSTL also noted that in order to capture all factors of production and other costs, the Department's calculation of surrogate financial ratios must be adjusted according to the labor cost elements that are included in the Department's expected NME wage rates.

Statement of Policy

Section 733(c) of the Act provides that the Department will value the factors of production in an NME using the best available information regarding the value of such factors in a market economy country or countries considered to be appropriate by the administering authority. The statute only requires that when valuing the factors of production, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of comparable economic development. See Section 733(c)(4) of the Act.

While surrogate values for other factors of production are selected from a single surrogate country, the Department determined in its *Final Rule* that it would be more accurate to base estimated labor values on data from many countries, stating that "more data is better than less data, and that averaging of multiple data points (or regression analysis) should lead to more accurate results in valuing any factor of production. However, it is only for labor

that we have a relatively consistent and complete database covering many countries." See *Final Rule* at 62 *FR* 27367.

Accordingly, section 351.408(c)(3) of the Department's regulations provides that: For labor, the Secretary will use regression-based rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

19 CFR 351.408 (c)(3).

The Department's regulations concerning the valuation of labor were promulgated as part of a public notice and comment process. In the *Proposed Rule* the Department explained the benefits of a wage rate derived from a regression analysis, which include fairness and predictability. The *Proposed Rule* states:

Moreover, use of this average wage rate will contribute to both the fairness and the predictability of NME proceedings. By avoiding the variability in results depending on which economically comparable country happens to be selected as the surrogate, the results are much fairer to all parties. To enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the Department each year, based on the most recently available data, and will be available to any interested party.

See *Proposed Rule*, at 7345.

PRC MOFCOM et. al.'s comment that the Department should abandon its regression-based calculation of expected NME wage rates in favor of the use of a single surrogate value for wage rates would contravene the Department's regulations, which direct the Department to use regression-based labor rates. In addition, as the Department noted in the *Proposed Rule*, while there is a strong positive correlation between wage rates and GNI, there is also variation in the wage rates of comparable market economies. For example, the Department's November 2005 regression illustrates that the observed hourly wage rates for market economy countries with national incomes below US\$1,000 ranged from US\$0.23 to US\$0.94. See <http://ia.ita.doc.gov/wages/03wages/110805-2003-Tables/03wages-110805.html>. Therefore, if the Department adopted this suggestion in a proceeding involving an NME country with a GNI under US\$1,000, values for labor might range from US\$0.23 to US\$0.94, depending on which economically comparable country is selected as the surrogate. See *Proposed Rule* at 7345.

The Department is able to avoid this variability through the regression-based methodology for estimating wage rates due to the availability of reliable wage rate data and the consistent relationship over time between wage rates and GNI. The Department relies upon what is, in essence, an average wage rate, indexed to each NME's level of economic development via its GNI. Under the Department's regression methodology, the value for labor will be the same in every proceeding involving a given NME. This enhances the fairness and predictability of the Department's calculations.

Similarly, restricting the basket of countries to include only countries that are economically comparable to each NME is not feasible and would undermine the consistency and predictability of the Department's regression analysis. A basket of "economically comparable" countries could be extremely small. For example, there were five countries with GNI less than US\$1,000 in the Department's 2005 calculation. A regression based on an extremely small basket of countries would be highly dependent on each and every data point. The inclusion or exclusion of any one country could have an extreme effect on the regression results. As described below, the Department screens the available data every year to ensure that they meet a number of important data suitability criteria. Therefore, the number and composition of the countries in the basket may vary unavoidably from year to year. A larger basket minimizes this potential for dramatic year-to-year variability.

Relative basket size would not be such a critical factor if there were a perfect correlation between GNI and wages. If this were the case, a precise regression line could be derived from suitable data from only two countries. However, while there is a strong world-wide relationship between wages and GNI (the r -square for the Department's 2005 calculation was .92, indicating an extremely strong relationship between GNI and wages), there is nevertheless variability in the data. For example, in the Department's 2005 calculation, observed wages did not increase in lockstep with increases in GNI in the five countries with GNI less than US\$1,000: Pakistan, with a GNI of US\$520, had reported a wage of US\$0.38 per hour while Sri Lanka, with a GNI of US\$930, had reported a wage of US\$0.34 per hour. As stated above, a larger basket minimizes the effects of any single data point and, thereby, better captures the global relationship between wages and GNI. More data is,

therefore, better than less data for the purposes of the Department's regression analysis, provided it is suitable and reliable data.

For this reason, consistent with the regulation and the statute, the Department's methodology relies on a significantly larger basket of countries. This maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the basket, and provides predictability and fairness. Importantly, the Department notes that economic comparability is established in the regression calculation through the GNI of the NME in question, which ensures that the result represents a wage rate for a country economically comparable to the NME.

With regard to the use of an alternative regression methodology, the Department notes that in its *Proposed Rule*, the Department explicitly stated that it would utilize an OLS regression analysis. See *Proposed Rule*, at 7345. OLS regression analysis is a commonly used analytical tool that is a basic component of any statistical analysis package. Like all statistical tools, the OLS analysis has certain limitations and cannot account for all characteristics of any given dataset, including heteroscedasticity. One of the assumptions of the OLS regression analysis is that the variance of the error terms is constant across observations. If the variance of the error terms is not constant, the error terms are considered heteroscedastic.

The data set upon which the Department bases its regression analysis changes on an annual basis. The Department does not consider it prudent, especially in light of its stated intention to use an OLS analysis, to decide on a year-by-year basis whether or not the level of heteroscedasticity in a given year's data would weigh in favor of using a GLS regression analysis. Instead, the OLS regression analysis allows the Department to rely on a simple, easily-duplicated methodology that enhances the fairness, predictability and transparency of the Department's antidumping duty calculations, while also ensuring their accuracy.

With regard to the CSUSTL comment that the Department should rely on "labor cost" figures from Chapter 6 of the ILO's *Yearbook of Labour Statistics*, the Department notes that the ILO defines data under "Chapter 5b: Wages in Manufacturing" as wages and bonuses, *i.e.*, pre-tax monetary remuneration received by the employee. This is the data set that the Department relies upon in its calculations of expected NME wage rates.

The Department also notes that the ILO defines "earnings" under Chapter 5 of its *Yearbook of Labour Statistics* as being inclusive of "wages," and as including both bonuses and gratuities. The Department agrees with CSUSTL that, in order to ensure that its calculation of expected NME wage rates accurately reflects the remuneration received by workers, it should rely on "earnings," not "wages."

Chapter 6 data, on the other hand, includes all costs to the producer related to labor including wages, benefits, housing, training, etc. As described below, the Department is already capturing as much of such labor costs as possible in its financial ratio calculations. The Department notes further that significantly fewer countries report Chapter 6 labor data than report Chapter 5b labor data. As of August 2006, 15 market economy countries had reported 2004 Chapter 6 data, while 65 market economy countries had reported 2004 Chapter 5b data. Chapter 6 therefore results in a significantly smaller basket of countries for which reliable data is available and may not accurately capture the global average of costs associated with labor.

The Department agrees with CSUSTL, however, that in order to ensure that labor costs not included in the ILO defined "earnings" are accounted for in its calculation of normal value, it is best to adjust, where possible, the surrogate financial ratios employed by the Department to value overhead expenses, selling, general and administrative ("SG&A") expenses, and profit. Accordingly, it is the Department's practice to categorize all individually identifiable labor costs not included in the ILO's definition of "earnings" under Chapter 5 of the *Yearbook of Labour Statistics* as overhead expenses. See *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum, at comment 1. Such adjustments are fact-specific in nature and subject to available information on the record. Specifically, where warranted, individually identifiable labor costs in the surrogate financial statements which are not included in "earnings" are categorized as overhead or SG&A expenses for purposes of the Department's calculation of surrogate financial ratios.

Finally, the Department agrees that the basket of countries upon which the regression is based should be expanded to include all countries for which data are available in order to ensure accuracy

and fairness. All such data must meet the Department's suitability requirements described below, which include contemporaneity and that the data cover both men and women and all reporting industries in the country.

Under its practice heretofore, the Department includes data from Chapter 5 of the ILO *Yearbook of Labour Statistics* that has been reported within five years of the Base Year, thereby considering a total of six years of data. (As described below in Attachment 1, the "Base Year" is the year upon which the regression data are based and is two years prior to the year in which the Department conducts its regression analysis.) In the course of reviewing its methodology, the Department has concluded that the inflation of data up to five years potentially reduces the accuracy of the calculation. Wage data that are potentially six years old may not represent the wage dynamics in labor markets today. The Department believes that, given the significant availability of more contemporaneous data, inflating old data is no longer necessary in order to achieve an acceptably large basket of countries. For example, over 50 countries reported suitable data within one year of 2003. The Department expects that the number of countries that meet the Department's suitability requirements will increase over time, as a greater number of countries report wage data to ILO in a reliable manner.

Therefore, in its revised methodology, the Department will only rely on ILO wage data that have been reported within one year prior to the Base Year, thereby considering a total of two years of data.

Revision of Methodology

Pursuant to the comments received and the Department's analysis thereof, effective for the 2006 calculation of expected NME wage rates, the Department will make the following revisions to its methodology:

1. The Department will only use earnings data reported in Chapter 5b of the ILO statistics.
2. The basket of countries upon which the wage regression is based will include data from all market economy countries that meet the criteria described below and that have been reported within 1 year prior to the Base Year.
3. Each year, the Department's annual calculation of expected NME wage rates will be subject to public notice prior to the adoption of the resulting expected NME wage rates for use in antidumping proceedings. Comment will be requested only

with regard to potential clerical errors in the Department's calculation in light of its stated revised methodology.

Accordingly, the Department intends to publish its 2006 expected NME wage rates on its website in the autumn of 2006, together with a notice in the **Federal Register** requesting comment with regard to potential clerical errors in light of the revised methodology described below. The Department intends to finalize its calculations within one month thereafter.

The Department's methodology is described in full in below.

The Expected NME Wage Rate Methodology

The Department's regulations generally describe the methodology by which the Department calculates expected NME wages:

For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in non-market economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

19 CFR 351.408 (c)(3).

In accordance with Section 351.408(c)(3), the Department annually calculates expected NME wages in two steps. First, the Department uses an ordinary least squares regression analysis to estimate a linear relationship between per-capita GNI and hourly wages in market economy ("ME") countries. Second, the Department uses the results of the regression and NME GNI data to estimate hourly wage rates for NME countries.

There is usually a two-year interval between the current year and the most recent reporting year of the data required for this methodology due to the practices of the respective data sources. The Department bases its regression analysis on this most recent reporting year, which the Department refers to as the "Base Year." For example, the Department relied upon data from 2001 to calculate expected NME wages in 2003, *i.e.*, the "Base Year" for the 2003 calculation was 2001. In practice, the "Base Year," *i.e.*, the year upon which the regression data are based, is two years prior to the year in which the Department conducts its regression analysis.

1. Regression Analysis

The Department's regression analysis, which describes generally the relationship between wages and GNI,

relies upon four distinct data series: (A) country-specific wage rate (earnings) data from Chapter 5B of the International Labor Organization's ("ILO") *Yearbook of Labour Statistics*; (B) country-specific consumer price index ("CPI") data from the *International Financial Statistics* of the International Monetary Fund ("IMF"); (C) exchange rate data from the IMF's *International Financial Statistics*; and (D) country-specific GNI data from the *World Development Indicators* of the World Bank ("WB").

The wage rate data described above are converted to hourly wage rates and adjusted using CPI data to be representative of the current Base Year. The data are then converted to U.S. dollars using the appropriate exchange rate data. A regression analysis is ultimately run on these adjusted wage rate data and GNI. The following sections describe each data series and how it is used.

(A) Wage Data

For every country for which data is available and suitable (as described below), the Department chooses a single wage rate that represents a broad measure of wages for that country. The Department will choose data that is either contemporaneous with the Base Year or one year prior. Thus, the Department limits its selection of data to a two year period.

The ILO Chapter 5B database categorizes data under a number of parameters.³ The Department prioritizes these parameters in order to arrive at a single wage rate for each country representing the broadest possible measure of wages. As such, there are three criteria that all data must meet in order to be considered suitable for the Department's regression analysis.

First, under the category "Type of Data," the Department will only use data that is reported in "earnings."

Second, under the category "Sex," the Department will only use data that cover both men and women.⁴

Third, under the category "Sub-Classification," the Department will only use data that represent all reported

³For example, "Type of Data," *i.e.*, whether the data reported is "earnings" or "wages," "Sex," *i.e.*, male/female coverage; "Sub-Classification," *i.e.*, coverage of different types of industry; "Worker Coverage," *i.e.*, coverage of different types of workers, such as wage earners or salaried employees; "Type of Data," *i.e.*, the unit of time for which the wage is reported, such as per hour or per month; and, "Source ID," *i.e.*, a code for the source of the data; "Source," *i.e.*, the original survey source of the data and "Classification," *i.e.*, the industrial classification.

⁴The Department does not consider values of "Indices, Men and Women" for this parameter.

industries. This is indicated in the database by a value of "Total" for the "Sub-Classification" parameter.

If there is more than one record in the ILO database that meet these three requirements, the Department will choose the data point from the Base Year over data from the prior year. At times, there is more than one data record in the ILO database that is both (1) reported in the same, most contemporaneous year and (2) meet the three required criteria above. In such cases, the Department chooses a single data point by prioritizing the following three parameters, described in greater detail below: (1) "Worker Coverage," *i.e.*, coverage of different types of workers; (2) "Type of Data," *i.e.*, the unit of time for which the wage is reported; and, (3) "Source ID," *i.e.*, a code for the source of the data.

For example, for the parameter "Worker Coverage," the Department considers "wage earners" to be the best measurement for calculating expected NME wages and prioritizes such data over "employees," "salaried employees" and "total employment," in that order.

When the values for all parameters listed above are equal, the Department prioritizes data reported on an hourly basis over that reported on a daily, weekly and monthly basis, in that order, for the parameter "Type of Data." Through this choice, the Department minimizes potential error due to converting daily, weekly or monthly wages to hourly wages.

When the values for all parameters listed above are equal, the Department prioritizes data classified under the International Standard Industrial Classification (ISIC) Revision 3 (ISIC Rev.3-D) over ISIC Revision 2 (ISIC Rev. 2-3). ISIC Rev. 3-D was revised in 1989 and is a more recent classification standard than the 1968 ISIC Rev. 2-3. See <http://unstats.un.org/unsd/cr/family2.asp?Cl=2> and <http://laborsta.ilo.org/applv8/data/istic2e.html>.

Finally, when the values for all parameters listed above are equal, the Department prioritizes data with a "Source ID" value of "no value" over "1," "2" and "3," in that order.

The ILO data that are not reported on an hourly basis are converted to an hourly basis based on the premise that there are 8 working hours per day, 5.5 working days a week and 24 working days per month.

(B) CPI Data

Once hourly figures have been calculated based on the wage rate data discussed above, the wages are adjusted to the Base Year on the basis of the

Consumer Price Index for each country, as reported by the IMF's *International Financial Statistics*. This adjustment is made for any wage rate data not reported for the Base Year.

(C) Exchange Rate Data

These inflation-adjusted wage data, which are denominated in each country's national currency, are then converted to U.S. dollars using Base Year period-average exchange rates reported by the IMF's *International Financial Statistics*.

Thus, using (A) wage data, (B) CPI data and (C) exchange rate data, discussed above, the Department arrives at hourly wages, denominated in U.S. dollars and adjusted for inflation for each country for which all the above data are available.

Finally, once the data have been converted to U.S. dollars per hour and adjusted for inflation, it is the Department's practice to eliminate values that could not possibly be reflective of actual wage levels or values that vary in either direction in the extreme from year to year (and which probably reflect errors in the original source data). For example, if a country is found to have average wage levels of US\$0.01 per hour, the Department would eliminate that value as erroneous.

(D) GNI Data

The Department uses Base Year GNI data for each of the countries in the Department's analysis, as reported by the WB. GNI data are denominated in U.S. dollars current for the Base Year. The WB defines GNI per capita as equivalent to gross national product ("GNP") per capita, which is "the dollar value of a country's final output of goods and services in a year divided by its population."

The Department conducts its linear, ordinary least squares regression analysis using the Base Year wages per hour in U.S. dollars discussed above and Base Year GNI per capita in U.S. dollars to arrive at the following equation: $\text{Wage}[i] = Y\text{-intercept} + X\text{-coefficient} * \text{GNI}$. The X-coefficient describes the slope of the line estimated by the regression analysis, while the Y-intercept is the point on the Y-axis where the regression line intercepts the Y-axis. The results of this regression analysis describe generally the relationship between hourly wages and GNI.

2. Application of Regression Results to NME GNI Data

The Department applies the NME Base Year GNI to the equation presented

above to arrive at an estimated wage rate for the NME. This is done for each NME.

Issue Three: Duty Drawback

Background

With respect to the duty drawback adjustment, the Department is directed by section 772(c)(1)(B) of the Act, which states that "the price used to establish export price and constructed export price shall be -- (1) increased by ... (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States."

Based upon this statutory language, the Department applies a two-prong test to determine entitlement to a duty drawback adjustment. That is, the party claiming such adjustment must establish that: (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. *See, e.g., Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006) and accompanying Issues and Decision Memorandum, at comment 2 ("*CORE from Korea*"). Moreover, the courts have sustained the Department's traditional two-prong test. *See, e.g., Wheatland Tube Company v. United States*, 414 F. Supp. 2d 1271, 1287 (CIT 2006); *Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1093 (CIT 2001); *Far East Machinery Co., Ltd. v. United States*, 699 F. Supp. 309, 311 (CIT 1988); *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987).

The Department previously requested and received comments regarding its practice with respect to duty drawback adjustments to export price in antidumping proceedings. *See Duty Drawback Practice in Antidumping Proceedings*, 70 FR 37764 (June 30, 2005) and *Duty Drawback Practice in Antidumping Proceedings*, 70 FR 44563 (August 3, 2005). Among other things, the Department requested comments on the appropriate methodology to apply when duty drawback is claimed for some, but not all, exports incorporating the input in question. In past cases,

certain parties have argued that the Department should allocate the total amount of relevant drawback received to total exports, regardless of destination, to ensure that the adjustment claimed on U.S. sales is not overstated. *See, e.g., CORE from Korea*, Issues and Decision Memorandum at comment 2.

Some parties argued, for example, for application of a "reasonableness" standard in this regard. They claim that, while an adjustment in the full amount of the duty drawback received should be made when the foreign producer can directly trace particular imported duty-paid inputs through the subsequent production process and into particular finished goods that are exported to the United States, this is an unlikely situation. Because it is more likely that exported goods may or may not actually have incorporated the imported input, a reasonable approach would involve allocating the drawback received to all exports that may have incorporated the duty-paid input in question. By doing so, these commenters claim, the Department would reasonably avoid excessive claims for drawback adjustments in antidumping calculations. These commenters further suggest that parties claiming favorable adjustments such as claims based upon duty drawback carry the burden of proof in this regard. *See Statement of Administrative Action*, H. Doc. 103-316, 103d Cong. 2d Sess., 829 (1994) ("{A}s with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment.").

The Department agrees with these commenters and proposes to modify its approach by limiting the duty drawback adjustment in certain circumstances. The Department generally agrees that it should allocate the total amount of duty drawback received across all exports that may have incorporated the duty-paid input in question, regardless of destination, to ensure that the adjustment claimed on U.S. sales is not overstated. Absent such a limitation, the Department is concerned that its current practice of permitting an adjustment to export price and constructed export price for all duty drawback received, whether or not it is related to U.S. sales, is an inappropriate application of its statutory authority to account for the effects of foreign drawback programs on price differentials between normal value and U.S. price. Furthermore, the Department is concerned that the adjustment could be manipulated by certain parties for purposes of obtaining a more favorable dumping margin. However, the Department will continue

to permit a full adjustment for duty drawback received should the foreign producer claiming such adjustment demonstrate that it can directly trace the particular imported duty-paid inputs through the subsequent production process and into particular finished goods that are exported to the United States. The Department welcomes comment on this proposed methodology.

DEADLINE FOR SUBMISSION OF COMMENTS (on duty drawback): November 17, 2006.

Comments (Duty Drawback Issue Only)

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in development of any changes to its methodology. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B-099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: <http://ia.ita.doc.gov/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

Dated: October 11, 2006.

David M. Spooner,
Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050317077-6264-03; I.D. 101306D]

Environmental Literacy Grants for Free-Choice Learning

AGENCY: Office of Education (OED), Office of the Undersecretary of Commerce for Oceans and Atmosphere (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: NOAA's Office of Education (OED) is requesting applications for environmental literacy projects in support of free-choice learning. The proposed projects should support NOAA's vision which is: an informed society that uses a comprehensive understanding of the role of the ocean, coasts, and atmosphere in the global ecosystem to make the best social and economic decisions. Successful projects should reach significant segments of the U.S. population at a State, multi-state or national level. The environmental literacy messages should clearly convey how the Earth system influences a project's target audience, how the target audience is influencing the Earth system and how an environmentally literate public can make informed decisions. The goal of these projects should be to provide adequate information to move the audience's knowledge beyond basic awareness while reaching audiences sufficient in size with a message that promotes such a change. Funded projects will last between one and five years in duration and will create new, or capitalize on existing, networks of institutions, agencies and/or organizations to provide common messages about key concepts in Earth System Science, for example the Ocean Literacy Essential Principles and Fundamental Concepts (http://www.coexploration.org/oceanliteracy/documents/OceanLitConcepts_10.11.05.pdf).

Applications for exhibits involving construction of part or all of a building are not eligible for funding under this announcement. Formal education projects and projects whose main focus

is on development of new data visualizations and platforms will not be considered for funding through this announcement. Please visit http://www.oesd.noaa.gov/funding_opps.html for information on additional funding opportunities in those areas. This funding opportunity meets NOAA's Mission Goal to protect, restore and manage the use of coastal and ocean resources through ecosystems-based management.

DATES: The deadline for preliminary proposals is 5 p.m., e.s.t., November 29, 2006. The deadline for full applications is 5 p.m., e.s.t. on March 21, 2007.

ADDRESSES: Pre-proposals may be submitted through [Grants.gov](http://www.grants.gov) (<http://www.grants.gov>), or if an applicant does not have Internet access, three copies must be mailed to Attn: ELG Competition Manager, DOC/NOAA, Office of Education, 1401 Constitution Avenue, NW., Room 6863, Washington, DC 20230. Please note that hard copies submitted via the U.S. Postal Service can take up to 4 weeks to reach this office, therefore applicants are recommended to send hard copies via expedited shipping methods (e.g., Airborne Express, DHL, Fed Ex, UPS).

Full applications may be submitted through [Grants.gov](http://www.grants.gov) (<http://www.grants.gov>), or if an applicant does not have Internet access, one hard copy should be sent to Attn: ELG Competition Manager, DOC/NOAA Office of Education, 1401 Constitution Avenue, NW., Room 6863, Washington, DC 20230. If submitting a hard copy, applicants are requested to provide a CD-ROM of the application, including scanned signed forms or forms with electronic signatures. This announcement will also be available at: http://www.oesd.noaa.gov/funding_opps.html or by contacting the program official identified in **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT:

Sarah Schoedinger at sarah.schoedinger@noaa.gov, telephone 704-370-3528 or Alyssa Gundersen at Alyssa.Gundersen@noaa.gov, telephone 202-482-3739.

SUPPLEMENTARY INFORMATION: NOAA's Office of Education (OED) is requesting applications for environmental literacy projects in support of free-choice learning. The proposed projects should support NOAA's vision which is: an informed society that uses a comprehensive understanding of the role of the ocean, coasts, and atmosphere in the global ecosystem to make the best social and economic decisions. Successful projects should reach significant segments of the U.S.

population at a State, multi-state or national level. The environmental literacy messages should clearly convey how the Earth system influences a project's target audience, how the target audience is influencing the Earth system and how an environmentally literate public can make informed decisions.

The goal of these projects should be to provide adequate information to move the audience's knowledge beyond basic awareness while reaching audiences sufficient in size with a message that promotes such a change. The proposed mechanisms for delivery of these messages may include, but are not limited to, public literacy campaigns, kiosks or traveling exhibits, and/or the revision of existing programs that would be made available at multiple venues. Funded projects will last between one and five years in duration and will create new, or capitalize on existing, networks of institutions, agencies and/or organizations to provide common messages about key concepts in Earth System Science, for example the Ocean Literacy Essential Principles and Fundamental Concepts. (http://www.coexploration.org/oceanliteracy/documents/OceanLitConcepts_10.11.05.pdf).

Applications for exhibits involving construction of part or all of a building are not eligible for funding under this announcement. Formal education projects and projects whose main focus is on development of new data visualizations and platforms will not be considered for funding through this announcement. Please visit http://www.oesd.noaa.gov/funding_opps.html for information on additional funding opportunities in those areas. All projects shall employ the relevant strategies articulated in the NOAA Education Plan (http://www.oesd.noaa.gov/NOAA_Ed_Plan.pdf). All projects should be implemented at a State, multi-state or national level and have evaluations that fully assess the strengths and weaknesses of the proposed project. It is anticipated that final recommendations for funding under this announcement will be made by June 30, 2007, and that projects funded under this announcement will have a start date no earlier than September 15, 2007. This funding opportunity meets NOAA's Mission Goal to protect restore and manage the use of coastal and ocean resources through ecosystems-based management.

A detailed description of the program requirements may be found in the full funding opportunity announcement that can be accessed via the Grants.gov Web site, the NOAA Web site at <http://>

www.oesd.noaa.gov/funding_opps.html, or by contacting the program official identified in **FOR FURTHER INFORMATION CONTACT**.

Electronic Access

The full text of the full funding opportunity announcement for this OED program can be accessed via the Grants.gov Web site. That announcement will also be available at the NOAA Web site: http://www.oesd.noaa.gov/funding_opps.html or by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement. This **Federal Register** notice is available through the NOAA home page at: <http://www.noaa.gov/>.

Statutory Authority: 15 U.S.C. 1540.

CFDA: 11.469, Congressionally Identified Awards and Projects.

Funding Availability

NOAA announces the availability, contingent upon FY 2007 appropriations, of approximately \$1,500,000 of Federal financial assistance in FY 2007 for free-choice learning projects. Approximately 2 to 5 awards in the form of grants or cooperative agreements will be made through this project solicitation. NOAA will only consider projects that have a duration of 1 to 5 years. The total Federal amount for all years that may be requested from NOAA for the direct and indirect costs of the proposed project shall not exceed \$750,000. The minimum Federal amount that must be requested from NOAA for all years for the direct and indirect costs is \$200,000. Applications requesting Federal support from NOAA of less than \$200,000 total or more than \$750,000 total will not be considered for funding.

Publication of this notice does not oblige the Department of Commerce/ National Oceanic and Atmospheric Administration (DOC/NOAA) to award any specific project or to obligate any available funds. If an applicant incurs any costs prior to receiving an award agreement signed by an authorized NOAA Grants Officer, the applicant would do so solely at one's own risk of such costs not being included under the award.

Eligibility

Eligible applicants are institutions of higher education, other nonprofits, and State, local and Indian tribal governments in the United States. Among those eligible applicants are K through 12 public and independent

schools and school systems, and science centers and museums. For profit organizations, foreign institutions, foreign organizations and foreign government agencies are not eligible to apply. Federal agencies are not eligible to receive Federal assistance under this announcement, but may be project partners. DOC/NOAA is strongly committed to increasing the participation of Minority Serving Institutions (MSIs), i.e., Historically Black Colleges and Universities, Hispanic-serving institutions, Tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that work in underserved communities. OED encourages applications that involve any of the above institutions. An individual may serve as a principal investigator (PI) in only one application for this funding opportunity, however individuals may serve as co-PIs or key personnel in an unlimited number of applications. Institutions may serve as a PI or co-PI in an unlimited number of applications.

Cost Sharing Requirements

There are no cost-sharing requirements.

Preliminary Proposals and Full Application Requirements

Applicants must submit pre-proposals for review to prevent the expenditure of effort on proposals that may not be successful. All applicants will receive a response to their pre-proposal via e-mail or letter indicating whether they are authorized to submit a full application. Only those who submit pre-proposals are eligible to submit a full application. The provisions for pre-proposal and full application preparation are mandatory. Additional guidance, including frequently asked questions (FAQ), is available online at http://www.oesd.noaa.gov/funding_opps.html.

Evaluation and Selection Procedures

The general evaluation criteria and selection factors that apply to both pre-proposals and full applications to this funding opportunity are summarized below. The evaluation criteria for pre-proposals and full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria for Projects

1. *Importance and/or relevance and applicability of proposed project to the program goals:* This ascertains whether there is intrinsic value in the proposed

work and/or relevance to NOAA, Federal, regional, State, or local activities.

2. *Technical/scientific merit*: This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

3. *Overall qualifications of applicants*: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

4. *Project costs*: The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. *Outreach and education*: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Review and Selection Process

Pre-Proposal

Pre-proposals meeting the requirements listed in FFO will be evaluated by government and/or non-government representatives, each having relevant expertise. The individual reviewers' ratings shall be averaged for each application to establish rank order for the Office of Education (OED) Program Officer. The review panel will provide no consensus advice. Decisions on whether to authorize or not authorize a full application will be based on the rank order of the pre-proposals, unless choosing out of rank order is justified by the selection factors below. The Office of Education anticipates asking up to 30 applicants to submit full applications. Full applications from applicants who were not asked to submit them will not be reviewed or considered for funding.

Full Application

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. All applications that meet the minimum eligibility requirements and that are ascertained to be complete will be evaluated and scored by independent reviewers. The reviews will be conducted by a panel of individuals, who may be government or non-government representatives, each having relevant expertise. The individual reviewers' ratings will be averaged for each application to establish rank order. No consensus

advice will be given by the review panel. The Program Officer will neither vote nor score applications as part of the review panel nor participate in discussion of the merits of any proposal.

The Program Officer will make his/her recommendations for funding based on rank order and the selection factors listed below to the Selecting Official for the final funding decision.

Selection Factors for Projects

The panel review ratings shall establish the rank order that the Selecting Official will use for final recommendation to the NOAA Grants Officer. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
 - a. Geographically.
 - b. By type of institutions.
 - c. By type of partners.
 - d. By research areas.
 - e. By project types.
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA

Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, http://www.nepa.noaa.gov/NAO216_6_TOC.pdf, and the Council on Environmental Quality implementation regulations, http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001.

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

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Helen Hurcombe,

Director, NOAA Acquisitions and Grants, U.S. Department of Commerce.

[FR Doc. E6-17535 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 050317077-6265-04; I.D. 101306C]

Environmental Literacy Grants for Formal K-12 Education

AGENCY: Office of Education (OED), Office of the Undersecretary of Commerce for Oceans and Atmosphere (USEC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: The NOAA Office of Education (OED) is requesting applications for environmental literacy projects in support of K-12 education. Funded projects will last between one and five years in duration and will propose ways to expand the amount of Earth System Science taught in the

classroom to improve student learning of that subject. All projects shall employ the relevant strategies articulated in the NOAA Education Plan. All projects should be implemented at a State or multi-State level and have evaluations that fully assess the strengths and weaknesses of the proposed project. It is anticipated that final recommendations for funding under this announcement will be made by June 30, 2007, and that projects funded under this announcement will have a start date no earlier than September 15, 2007. This funding opportunity meets NOAA's Mission Goal to understand climate variability and change to enhance society's ability to plan and respond.

DATES: The deadline for preliminary proposals is 5 p.m., E.S.T., November 29, 2006. The deadline for full applications is 5 p.m., E.S.T. on March 21, 2007.

ADDRESSES: Pre-proposals may be submitted through Grants.gov (<http://www.grants.gov>), or if an application does not have Internet access, three copies may be mailed to ATTN: ELG Competition Manager, DOC/NOAA, Office of Education, 1401 Constitution Avenue, NW., Room 6863, Washington, DC 20230. Please note hard copies submitted via the U.S. Postal Service can take up to 4 weeks to reach this office therefore applicants are recommended to send hard copies via expedited shipping methods (e.g. Airborne Express, DHL, Fed Ex, UPS).

Full applications may be submitted through Grants.gov (<http://www.grants.gov>) or, if an applicant does not have Internet access, one hard copy may be sent to ATTN: ELG Competition Manager, DOC/NOAA Office of Education, 1401 Constitution Avenue NW., Room 6863, Washington, DC 20230. If submitting a hard copy, applicants are requested to provide a CD-ROM of the application, including scanned signed forms or forms with electronic signatures. This announcement will also be available at: http://www.oesd.noaa.gov/funding_opps.html or by contacting the program official identified in **FOR FURTHER INFORMATION CONTACT.** The NOAA Education Plan may be accessed at: http://www.oesd.noaa.gov/NOAA_Ed_Plan.pdf. The document entitled Ocean Literacy Essential Principles and Fundamental Concepts may be accessed at http://www.coexploration.org/oceanliteracy/documents/OceanLitConcepts_10.11.05.pdf.

FOR FURTHER INFORMATION CONTACT: Sarah Schoedinger at sarah.schoedinger@noaa.gov, telephone

704-370-3528 or Alyssa Gundersen at Alyssa.Gundersen@noaa.gov, telephone 202-482-3739.

SUPPLEMENTARY INFORMATION: The NOAA Office of Education (OED) is requesting applications for environmental literacy projects in support of K-12 education. Funded projects will last between one and five years in duration and will propose ways to expand the amount of Earth System Science taught in the classroom to improve student learning of that subject. Successful projects will catalyze change in K-12 education through development of new programs and/or materials, and/or revision of existing programs and/or materials that result in the increased use of Earth System Science in K-12 classrooms. Projects are encouraged to further the use of Earth System Science concepts, such as the concepts articulated in the Ocean Literacy Essential Principles and Fundamental Concepts (See **ADDRESSES**). Projects might focus on the education of pre-service teachers or on the professional development for in-service teachers. Projects might also propose ways to create and/or support the retention of highly qualified teachers, e.g. creation of an Earth System Science certification program, or propose new, or modification to existing, K-12 curricula and related instructional materials. Projects focusing on pre-service education of teachers should involve post-secondary institutions or other entities that provide pre-service teacher education. Projects focusing on in-service teacher professional development should involve State or local governments, such as school districts, as appropriate. Projects focusing on the development of new, or modification to existing, curricula and related instructional materials should be able to demonstrate how they will address the relevant State standards, support State or national assessments, and be disseminated at the State or multi-State level. Projects that focus on free-choice learning or development of new data visualizations and platforms will not be considered for funding through this announcement. Please visit http://www.oesd.noaa.gov/funding_opps.html for information on these additional funding opportunities.

All projects shall employ the relevant strategies articulated in the NOAA Education Plan (See **ADDRESSES**). All projects should be implemented at a State or multi-State level and have evaluations that fully assess the strengths and weaknesses of the proposed project.

It is anticipated that final recommendations for funding under this announcement will be made by June 30, 2007, and that projects funded under this announcement will have a start date no earlier than September 15, 2007. This funding opportunity meets NOAA's Mission Goal to understand climate variability and change to enhance society's ability to plan and respond.

Electronic Access

The full text of the full funding opportunity announcement for this OED program can be accessed via the Grants.gov Web site. That announcement will also be available at the NOAA Web site: http://www.oesd.noaa.gov/funding_opps.html or by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement. This **Federal Register** notice is available through the NOAA home page at: <http://www.noaa.gov/>.

Statutory Authority: 15 U.S.C. 1540.

CFDA: 11.469, Congressionally Identified Awards and Projects.

Funding Availability

NOAA announces the availability, contingent upon appropriations, of approximately \$3,000,000 of Federal financial assistance in FY 2007 for K-12 education projects. Approximately 4 to 6 awards in the form of grants or cooperative agreements will be made. NOAA will only consider projects that have a duration of 1 to 5 years. The total Federal amount for all years that may be requested from NOAA for the direct and indirect costs of the proposed project shall not exceed \$750,000. The minimum Federal amount that must be requested from NOAA for all years for the direct and indirect costs is \$200,000. Applications requesting Federal support from NOAA of less than \$200,000 total or more than \$750,000 total will not be considered for funding.

Publication of this notice does not oblige the Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) to award any specific project or to obligate any available funds. If an applicant incurs any costs prior to receiving an award agreement signed by an authorized NOAA Grants Officer, the applicant would do so solely at one's own risk of such costs not being included under the award.

Eligibility

Eligible applicants are institutions of higher education, other nonprofits, and

State, local and Indian tribal governments in the United States. Among those eligible applicants are K through 12 public and independent schools and school systems, and science centers and museums. For profit organizations, foreign institutions, foreign organizations and foreign government agencies are not eligible to apply. Federal agencies are not eligible to receive Federal assistance under this announcement, but may be project partners. DOC/NOAA is strongly committed to increasing the participation of Minority Serving Institutions (MSIs), *i.e.*, Historically Black Colleges and Universities, Hispanic-serving institutions, Tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that work in underserved communities. Applications are encouraged that involve any of the above institutions. An individual may apply only once as principal investigator (PI) through this funding opportunity, however individuals may serve as co-PIs or key personnel on more than one application. Institutions may serve as PIs or co-PIs on an unlimited number of applications.

Cost Sharing Requirements

There are no cost-sharing requirements.

Preliminary Proposals and Full Application Requirements

Applicants must submit pre-proposals for review to prevent the expenditure of effort on proposals that may not be successful. All applicants will receive a response to their pre-proposal via e-mail or letter indicating whether they are authorized to submit a full application. Only those who submit pre-proposals are eligible to submit a full application. The provisions for pre-proposal and full application preparation are mandatory. Additional guidance, including frequently asked questions (FAQ), is available online at http://www.oesd.noaa.gov/funding_opps.html.

Evaluation and Selection Procedures

The general evaluation criteria and selection factors that apply to both pre-proposals and full applications to this funding opportunity are summarized below. The evaluation criteria for pre-proposals and full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria for Projects

1. Importance and/or relevance and applicability of proposed project to the program goals: This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities.

2. Technical/scientific merit: This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

3. Overall qualifications of applicants: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

4. Project costs: The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Review and Selection Process

Pre-Proposal

Pre-proposals meeting the requirements listed in FFO will be evaluated by government and/or non-government representatives, each having relevant expertise. The individual reviewers' ratings shall be averaged for each application to establish rank order for the Office of Education (OED) Program Officer. The review panel will provide no consensus advice. Decisions on whether to authorize or not authorize a full application will be based on the rank order of the pre-proposals, unless choosing out of rank order is justified by the selection factors below. The Office of Education anticipates asking up to 30 applicants to submit full applications. Full applications from applicants who were not asked to submit them will not be reviewed or considered for funding.

Full Application

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. All applications that meet the minimum eligibility requirements and that are ascertained to be complete will be evaluated and scored by independent reviewers. The reviews will be conducted by a panel of individuals, who may be government or non-

government representatives, each having relevant expertise. The individual reviewers' ratings will be averaged for each application to establish rank order. No consensus advice will be given by the review panel. The Program Officer will neither vote nor score applications as part of the review panel nor participate in discussion of the merits of any proposal.

The Program Officer will make his/her recommendations for funding based on rank order and the selection factors listed below to the Selecting Official for the final funding decision.

Selection Factors for Projects

The panel review ratings shall establish the rank order that the Selecting Official will use for final recommendation to the NOAA Grants Officer. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
 - a. Geographically;
 - b. By type of institutions;
 - c. By type of partners;
 - d. By research areas;
 - e. By project types.
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, http://www.nepa.noaa.gov/NAO216_6_TOC.pdf, and the Council on Environmental Quality implementation regulations, http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001.

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

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Helen Hurcombe,

Director, NOAA Acquisitions and Grants, U.S. Department of Commerce.

[FR Doc. E6-17536 Filed 10-18-06; 8:45 am]

BILLING CODE 3510-12-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 (DRG) Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: On October 12, 2006 the Department of Defense published a notice on Fiscal Year 2007 Diagnosis

Related Group (DRF) Updates. This notice corrects an error for TRICARE DRG base payment rate.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Medical Benefits and Reimbursement Systems (TMA), telephone 303-676-3803.

Correction

In **Federal Register** at 71 FR 60112, the heading of the notice, DRF is corrected to read DRG.

At 71 FR 60113, paragraph E, \$22.639 is corrected to read \$22,649. All other information remains unchanged.

Dated: October 13, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06-8767 Filed 10-18-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Missile Defense Agency (MDA), DoD.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Missile Defense Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance scores to the Director, MDA.

DATES: *Effective Date:* October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Gail Gallant, MDA SES Program Manager, Missile Defense Agency, Arlington, Virginia, (703) 693-1744.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Missile Defense Agency PRB: Brigadier General Marvin K. McNamara, Dr. Patricia Sanders, Mr. Keith Englander, Mr. Michael Cifrino, Brigadier General Patrick O'Reilly.

Executives listed will serve a one-year term, effective October 31, 2006.

Dated: October 13, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-8768 Filed 10-18-06; 8:45am]

BILLING CODE 5001-06-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 20, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 16, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: State Educational Agency Local Educational Agency, and School Data

Collection and Reporting under ESEA, Title I, Part A.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 43,285.

Burden Hours: 6,688,814.

Abstract: Title I, Part A of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act, requires State educational agencies (SEAs), local educational agencies (LEAs), and schools to collect and disseminate information to document progress, inform parents and the public about school, district, and State educational performance, and provide services to students and teachers to help at-risk students meet challenging State achievement standards. The change in burden hours is primarily due to updated estimates of the time needed for SEA, LEA, and school implementation of statutory district and school improvement planning requirements and the statutory requirement that local educational agencies notify parents of eligible students in schools in improvement of their public school choice and supplemental educational services option. The estimate also reflects hours for new final regulations 200.6(b)(4)(i)(c) and hours for the preparation of SEA and LEA report cards.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3147. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 06-8785 Filed 10-18-06; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement—Complex 2030

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The National Nuclear Security Administration (NNSA), an agency within the U.S. Department of Energy (DOE or Department), announces its intent to prepare a *Supplement to the Stockpile Stewardship and Management Programmatic Environmental Impact Statement—Complex 2030* (Complex 2030 SEIS or SEIS, DOE/EIS-0236-S4), pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's (CEQ's) and DOE's regulations implementing NEPA (40 CFR parts 1500–1508 and 10 CFR part 1021, respectively). The SEIS will analyze the environmental impacts from the continued transformation of the United States' nuclear weapons complex by implementing NNSA's vision of the complex as it would exist in 2030, which the Department refers to as Complex 2030, as well as alternatives. Since the end of the Cold War, there continue to be significant changes in the requirements for the nation's nuclear arsenal, including reductions in the number of nuclear weapons. To fulfill its responsibilities for certifying the safety and reliability of nuclear weapons without underground testing, DOE proposed and implemented the Stockpile Stewardship and Management (SSM) Program in the 1990s. Stockpile Stewardship includes activities required to maintain a high level of confidence in the safety and reliability of nuclear weapons in the absence of underground testing, and in the capability of the United States to resume nuclear testing if directed by the President. Stockpile Management activities include dismantlement, maintenance, evaluation, repair, and replacement of weapons and their components in the existing stockpile.

NNSA's proposed action is to continue currently planned modernization activities and select a site for a consolidated plutonium center for long-term research and development, surveillance, and pit¹ manufacturing; consolidate special nuclear materials throughout the complex; consolidate,

relocate, or eliminate duplicative facilities and programs and improve operating efficiencies; identify one or more sites for conducting NNSA flight test operations; and accelerate nuclear weapons dismantlement activities. This Notice of Intent (NOI), the initial step in the NEPA process, informs the public of NNSA's intention to prepare the Complex 2030 SEIS, announces the schedule for public scoping meetings, and solicits public input. Following the scoping period, NNSA will prepare and issue a draft of the Complex 2030 SEIS that will describe the Complex 2030 proposal, the alternatives analyzed, and potential impacts of the proposal and the alternatives.

This NOI also announces that NNSA has cancelled the previously planned *Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility* (DOE/EIS-0236-S2).

DATES: NNSA invites comments on the scope of the Complex 2030 SEIS. The public scoping period starts with the publication of this NOI in the **Federal Register** and will continue through January 17, 2006. Scoping comments received after this date will be considered to the extent practicable. NNSA will hold public scoping meetings to discuss issues and receive oral and written comments on the scope of the Complex 2030 SEIS. The locations, dates, and times for these public scoping meetings are listed below and will be announced by additional appropriate means. NNSA requests federal agencies that desire to be designated as cooperating agencies on the SEIS to contact NNSA's Office of Transformation at the address listed under **ADDRESSES** by the end of the scoping period.

North Augusta, South Carolina, North Augusta Community Center, 495 Brookside Avenue. November 9, 2006, 11 a.m.—3 p.m., 6 p.m.—10 p.m.

Oak Ridge, Tennessee, Oak Ridge City Center Club Room, 333 Main Street. November 13, 2006, 11 a.m.—3 p.m., 6 p.m.—10 p.m.

Amarillo, Texas, Amarillo Globe-News Center, Education Room, 401 S. Buchanan. November 15, 2006, 11 a.m.—3 p.m., 6 p.m.—10 p.m.

Las Vegas, Nevada, Cashman Center, 850 Las Vegas Boulevard North (at Washington). November 28, 2006, 11 a.m.—3 p.m., 6 p.m.—10 p.m.

Tonopah, Nevada, Tonopah Convention Center, 301 Brougner Avenue. November 29, 2006, 6 p.m.—10 p.m.

Socorro, New Mexico, Macey Center (at New Mexico Tech), 801 Leroy Place. December 4, 2006, 6 p.m.—10 p.m.

Albuquerque, New Mexico, Albuquerque Convention Center, 401 2nd St. NW. December 5, 2006, 11 a.m.—3 p.m., 6 p.m.—10 p.m.

Los Alamos, New Mexico, Mesa Public Library, 2400 Central Avenue. December 6, 2006, 10:30 a.m.—2:30 p.m.

Santa Fe, New Mexico, Genoveva Chavez Community Center, 3221 Rodeo Road. December 6, 2006, 6 p.m.—10 p.m.

Livermore, California, Robert Livermore Community Center, 4444 East Avenue. December 12, 2006, 11 a.m.—3 p.m.

Tracy, California, Tracy Community Center, 950 East Street. December 12, 2006, 6 p.m.—10 p.m.

U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E-245, Washington, DC. December 14, 2006, 1 p.m.—5 p.m.

NNSA officials will be available to informally discuss the Complex 2030 proposal during the first hour. Following this, NNSA intends to hold a plenary session at each scoping meeting in which officials will explain the Complex 2030 proposal and the SEIS, including preliminary alternatives. The meetings will provide the public with an opportunity to provide oral and written comments to NNSA on the scope of the SEIS. Input from the scoping meetings will assist NNSA in preparing the draft SEIS.

ADDRESSES: General questions concerning the NOI can be asked by calling toll-free 1-800-832-0885 (ext. 63519), e-mailing to Complex2030@nnsa.doe.gov, or writing to Theodore A. Wyka, Complex 2030 SEIS Document Manager, Office of Transformation, U.S. Department of Energy, NA-10.1, 1000 Independence Avenue, SW., Washington, DC 20585. Written comments on the scope of the SEIS or requests to be placed on the document distribution list can be sent to the Complex 2030 SEIS Document Manager. Additional information regarding Complex 2030 is available on Complex2030PEIS.com.

For general information on the DOE NEPA process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or 1-800-472-2756. Additional information regarding DOE NEPA activities and access to many DOE NEPA documents are available on the Internet through the DOE NEPA Web site at <http://www.eh.doe.gov/nepa>.

SUPPLEMENTARY INFORMATION:

¹ A pit is the central core of a nuclear weapon typically containing plutonium-239 that undergoes fission when compressed by high explosives.

Background: The early days of the nuclear weapons complex after World War II saw a rapid build-up of capability and capacity to support the growth of the stockpile to fight the Cold War. By the 1960s, the United States had built a large stockpile of nuclear weapons, and the nation began to focus on improving, rather than expanding, the stockpile. NNSA's predecessor agencies began to consolidate operations and close some production facilities. In the 1980s, facilities were shut down across the nuclear weapons complex, including certain facilities at the Savannah River Site in South Carolina; the Oak Ridge Reservation in Tennessee; the Rocky Flats Plant in Colorado; the Fernald Site in Ohio; the Hanford Reservation in Washington; and elsewhere.

Prior DOE NEPA Reviews: DOE completed a Nuclear Weapons Complex Reconfiguration ("Complex-21") Study in January 1991, which identified significant cost savings that could be achieved by further downsizing of the nuclear weapons complex.

DOE then initiated a programmatic EIS (Reconfiguration PEIS) examining alternatives for reconfiguring the nuclear weapons complex. However, in December 1991, the Department decided to separate proposals for transforming non-nuclear production from the Reconfiguration PEIS because (1) proposals to consolidate non-nuclear facilities might not require preparation of an EIS, and (2) proposals and decisions regarding transformation of non-nuclear production would neither significantly affect nor be affected by proposals and decisions regarding transformation of nuclear production. On January 27, 1992, the Department issued an NOI (57 FR 3046) to prepare an environmental assessment (DOE/EA-0792) for the consolidation of non-nuclear production activities within the nuclear weapons complex. Following the collapse of the Soviet Union, the United States reduced the budget for the nuclear weapons program. President George H. W. Bush imposed a moratorium in 1992 on underground nuclear testing.

On September 14, 1993, DOE published a Finding of No Significant Impact (FONSI) regarding its proposal to consolidate non-nuclear component production (58 FR 48043). This proposal included termination of non-nuclear production missions at the Mound Plant in Ohio, the Pinellas Plant in Florida, and the Rocky Flats Plant in Colorado. The electrical and mechanical manufacturing functions were consolidated at the Kansas City Plant. Detonators and beryllium capabilities for technology and pit support were

consolidated at Los Alamos National Laboratory (LANL) in New Mexico, and neutron generator production was relocated to Sandia National Laboratories in New Mexico.

In October 1993, President William J. Clinton issued Presidential Decision Directive 15 (PDD-15), which directed DOE to establish the Stockpile Stewardship Program. PDD-15 significantly redirected the nuclear weapons program. Throughout the Cold War, the Department of Defense (DOD) and DOE's nuclear weapons laboratories had based a portion of their confidence in the reliability of nuclear weapons on performance data from atmospheric and underground tests. To ensure weapons reliability during the moratorium on testing, DOE proposed to invest in new scientific tools to assess the complex phenomena involved in the detonation of nuclear weapons. DOE also began to develop sophisticated tools and computer-based simulation techniques to assess various aging phenomena as nuclear weapons continued to serve well beyond their originally anticipated lifetimes. These actions enhanced research and development (R&D) and deferred spending on the production complex.

DOE concluded in October 1994 that the alternatives described in the Reconfiguration PEIS no longer contained realistic proposals for reconfiguration of the nuclear weapons complex. That conclusion was based on several factors, including: comments offered at the September-October 1993 Reconfiguration PEIS scoping meetings; the anticipation that no production of new nuclear weapons types would be required for the foreseeable future; budget constraints; and the Department's decision to prepare a separate PEIS on Storage and Disposition of Weapons-Usable Fissile Materials (DOE/EIS-0229; NOI published June 21, 1994, 59 FR 17344).

Consequently, the Department separated the Reconfiguration PEIS into two new PEISs: (1) A Tritium Supply and Recycling PEIS (DOE/EIS-0161); and (2) the SSM PEIS (DOE/EIS-0236). The Final PEIS for Tritium Supply and Recycling was issued on October 27, 1995 (60 FR 55021). In its Record of Decision (ROD) on May 14, 1999 (64 FR 26369²), DOE decided it would produce the tritium needed to maintain the nuclear arsenal at commercial light water reactors owned and operated by the Tennessee Valley Authority and

extract tritium at a new DOE-owned Tritium Extraction Facility at the Savannah River Site. With regard to the SSM PEIS, DOE issued an NOI on June 6, 1995 (60 FR 31291), a final SSM PEIS on November 19, 1996 (61 FR 58871), and a ROD on December 26, 1996 (61 FR 68014) announcing its decision to transform the weapons production complex by (1) reducing the weapon assembly capacity located at the Pantex Plant in Texas; (2) reducing the high-explosives fabrication capacity at Pantex; (3) reducing the uranium, secondary, and case fabrication capacity in the Y-12 National Security Complex in Tennessee; (4) reducing nonnuclear component fabrication capacity at the Kansas City Plant; and (5) reestablishing a modest interim pit fabrication capability at Los Alamos National Laboratory in New Mexico while evaluating the need for greater pit manufacturing capacity in the future.

In accordance with the decisions in the SSM PEIS, the *Non-nuclear Consolidation Environmental Assessment* (EA), and the Tritium Supply and Recycling PEIS, DOE began transforming the nuclear weapons complex to its present configuration. DOE has also prepared other EISs that facilitated the transformation of the complex. The relevant RODs for these site-wide and project-specific EISs are listed below:

- 1996 ROD for the *EIS for the Nevada Test Site and Off-Site Locations in the State of Nevada* (61 FR 65551, December 13, 1996).
- 1997 ROD for the *EIS for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components* (62 FR 3880, January 27, 1997).
- 1999 ROD for the Site-wide EIS for Continued Operation of the Los Alamos National Laboratory (64 FR 50797, September 20, 1999).
- 1999 ROD for the *EIS for Site-wide Operation of Sandia National Laboratories* (64 FR 69996, December 15, 1999).
- 2000 *Amended ROD for the Nevada Test Site EIS* (65 FR 10061, February 25, 2000).
- 2002 ROD for the *Site-wide EIS for the Oak Ridge Y-12 National Security Complex* (67 FR 11296, March 13, 2002).
- 2002 ROD for the *EIS for the Relocation of Technical Area 18 Capabilities and Materials at the Los Alamos National Laboratory* (67 FR 79906, December 31, 2002).
- 2004 ROD for the *EIS for the Chemistry and Metallurgy Research Building Replacement Project, Los*

² This ROD also contains decisions for the EIS for Construction and Operation of a Tritium Extraction Facility at the Savannah River Site (DOE/EIS-0271) and EIS for the Production of Tritium in a Commercial Light Water Reactor (DOE/EIS-0288).

Alamos National Laboratory (69 FR 6967, February 12, 2004).

- 2005 ROD for the *Site-wide EIS for Continued Operation of Lawrence Livermore National Laboratory and Supplemental Stockpile Stewardship and Management Programmatic EIS* (70 FR 71491, November 29, 2005).

Nuclear Weapons Complex: The current nuclear weapons complex consists of eight major facilities located in seven states. NNSA maintains a limited capability to design and manufacture nuclear weapons; provides surveillance of and maintains nuclear weapons currently in the stockpile; and dismantles retired nuclear weapons. Major facilities and their primary responsibilities within the nuclear weapons complex are listed below:

Savannah River Site (SRS) (Aiken, South Carolina)—Extracts tritium (when the Tritium Extraction Facility becomes operational in 2007); provides loading, unloading and surveillance of tritium reservoirs. SRS does not maintain Category I/II³ quantities of special nuclear material (SNM)⁴ associated with weapons activities, but does maintain Category I/II quantities of SNM associated with other Department activities (e.g., environmental management).

Pantex Plant (PX) (Amarillo, Texas)—Dismantles retired weapons; fabricates high-explosives components; assembles high explosive, nuclear, and non-nuclear components into nuclear weapons; repairs and modifies weapons; and evaluates and performs non-nuclear testing of weapons. Maintains Category I/II quantities of SNM for the weapons program and material no longer needed by the weapons program.

Y-12 National Security Complex (Y-12) (Oak Ridge, Tennessee)—Manufactures nuclear weapons secondaries, cases, and other weapons components; evaluates and performs testing of weapon components; maintains Category I/II quantities of SNM; conducts dismantlement, storage, and disposition of nuclear weapons materials; and supplies SNM for use in naval reactors.

Kansas City Plant (KCP) (Kansas City, Missouri)—Manufactures and acquires

non-nuclear weapons components; and evaluates and performs testing of weapon components. No Category I/II quantities of SNM are maintained at the KCP.

Lawrence Livermore National Laboratory (LLNL) (Livermore, California)—Conducts research and development of nuclear weapons; designs and tests advanced technology concepts; designs weapons; maintains a limited capability to fabricate plutonium components; and provides safety and reliability assessments of the stockpile. Maintains Category I/II quantities of SNM associated with the weapons program and material no longer needed by the weapons program.

Los Alamos National Laboratory (LANL) (Los Alamos, New Mexico)—Conducts research and development of nuclear weapons; designs and tests advanced technology concepts; designs weapons; provides safety and reliability assessments of the stockpile; maintains interim production capabilities for limited quantities of plutonium components (e.g., pits); and manufactures nuclear weapon detonators for the stockpile. Maintains Category I/II quantities of SNM associated with the nuclear weapons program and material no longer needed by the weapons program.

Sandia National Laboratories (SNL) (Albuquerque, New Mexico; Livermore, California)—Conducts system engineering of nuclear weapons; designs and develops non-nuclear components; conducts field and laboratory non-nuclear testing; conducts research and development in support of the nuclear weapon non-nuclear design; manufactures non-nuclear weapon components; provides safety and reliability assessments of the stockpile; and manufactures neutron generators for the stockpile. Maintains Category I/II quantities of SNM associated with the nuclear weapons program.

Nevada Test Site (NTS) (Las Vegas, Nevada)—Maintains capability to conduct underground nuclear testing; conducts experiments involving nuclear material and high explosives; provides capability to disposition a damaged nuclear weapon or improvised nuclear device; conducts non-nuclear experiments; and conducts research and training on nuclear safeguards, criticality safety and emergency response. Maintains Category I/II quantities of SNM associated with the nuclear weapons program.

Purpose and Need for the Stockpile Stewardship and Management Program: Under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), DOE is responsible for providing nuclear

weapons to support the United States' national security strategy. The National Nuclear Security Administration Act (Pub. L. 106-65, Title XXXII) assigned this responsibility to NNSA within DOE. One of the primary missions of NNSA is to provide the nation with safe and reliable nuclear weapons, components and capabilities, and to accomplish this in a way that protects the environment and the health and safety of workers and the public.

Changes in national security needs and budgets have necessitated changes in the way NNSA meets its responsibilities regarding the nation's nuclear stockpile. As a result of a changed security environment, unilateral decisions by the United States and international arms control agreements, the nation's stockpile is significantly smaller today and by 2012, it will be the smallest since the Eisenhower administration (1953-1961). The Treaty of Moscow will eventually lead to a level of 1,700-2,200 operationally-deployed strategic nuclear weapons.

However, nuclear deterrence will continue to be a cornerstone of United States national security policy, and NNSA must continue to meet its responsibilities for ensuring the safety and reliability of the nation's nuclear weapons stockpile. The current policy is contained in the Nuclear Posture Review, submitted to Congress in early 2002, which states that the United States will:

- Change the size, composition and character of the nuclear weapons stockpile in a way that reflects that the Cold War is over;
- Achieve a credible deterrent with the lowest possible number of nuclear warheads consistent with national security needs, including obligations to allies; and
- Transform the NNSA nuclear weapons complex into a responsive infrastructure that supports the specific stockpile requirements established by the President and maintains the essential United States nuclear capabilities needed for an uncertain global future.

Complex 2030 SEIS: NNSA has been evaluating how to establish a more responsive nuclear weapons complex infrastructure since the Nuclear Posture Review was transmitted to Congress in early 2002. The Stockpile Stewardship Conference in 2003, the Department of Defense Strategic Capabilities Assessment in 2004, the recommendations of the Secretary of Energy Advisory Board (SEAB) Task Force on the Nuclear Weapons Complex Infrastructure in 2005, and the Defense

³ Category I/II quantities of special nuclear material are determined by grouping materials by type, attractiveness level, and quantity. These grouping parameters are defined in DOE Manual 470.4-6, Nuclear Material Control and Accountability [see <https://www.directives.doe.gov>].

⁴ As defined in section 11 of the Atomic Energy Act of 1954, special nuclear material are: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material; or (2) any material artificially enriched by plutonium or uranium 233 or 235.

Science Board Task Force on Nuclear Capabilities in 2006 have provided information for NNSA's evaluations.

In early 2006, NNSA developed a planning scenario for what the nuclear weapons complex would look like in 2030. See <http://www.nnsa.doe.gov> for

more information regarding Complex 2030 planning. The Complex 2030 planning scenario incorporates many of the decisions NNSA has already made based on the evaluations in the SSM PEIS, Tritium Supply and Recycling PEIS, and other NEPA documents. See

discussion in background above. The following table identifies which components of Complex 2030 are based on the existing SSM PEIS and Tritium PEIS RODs, including RODs for subsequent tiered EISs:

Components of Complex 2030 that reflect earlier decisions	SSM PEIS ROD	Tritium PEIS ROD
Maintain but reduce the existing weapon assembly capacity located at Pantex	X	.....
Maintain but reduce the high-explosives fabrication capacity at Pantex	X	.....
Maintain but reduce the existing uranium, secondary, and case fabrication capacity at the Y-12 Plant at Oak Ridge	X	.....
Reduce the non-nuclear component fabrication capacity at the Kansas City Plant	X	.....
Reestablish limited pit fabrication capability at Los Alamos National Laboratory while evaluating the need for a larger capability	X	.....
Irradiate tritium producing rods in commercial light water reactors; construct and operate a new Tritium Extraction Facility at DOE's Savannah River Site .....	.....	X

Types of Decisions that Would Be Based on the Complex 2030 SEIS: The decisions set forth in the Complex 2030 ROD would:

- Identify the future missions of the SSM Program and the nuclear weapons complex; and
- Determine the configuration of the future weapons complex needed to accomplish the SSM Program.

For specific programs or facilities, NNSA may need to prepare additional NEPA documents to implement the decisions announced in the ROD. The baseline that will be used for the analyses of program and facility needs in the SEIS is 1,700–2,200 operationally-deployed strategic nuclear weapons, in addition to augmentation weapons, reliability-reserve weapons and weapons required to meet NATO commitments. The numbers are consistent with international arms-control agreements. Consistent with national security policy directives, replacement warhead design concepts may be pursued under the alternatives as a means of, for example, enhancing safety and security, improving manufacturing practices, reducing surveillance needs, and reducing need for underground tests.

The SEIS will evaluate reasonable alternatives for future transformation of the nuclear weapons complex. The Proposed Action and alternatives to the Proposed Action will assume continued implementation of the following prior siting decisions that DOE made in the SSM PEIS and Tritium PEIS RODs, including RODs for subsequent tiered EISs:

- Location of the weapon assembly/disassembly operations at the Pantex Plant in Texas.
- Location of uranium, secondary, and case fabrication at the Y-12

National Security Complex in Tennessee.

- Location of tritium extraction, loading and unloading, and support operations at the Savannah River Site in South Carolina.

NNSA does not believe it is necessary to identify additional alternatives beyond those present in the SSM PEIS. Regarding the uranium, secondary, and case fabrication at Y-12, NNSA is currently preparing a Y-12 Site-wide EIS to evaluate reasonable alternatives for the continued modernization of the Y-12 capabilities. The Complex 2030 SEIS will incorporate any decisions made pursuant to the Y-12 Site-wide EIS.

While the Complex 2030 planning scenario proposes to consolidate further non-nuclear production activities performed at the Kansas City Plant, this proposal will be evaluated in a separate NEPA analysis, as was done in the 1990s. NNSA believes that it is appropriate to separate the analyses of the transformation of non-nuclear production from the SEIS because decisions regarding those activities would neither significantly affect nor be affected by decisions regarding the transformation of nuclear production activities.

The SSM PEIS ROD announced NNSA's decision to establish a small interim pit production capacity at LANL. In the 1999 LANL Site-wide EIS ROD, NNSA announced it would achieve a pit production capacity at LANL of up to 20 pits per year. The 2006 draft LANL Site-wide EIS evaluates a proposal for a production capacity of 50 certified pits annually. This proposed capacity is based on an annual production rate of 80 pits per year in order to provide NNSA with sufficient flexibility to obtain 50

certified pits. Any decisions made pursuant to the LANL Site-wide EIS will be included in the Complex 2030 SEIS.

Based upon the studies⁵ and analyses that led to NNSA's development of the Complex 2030 scenario, NNSA has developed alternatives that are intended to facilitate public comment on the scope of the SEIS. NNSA's decisions regarding implementation of Complex 2030 will be based on the following alternatives, or a combination of those alternatives.

The Proposed Action—Transform to a More Modern, Cost-Effective Nuclear Weapons Complex (Complex 2030). This alternative would undertake the following actions to continue the transformation of NNSA's nuclear weapons complex:

- Select a site to construct and operate a consolidated plutonium center for long-term R&D, surveillance, and manufacturing operations for a baseline capacity of 125 qualified pits per year at a site with existing Category I/II SNM.
- Reduce the number of sites with Category I/II SNM and consolidate SNM to fewer locations within each given site.
- Consolidate, relocate or eliminate duplicative facilities and programs and improve operating efficiencies, including at facilities for nuclear materials storage, tritium R&D, high explosives R&D, environmental testing, and hydrotesting facilities.
- Identify one or more sites for conducting NNSA flight test operations.

⁵ The Stockpile Stewardship Conference in 2003, the Department of Defense Strategic Capabilities Assessment in 2004, the recommendations of the Secretary of Energy Advisory Board (SEAB) Task Force on the Nuclear Weapons Complex Infrastructure in 2005, and the recommendations of the Defense Science Board Task Force on Nuclear Capabilities in 2006.

Existing DOD and DOE test ranges (e.g., White Sands Missile Range in New Mexico and Nevada Test Site in Nevada) would be considered as alternatives to the continued operation of the Tonopah Test Range in Nevada.

- Accelerate dismantlement activities.

The DOE sites that will be considered as potential locations for the consolidated plutonium center and consolidation of Category I/II SNM include: Los Alamos, Nevada Test Site, Pantex Plant, Y-12 National Security Complex, and the Savannah River Site. Other DOE sites are not considered

reasonable alternative locations because they do not satisfy certain criteria such as population encroachment, or mission compatibility or synergy with the site's existing mission.

Alternatives to the Proposed Action

No Action Alternative. The No Action Alternative represents the status quo as it exists today and is presently planned. It includes the continued implementation of decisions made pursuant to the SSM PEIS and the Tritium Supply and Recycling PEIS (as summarized above) and related site-specific EISs and EAs. These decisions

are contained in RODs and Findings of No Significant Impact (FONSI)s, including those discussed above, and copies can be located on the DOE NEPA Document Web page at <http://www.eh.doe.gov/nepa/documents.html>.

The No Action Alternative would also include any decisions made as a result of the new Y-12 Site-wide EIS and the LANL Site-wide EIS once these EISs are finished. NNSA expects to issue RODs on these EISs prior to publication of the draft Complex 2030 SEIS.

The No Action Alternative is illustrated in the following matrix:

Capability	Sites (no action alternative)							
	KCP	LANL	LLNL	NTS	Y-12	PX	SNL	SRS
Weapons assembly/Disassembly				X		X		
Nonnuclear components	X	X					X	
Nuclear components:								
—Pits		X						
—Secondaries and cases					X			
High explosives components						X		
Tritium Extraction, Loading and Unloading								X
High explosives R&D		X	X			X	X	
Tritium R&D		X	X					X
Large Scale Hydrotesting		X	X	X				
Category I/II SNM Storage		X	X	X	X	X	X	X

The No Action Alternative also includes continuation of environmental testing at current locations and flight-testing activities at the Tonopah Test Range in Nevada.

Reduced Operations and Capability-Based Complex Alternative

In this alternative, NNSA would maintain a basic capability for manufacturing technologies for all stockpile weapons, as well as laboratory and experimental capabilities to support stockpile decisions, but would reduce production facilities to a "capability-based" ⁶ capacity. This alternative would not have a production capacity sufficient to meet current national security objectives. This alternative would be defined as follows:

- Do not construct and operate a consolidated plutonium center for long-term R&D, surveillance, and manufacturing operations; and do not expand pit production at LANL beyond 50 certified pits per year.
- Reduce the number of sites with Category I/II SNM and consolidate SNM to fewer locations within a given site.
- Consolidate, relocate or eliminate duplicative facilities and programs and improve operating efficiencies, including at facilities for nuclear

materials storage, tritium R&D, high explosives R&D, environmental testing facilities, and hydrotesting facilities.

- Identify one or more sites for conducting NNSA flight test operations. Existing DOD and DOE test ranges (e.g. White Sands Missile Range in New Mexico and Nevada Test Site in Nevada) would be considered as potential alternatives to the continued operation of the Tonopah Test Range in Nevada.

- Production capacities at Pantex, Y-12, and the Savannah River Site would be considered for further reductions limited by the capability-based capacity.

- NNSA would continue dismantlement activities.

Proposal Not Being Considered for Further Analysis. The SEAB Task Force on the Nuclear Weapons Complex Infrastructure recommended that NNSA pursue a consolidated nuclear production center (CNPC) as a single facility for all research, development, and production activities relating to nuclear weapons that involve significant amounts (i.e. Category I/II quantities) of SNM. The CNPC, as envisioned by the SEAB Task Force, would contain all the nuclear weapons manufacturing, production, assembly, and disassembly facilities and associated weapon surveillance and maintenance activities for the stockpile weapons. The CNPC would include the plutonium activities

of the consolidated plutonium center proposed by NNSA in its Complex 2030 vision, as well as the consolidated activities of the uranium, tritium, and high explosive operations. DOE believes that creation of a CNPC is not a reasonable alternative and does not intend to analyze it as an alternative in the SEIS because of the technical and schedule issues involved in constructing a CNPC, as well as associated costs. NNSA invites and will consider comments on this matter during the scoping process.

The SEAB Task Force developed three business cases for transforming the nuclear weapons complex, two of which were characterized as high risk. Its preferred least-risk option was to establish a CNPC "quickly" by accelerating site selection, NEPA analyses, regulatory approvals, and construction. The Task Force assumed that NNSA could, under these circumstances, begin operating a CNPC in 2015, start consolidation of SNM shortly thereafter, accelerate dismantlements, and begin other major transformational activities. Until the CNPC was completed, NNSA would have to maintain, and in some cases improve, existing production and research facilities. According to the Task Force's estimates, this option would require an additional 1 billion dollars per year for weapons programs

⁶ The capability to manufacture and assemble nuclear weapons at a nominal level.

activities for the next 10 years, and lead to a net savings through 2030 of 15 billion dollars.

Accelerated construction of a CNPC would not allow NNSA to avoid immediate expenditures to restore and modernize interim production capabilities to meet essential Life Extension Program (LEP) schedules and support the existing stockpile during the next decade. LEP is the refurbishment of nuclear weapons parts and components to extend the weapon deployment life. NNSA has concluded that the SEAB Task Force underestimated the nonfinancial challenges of constructing a CNPC. A CNPC would require moving a unique and highly skilled workforce to a new location. It would require NNSA to obtain significant regulatory approvals rapidly, and to construct a unique and complex facility on a tight schedule. It would put many of the significant aspects of the weapons complex transformation into "one basket"—until the CNPC began operations, all the other facilities and activities would be delayed. NNSA's Proposed Action would achieve many of the benefits of the CNPC approach—consolidation of SNM and facilities, integrated R&D and production involving SNM, and aggressive dismantlements—in a way that addresses immediate national security needs in a technically feasible and affordable manner.

Nuclear Materials Consolidation: DOE is pursuing SNM consolidation from all DOE sites including those that comprise the nuclear weapons complex. The SEIS will look at alternatives for the storage and consolidation of nuclear materials within the nuclear weapons complex including materials needed to maintain the United States' nuclear weapons arsenal. There is a potential overlap between the SEIS and the activities of the Department's other nuclear materials consolidation activities, and DOE will ensure that there is appropriate coordination between the two activities.

Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility: NNSA issued a *Draft Supplemental Programmatic Environmental Impact Statement on Stockpile Stewardship and Management for a Modern Pit Facility* (MPF) on June 4, 2003 (68 FR 33487; also 68 FR 33934, June 6, 2003) that analyzed alternatives for producing the plutonium pits that are an essential component of nuclear weapons. On January 28, 2004, NNSA announced that it was indefinitely postponing any decision on how it would obtain a large capacity pit

manufacturing facility. Because the Complex 2030 SEIS will analyze alternatives for plutonium-related activities that include pit production, DOE, effective upon publication of this NOI, cancels the MPF PEIS.

Public Scoping Process: The scoping process is an opportunity for the public to assist the NNSA in determining the issues for analysis. NNSA will hold public scoping meetings at locations identified in this NOI. The purpose of these meetings is to provide the public with an opportunity to present oral and written comments, ask questions, and discuss concerns regarding the transformation of the nuclear weapons complex and the SEIS with NNSA officials. Comments and recommendations can also be communicated to NNSA as discussed earlier in this notice.

Complex 2030 PEIS Supplement Preparation Process: The SEIS preparation process begins with the publication of this NOI in the **Federal Register**. NNSA will consider all public comments that it receives during the public comment period in preparing the draft SEIS. NNSA expects to issue the draft SEIS for public review during the summer of 2007. Public comments on the draft SEIS will be received during a comment period of at least 45 days following the U.S. Environmental Protection Agency's publication of the Notice of Availability in the **Federal Register**. Notices placed in local newspapers will specify dates and locations for public hearings on the draft SEIS and will establish a schedule for submitting comments on the draft SEIS, including a final date for submission of comments. Issuance of the final SEIS is scheduled for 2008.

Classified Material: NNSA will review classified material while preparing the SEIS. Within the limits of classification, NNSA will provide the public as much information as possible to assist its understanding and ability to comment. Any classified material needed to explain the purpose and need for the action, or the analyses in the SEIS, will be segregated into a classified appendix or supplement, which will not be available for public review. However, all unclassified information or results of calculations using classified data will be reported in the unclassified section of the SEIS, to the extent possible in accordance with federal classification requirements.

Issued in Washington, DC on October 11, 2006.

Linton F. Brooks,

Administrator, National Nuclear Security Administration.

[FR Doc. E6-17508 Filed 10-18-06; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC07-538-000; FERC-538]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

October 13, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c) (2) (a) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by December 21, 2006.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED-34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC07-538-000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at <http://www.ferc.gov> and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet

through FERC's homepage using the eLibrary link. For user assistance, contact FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676 or for TTY, contact (202) 502-8659.

FOR FURTHER INFORMATION CONTACT:

Michael Miller may be reached by telephone at (202)502-8415, by fax at (202)273-0873, and by e-mail at michael.miller@ferc.gov.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC-538 "Gas Pipeline Certificates: Initial Service (OMB No. 1902-0061) is used by the Commission to implement the statutory provisions of sections 7(a), 10(a) and 16 of the Natural Gas Act (NGA) (Pub. L. 75-688) (15 U.S.C. 717-717w). The reporting requirements contained in this

collection of information are used by the Commission to determine whether a distributor applicant can economically construct and manage its facilities. Requests are made to the Commission by individuals or entities to have the Commission, by order, direct a natural gas pipeline to extend or improve its transportation facilities, and sell gas to an individual, entity or municipality for the specific purpose indicated in the order, and to extend the pipeline's transportation facilities to communities immediately adjacent to the municipality's facilities or to territories served by the natural gas company. In addition, the Commission reviews the supply data to determine if the pipeline company can provide the service without curtailing certain of its existing

customers. The flow data and market data are also used to evaluate existing and future customer requirements on the system to find if sufficient capacity will be available. Likewise, the cost of facilities and the rate data are used to evaluate the financial impact of the cost of the project to both the pipeline company and its customers. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 156.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)x(2)x(3)
1	1	240	240

The estimated total cost to respondents is \$13,537 (240 hours divided by 2,080 hours per employee per year times \$117,321 per year average salary (including overhead) per employee = \$13,537 (rounded off)).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17501 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1205-000, ER06-1205-001, ER06-1206-000, and ER05-1326-003]

330 Fund I, L.P.; 330 Investment Management, LLC; 330 MM, LLC; Cornerstone Energy Partners, LLC; Notice of Issuance of Order

October 13, 2006.

330 Fund I, L.P. (330 Fund) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. 330 Fund also requested waivers of various Commission regulations. In particular, 330 Fund requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by 330 Fund.

On August 7, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by

330 Fund should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, 330 Fund is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of 330 Fund, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of 330 Fund's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17480 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1354-000]

AB Energy, Inc.; Notice of Issuance of Order

October 13, 2006.

AB Energy, Inc. (AB Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of

energy, capacity and ancillary services at market-based rates. AB Energy also requested waivers of various Commission regulations. In particular, AB Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by AB Energy.

On September 19, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by AB Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, AB Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of AB Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of AB Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

"e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17491 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1397-000]

Allegheny Ridge Wind Farm, LLC; Notice of Issuance of Order

October 13, 2006.

Allegheny Ridge Wind Farm, LLC (Allegheny Wind) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates.

Allegheny Wind also requested waivers of various Commission regulations. In particular, Allegheny Wind requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Allegheny Wind.

On September 21, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Allegheny Wind should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Allegheny Wind is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Allegheny Wind, compatible with the public interest, and

is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Allegheny Wind's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17496 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07-2-000]

Aquila, Inc.; Notice of Application

October 13, 2006.

Take notice that on October 6, 2006, Aquila, Inc. (Aquila), 1815 Capitol Avenue, Omaha, NE 68102, filed in Docket No. CP07-2-000, an abbreviated application pursuant to section 7(f) of the Natural Gas Act requesting the determination of a service area within which Aquila may, without further commission authorization, provide natural gas distribution service. Aquila also requests a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502-8659 or TTY, (202) 208-3676.

Any questions regarding this application should be directed to Arleen

Dizona, Aquila Networks, 1815 Capitol Avenue, Omaha, NE 68102; (402) 221-2630 (telephone) or arleen.dizona@aquila.com, or Patrick Joyce, Blackwell Sanders Peper Martin LLP, 1620 Dodge Street, Suite 2100, Omaha, NE 68102; (402) 964-5012 (telephone) or pjoyce@blackwellsanders.com.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web (<http://www.ferc.gov>) site under the "e-Filing" link.

Comment Date: November 3, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17472 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1367-000; ER06-1367-001]

BG Dighton Power, LLC; Notice of Issuance of Order

October 13, 2006.

BG Dighton Power, LLC (BG Dighton) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based tariff provides for the sale of energy and capacity at market-based rates. BG Dighton also requested waivers of various Commission regulations. In particular, BG Dighton requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by BG Dighton.

On September 27, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by BG Dighton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, BG Dighton is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of BG Dighton, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of BG Dighton's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the

Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17494 Filed 10-18-06; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-931-000, ER06-931-001, ER06-932-000, ER06-932-001]

Black River Macro Discretionary Fund, Ltd.; Black River Commodity Energy Fund LLC; Notice of Issuance of Order

October 13, 2006.

Black River Macro Discretionary Fund Ltd. and Black River Commodity Energy Fund LLC (Applicants) filed an application for market-based rate authority, each with an accompanying tariff. The proposed market-based rate tariffs provides for the sale of energy, capacity and ancillary services at market-based rates. The Applicants also requested waivers of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On July 19, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of the Applicants' issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17500 Filed 10-18-06; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-71-002]

Carolina Gas Transmission Corporation; SCG Pipeline, Inc.; South Carolina Pipeline Corporation; Notice of Tariff Cancellation

October 12, 2006.

Take notice that on September 29, 2006, SUG Pipeline, Inc. (SUG) tendered for filing a tariff sheet to cancel its FERC Gas Tariff, including its rate schedules. SCG requests that the cancellation be effective November 1, 2006.

SCG states that any charges or customer credits that are attributable to the service provided by SCG prior to

November 1, 2006, but not settled as of November 1, 2006, will be charged or paid as soon after November 1 as practicable.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on October 17, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17460 Filed 10-18-06; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1152-000, ER06-1152-001]

Celeren Corporation; Notice of Issuance of Order

October 13, 2006.

Celeren Corporation (Celeren) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Celeren also requested waivers of various

Commission regulations. In particular, Celeren requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Celeren.

On August 21, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Celeren should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Celeren is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Celeren, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Celeren's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

"e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17479 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1414-000]

Cinergy Marketing & Trading, L.P.; Notice of Issuance of Order

October 13, 2006.

Cinergy Marketing & Trading, L.P. (Cinergy M&T) filed request for waivers of various Commission regulations. In particular, Cinergy M&T requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Cinergy M&T.

On October 11, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Cinergy M&T should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Cinergy M&T is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Cinergy M&T, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued

approvals of Cinergy M&T's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17498 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1236-000]

CMP Androscoggin LLC; Notice of Issuance of Order

October 13, 2006.

CMP Androscoggin LLC (CMP Androscoggin) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. CMP Androscoggin also requested waivers of various Commission regulations. In particular, CMP Androscoggin requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CMP Androscoggin.

On August 14, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by CMP Androscoggin should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, CMP Androscoggin is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CMP Androscoggin, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of CMP Androscoggin's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17484 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-17-000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 12, 2006.

Take notice that on October 10, 2006, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, one firm transportation service agreement (FTSA) with Public Service Company of Colorado.

CIG states that the FTSA is being submitted to update a previously approved non-conforming agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17458 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-468-000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 13, 2006.

Take notice that on September 28, 2006, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP06-468-000, a prior notice request pursuant to sections 157.205, 157.208(b) and 157.216(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, and Columbia's blanket certificate issued in Docket No. CP83-76-000 to replace 5.87 miles of its 14-inch Line 1278 with like-size pipeline, located in Northampton, Lehigh and Bucks Counties, Pennsylvania. Columbia states that the replacement project is due to age and condition of the existing pipeline and it estimates the project cost at approximately \$12,475,000, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding the application should be directed to Fredric J. George, Lead Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 22030-0146 at (304) 357-2359, Fax (304) 357-3206.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17470 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-469-000]

Dominion Cove Point LNG, LP; Notice of Application

October 13, 2006.

Take notice that on September 29, 2006, as supplemented on October 10, 2006, Dominion Cove Point LNG, LP (Cove Point LNG) filed an application in Docket No. CP06-469-000, pursuant to section 3 of the Natural Gas Act (NGA), for authority to construct, install, own, operate and maintain certain facilities at the Cove Point LNG import terminal at Cove Point, Maryland (Post Expansion Send-out Project). The details of this proposal are more fully set forth in the application that is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or TTY (202) 502-8659.

Any questions regarding this application should be directed to Anne E. Bomar, Vice President, Federal Regulations, Dominion Resources, Inc., 120 Tredegar Street, Richmond, Virginia 23219, or by phone at (804) 819-2134.

Cove Point LNG says that the Post Expansion Send-out Project is designed to add three spare LNG send-out pumps, two auxiliary heaters to be used as an alternate heating source for existing waste heat vaporizers, and related electrical infrastructure improvements at the Dominion Cove Point LNG import terminal located in Calvert County, Maryland. The proposed facilities will also enhance the reliability of service at the LNG terminal for the Rate Schedule

LTD-1 customers (those who import LNG) under the Incremental Sendout Quantity (ISQ) provisions of Rate Schedule LTD-1, as shown in Exhibit P of the application. These LNG terminal facility improvements are expected to cost more than \$21 million, however Cove Point LNG says that its proposed changes to the ISQ service in Rate Schedule LTD-1 does not create a subsidy, nor will it degrade service to existing customers or result in undue discrimination. Cove Point LNG requests that the Commission grant the requested authorization at the earliest practicable date, in order to ensure an in-service date of August 2008.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right

to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Comment Date: 5 p.m. Eastern Time on November 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17471 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04-365-004]

Dominion Transmission, Inc.; Notice of Compliance Filing

October 12, 2006.

Take notice that on September 28, 2006, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 36 and Second Revised Sheet No. 36A, to become effective November 1, 2006.

DTI states that the filing is being made in compliance with the Commission's order issued on October 20, 2005, requiring DTI to change the proposed incremental transportation rate as the initial rate for service under Rate Schedule FTGSS.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on October 17, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17466 Filed 10-18-06; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-18-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 13, 2006.

Take notice that on October 10, 2006 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing revised tariff sheets, proposed to be effective October 1, 2006:

Sixty-First Revised Sheet No. 7.
Sixty-First Revised Sheet No. 8.

Eastern Shore states that copies of its filing have been mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17487 Filed 10-18-06; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1118-000; ER06-1118-001; and ER06-1118-002]

ECP Energy, LLC; Notice of Issuance of Order

October 13, 2006.

ECP Energy, LLC (ECP Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. ECP Energy also requested waivers of various Commission regulations. In particular, ECP Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by ECP Energy.

On September 7, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by ECP Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, ECP Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of ECP Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of ECP Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17476 Filed 10-18-06; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1355-000; ER06-1355-001]

Evergreen Windpower, LLC; Notice of Issuance of Order

October 13, 2006.

Evergreen Windpower, LLC (Evergreen) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Evergreen also requested waivers of various Commission regulations. In particular, Evergreen requested that the Commission grant

blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Evergreen.

On September 19, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Evergreen should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Evergreen is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Evergreen, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Evergreen's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17492 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1223-000; ER06-1223-001]

Fairchild Energy, LLC; Notice of Issuance of Order

October 13, 2006.

Fairchild Energy, LLC (Fairchild) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Fairchild also requested waivers of various Commission regulations. In particular, Fairchild requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Fairchild.

On September 7, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Fairchild should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Fairchild is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Fairchild, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Fairchild's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the

Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17483 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1261-000, ER06-1261-001]

FPL Energy Mower County, LLC; Notice of Issuance of Order

October 13, 2006.

FPL Energy Mower County, LLC (FPL Mower) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. FPL Mower also requested waivers of various Commission regulations. In particular, FPL Mower requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by FPL Mower.

On September 21, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by FPL Mower should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, FPL Mower is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of FPL Mower, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of FPL Mower's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17505 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1392-000]

FPL Energy Oliver Wind, LLC; Notice of Issuance of Order

October 13, 2006.

FPL Energy Oliver Wind, LLC (FPL Oliver Wind) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. FPL Oliver Wind also requested waivers of various Commission regulations. In particular, FPL Oliver Wind requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of

securities and assumptions of liability by Hawks Nest.

On September 29, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by FPL Oliver Wind should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, FPL Oliver Wind is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of FPL Oliver Wind, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of FPL Oliver Wind's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17495 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06-407-002]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

October 12, 2006.

Take notice that on October 6, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1-A, the following tariff sheets, to become effective January 1, 2007:

Second Revised Sheet No. 221.

Original Sheet No. 221A .

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17464 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER06-1446-000]

Hawks Nest Hydro LLC; Notice of Issuance of Order

October 13, 2006.

Hawks Nest Hydro LLC (Hawks Nest) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Hawks Nest also requested waivers of various Commission regulations. In particular, Hawks Nest requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Hawks Nest.

On September 29, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Hawks Nest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Hawks Nest is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Hawks Nest, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Hawk Nest's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the

Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,*Secretary.*

[FR Doc. E6-17499 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ER06-1364-000]

International Paper Company; Notice of Issuance of Order

October 13, 2006.

International Paper Company (IPC) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. IPC also requested waivers of various Commission regulations. In particular, IPC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by IPC.

On September 19, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by IPC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, IPC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of IPC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of IPC's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,*Secretary.*

[FR Doc. E6-17493 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket Nos. ER06-1243-000, ER06-1243-001]

Liberty Power Holdings, LLC; Notice of Issuance of Order

October 13, 2006.

Liberty Power Holding, LLC (Liberty Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Liberty Power also requested waivers of various Commission regulations. In particular, Liberty Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future

issuances of securities and assumptions of liability by Liberty Power.

On September 6, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director’s order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Liberty Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Liberty Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Liberty Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Liberty Power’s issuance of securities or assumptions of liability.

Copies of the full text of the Director’s Order are available from the Commission’s Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission’s Web site at <http://www.ferc.gov>, using the eLibrary link.

Enter the docket number excluding the last three digits in the docket number filed to access the document.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17468 Filed 10–18–06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Issuance of Order

October 13, 2006.

Liberty Power Maine, LLC	Docket No. ER06–1147–000
Liberty Power New Jersey LLC	Docket No. ER06–1148–000
Liberty Power Rhode Island LLC	Docket No. ER06–1149–000
Liberty Power Massachusetts LLC	Docket No. ER06–1150–000
Liberty Power Illinois LLC	Docket No. ER06–1151–000
Liberty Power Montana LLC	Docket No. ER06–1155–000
Liberty Power Delaware LLC	Docket No. ER06–1157–000
Liberty Power Michigan LLC	Docket No. ER06–1156–000
Liberty Power Virginia LLC	Docket No. ER06–1158–000
Liberty Power Arizona LLC	Docket No. ER06–1159–000
Liberty Power Oregon LLC	Docket No. ER06–1161–000
Liberty Power Nevada LLC	Docket No. ER06–1166–000
Liberty Power New Hampshire LLC	Docket No. ER06–1167–000
Liberty Power Pennsylvania LLC	Docket No. ER06–1168–000
Liberty Power Ohio LLC	Docket No. ER06–1170–000
Liberty Power California LLP	Docket No. ER06–1172–000
Liberty Power Connecticut LLP	Docket No. ER06–1173–000

Liberty Power Entities filed applications for market-based rate authority, with an accompanying rate schedules. The proposed market-based rate schedules provide for the sale of energy and capacity at market-based rates. Liberty Power Entities also requested waivers of various Commission regulations. In particular,

Liberty Power Entities requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Liberty Power Entities.

On July 14, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the

requests for blanket approval under part 34. The Director’s order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by

Liberty Power Entities should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Liberty Power Entities are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Liberty Power Entities, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Liberty Power Entities' issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17478 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1143-000, ER06-1143-001]

MATEP LLC.; Notice of Issuance of Order

October 13, 2006.

MATEP LLC filed an application for market-based rate authority, with an accompanying tariff. The proposed

market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. MATEP LLC also requested waivers of various Commission regulations. In particular, MATEP LLC requested that the Commission grant blanket approval under 18 C.F.R. Part 34 of all future issuances of securities and assumptions of liability by MATEP LLC.

On August 11, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by MATEP LLC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 17, 2006.

Absent a request to be heard in opposition by the deadline above, MATEP LLC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of MATEP LLC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of MATEP LLC's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

"e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17477 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1239-000; ER06-1239-001]

Moguai Energy, LLC; Notice of Issuance of Order

October 13, 2006.

Moguai Energy, LLC (Moguai Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Moguai Energy also requested waivers of various Commission regulations. In particular, Moguai Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Moguai Energy.

On September 8, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Moguai should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Moguai Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Moguai Energy, compatible with the public interest, and is

reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Moguei Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17485 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1291-000]

Mt. Tom Generating Company, LLC; Notice of Issuance of Order

October 13, 2006.

Mt. Tom Generating Company, LLC (Mt. Tom Generating) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Mt. Tom Generating also requested waivers of various Commission regulations. In particular, Mt. Tom Generating requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mt. Tom Generating.

On August 28, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of

securities or assumptions of liability by Mt. Tom Generating should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Mt. Tom Generating is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Mt. Tom Generating, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Mt. Tom Generating's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17490 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1286-000]

New Hope Power Partnership; Notice of Issuance of Order

October 13, 2006.

New Hope Power Partnership (New Hope) filed an application for market-based rate authority, with an

accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and the reassignment of transmission capacity. New Hope also requested waivers of various Commission regulations. In particular, New Hope requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by New Hope.

On September 8, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by New Hope should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, New Hope is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of New Hope, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of New Hope's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

“e-Filing” link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17506 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1055-000; ER06-1055-001]

Newmont Nevada Energy Investment LLC; Notice of Issuance of Order

October 13, 2006.

Newmont Nevada Energy Investment LLC (Newmont) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Newmont also requested waivers of various Commission regulations. In particular, Newmont requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Newmont.

On August 1, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director’s order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Newmont should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Newmont is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Newmont, compatible with the public interest, and is reasonably

necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Newmont’s issuance of securities or assumptions of liability.

Copies of the full text of the Director’s Order are available from the Commission’s Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission’s Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17475 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1407-000; ER06-1408-000; ER06-1409-000; and ER06-1413-000]

Noble Bliss Windpark, LLC; Noble Ellenburg Windpark, LLC; Noble Altona Windpark, LLC; Noble Clinton Windpark I, LLC; Notice of Issuance of Order

October 13, 2006.

Noble Bliss Windpark, LLC, Noble Ellenburg Windpark, LLC, Noble Altona Windpark, LLC and Noble Clinton Windpark I, LLC (Applicants) filed an application for market-based rate authority, with accompanying rate schedules. The proposed market-based rate schedules provides for the sale of energy, capacity and ancillary services at market-based rates. The Applicants also requested waivers of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On September 28, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director’s order also stated that

the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of the Applicants’ issuance of securities or assumptions of liability.

Copies of the full text of the Director’s Order are available from the Commission’s Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission’s Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17497 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 12514-000—Indiana]

Northern Indiana Public Service Company; Norway-Oakdale Project; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 12, 2006.

Rule 2010 of the Federal Energy Regulatory Commission's (hereinafter, Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.¹ The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Indiana State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Norway-Oakdale Project No. 12514-000 (SHPO Reference Number DNR #10475).

The programmatic agreement, when executed by the Commission and the SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Norway-Oakdale Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

Northern Indiana Public Service Company, as licensee for Project No. 12514, the Pokagon Band of Potawatomi Indians of Indiana and Michigan, and

the Miami Tribe of Oklahoma are invited to participate in consultations to develop the programmatic agreement.

For purposes of commenting on the programmatic agreement, we propose to restrict the service list for the aforementioned project as follows:

Don Klima or Representative, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Jerome B. Weeden, Vice President of Generation or Representative, Northern Indiana Public Service Company, 801 East 86th Avenue, Merrillville, IN 46410.

Karie A. Brudis or Representative, Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, 402 W. Washington Street, W274, Indianapolis, IN 46204-2739.

John Miller, Tribal Chairman or Representative, Pokagon Band of Potawatomi Indians of Indiana and Michigan, 58620 Sink Road, Dowagiac, MI 49047.

Floyd Leonard, Chief or Representative, Miami Nation of Oklahoma, 202 South Eight Tribes Trail, Miami, OK 74354.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also please identify any concerns about historic properties, including Traditional Cultural Properties. If historic properties are to be identified within the motion, please use a separate page, and label it NON-PUBLIC Information.

An original and 8 copies of any such motion must be filed with Magalie Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. Please put the project name "Norway-Oakdale Project" and number "P-12514-000" on the front cover of any motion. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Magalie Salas,*Secretary.*

[FR Doc. E6-17462 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket Nos. ER06-1221-000, ER06-1221-001 and ER06-1221-002]

Parkview AMC Energy, LLC; Notice of Issuance of Order

October 13, 2006.

Parkview AMC Energy, LLC (Parkview) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Parkview also requested waivers of various Commission regulations. In particular, Parkview requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Parkview.

On September 7, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Parkview should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Parkview is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Parkview, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Parkview's issuance of securities or assumptions of liability.

¹ 18 CFR 385.2010.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17481 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1222-000; ER06-1222-001; and ER06-1222-002]

PEAK Capital Management, LLC; Notice of Issuance of Order

October 13, 2006.

PEAK Capital Management, LLC (PEAK) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. PEAK also requested waivers of various Commission regulations. In particular, PEAK requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PEAK.

On September 27, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by PEAK should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and

Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, PEAK is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of PEAK, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of PEAK's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17482 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-465-000]

Puget Sound Energy, Inc.; Notice of Application

October 13, 2006.

Take notice that on September 22, 2006, Puget Sound Energy, Inc., (Puget), as Operator of the Jackson Prairie Storage Project (Project), 10885 NE. 4th Street P.O. Box 97034 Bellevue, WA 98009-9734, filed in Docket No. CP06-465-000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, for authorization to construct and operate facilities to mitigate gas migration at the storage facility, and to confirm the approved

status of all current well operations at the storage facility as well as the Project's certificated zone boundaries, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502-8659 or TTY, (202) 208-3676.

Specifically, Puget seeks: (1) Certificate authority to construct and operate facilities (including certain minor pipeline, compression, and related facilities) necessary to efficiently recycle natural gas back to Zone 2, a currently authorized storage reservoir at the Project, from Zone 1, another reservoir at the Project not currently authorized for storage activities, to which such gas has migrated, and to utilize Zone 1 on an ongoing basis in support of the previously authorized Zone 2 storage operation; (2) an amendment to the Project's existing certificate to reflect a small reduction in the authorized cushion gas level at the project; and (3) amendments to existing certificates or new certificate authority, as necessary, to confirm the approved status of all current well operations at the Project's certificated zone boundaries.

Any questions regarding this application should be directed to Andrea J. Chambers, Troutman Sanders LLP, 401 9th Street, NW., suite 1000 Washington, DC 20004-4605, or call (202) 274-2950.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments protests and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

Comment Date: November 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17469 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06-1272-000; ER06-1272-001]

Reliant Energy Power Supply, LLC; Notice of Issuance of Order

October 13, 2006.

Reliant Energy Power Supply, LLC (Reliant) filed an application for market-

based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Reliant also requested waivers of various Commission regulations. In particular, Reliant requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Reliant.

On September 21, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Reliant should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Reliant is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Reliant, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Reliant's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17488 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05-355-002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 12, 2006.

Take notice that on September 29, 2006, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2006:

Eleventh Revised Sheet No. 23G

Eighth Revised Sheet No. 413A

Tennessee states that the filing is being made in compliance with the Commission's order issued on December 29, 2005 in Docket Nos. CP05-355-000 and CP05-352-000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on October 17, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17459 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-413-004]

Tennessee Gas Pipeline Company; Notice of Shipper Refund Report

October 12, 2006.

Take notice that on October 6, 2006, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its Statement of Refunds Report, which reflects refunds paid to applicable Columbia Gulf Transmission Company shippers as directed by the August 11 Order.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on October 19, 2006.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17463 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-16-000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

October 12, 2006.

Take notice that on October 10, 2006, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing with the Commission to become a part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 10, 2006:

Tenth Revised Sheet No. 374
Thirteenth Revised Sheet No. 376

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the

Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17465 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06-1273-000]

Wolverine Trading, Inc.; Notice of Issuance of Order

October 13, 2006.

Wolverine Inc. (Wolverine) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Wolverine also requested waivers of various Commission regulations. In particular, Wolverine requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Wolverine.

On September 1, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Wolverine should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Wolverine is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any

security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Wolverine, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Wolverine's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17489 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 13, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07-1-000.

Applicants: Peoples Elwood, LLC; J-Power USA Investment Company, Ltd.

Description: Peoples Elwood, LLC & J-POWER USA Investment Co, Ltd submit a joint application for authorization to transfer membership interest in a public utility.

Filed Date: 10/06/2006.

Accession Number: 20061010-0219.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: EC07-2-000.

Applicants: KGen Southaven, LLC; KGen New Albany LLC, BTEC New Albany LLC.

Description: KGen Southaven, LLC, KGen New Albany, LLC *et al.* submit a joint application for disposition of jurisdictional facilities.

Filed Date: 10/06/2006.

Accession Number: 20061012-0215.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07-3-000.

Applicants: Plains End II, LLC.

Description: Plains End II, LLC

submits its Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/12/2006.

Accession Number: 20061012-5017.

Comment Date: 5 p.m. Eastern Time on Thursday, November 2, 2006.

Docket Numbers: EG07-4-000.

Applicants: RC Cape May Holdings, LLC.

Description: RC Cape May Holdings LLC submits its a Notice of Self-Certification of Exemption Wholesale Generator Status.

Filed Date: 10/11/2006.

Accession Number: 20061013-0083.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 1, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99-845-010.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits a Notice in Change in Status pursuant to requirements of Order 652.

Filed Date: 10/06/2006.

Accession Number: 20061011-0009.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER00-2885-011;

ER01-2765-010; ER02-1582-009;

ER02-1785-006; ER02-2102-010;

ER06-864-003.

Applicants: Bear Energy LP; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C., Mohawk River Funding IV, L.L.C.; Thermo Cogeneration Partnership L.P., Utility Contract Funding, L.L.C.

Description: Bear Energy, LP *et al.* submits a notice to FERC that they have entered into two energy management agreements with Project Orange Associates *et al.* pursuant to Order 652.

Filed Date: 10/11/2006.

Accession Number: 20061013-0074.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 1, 2006.

Docket Numbers: ER01-615-014;

ER96-1551-018.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits an electric compliance report.

Filed Date: 10/06/2006.

Accession Number: 20061006-5052.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER03-467-001.

Applicants: Gulf States Energy, Inc.

Description: Gulf States Energy Inc submits amended triennial updated market power analysis in compliance with the FERC order.

Filed Date: 10/06/2006.

Accession Number: 20061010-0034.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER03-821-001.

Applicants: One Nation Energy Solutions, LLC.

Description: One Nation Energy Solutions, LLC submits a Triennial Market Power Update.

Filed Date: 10/12/2006.

Accession Number: 20061013-0099.

Comment Date: 5 p.m. Eastern Time on Thursday, November 2, 2006.

Docket Numbers: ER03-888-003;

ER06-1503-001; ER06-1504-001.

Applicants: Nordic Marketing of Ohio; Nordic Marketing of Pennsylvania, LLC; Nordic Marketing of Illinois, LLC.

Description: Nordic Marketing of Ohio LLC *et al* submit rate schedule cancellation sheet (Second Revised Sheet 1 *et al.*) to supplement their 9/15/06 submission.

Filed Date: 10/06/2006.

Accession Number: 20061011-0010.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER03-891-002.

Applicants: Gulf States Energy Investments L.P.

Description: Gulf States Energy Investments, LP submits amended triennial updated market power analysis in compliances with FERC's Order 652 under ER03-891.

Filed Date: 10/06/2006.

Accession Number: 20061010-0030.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER03-1288-002.

Applicants: Rocky Mountain Energy Center, LLC.

Description: Rocky Mountain Energy Center, LLC submits an Updated Market Analysis in accordance with the Commission's 10/3/03 letter order.

Filed Date: 10/03/2006.

Accession Number: 20061005-0044.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 24, 2006.

Docket Numbers: ER05-636-005.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a Compliance Filing of Large Generator Interconnection Agreement among Columbia Community Windpower LLC.

Filed Date: 10/10/2006.

Accession Number: 20061011-0053.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER05-662-005.
Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits the Large Generator Interconnection Agreement with Darlington Wind Farm, LLC *et al.*
Filed Date: 10/10/2006.

Accession Number: 20061011-0018.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER05-864-004.
Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits a Large Generator Interconnection Agreement among Forward Energy LLC & American Transmission Co, LLC.
Filed Date: 10/10/2006.

Accession Number: 20061011-0266.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER05-1178-005.
Applicants: Gila River Power, L.P.; Union Power Partners, LP.
Description: Gila River Power LP and Union Power Partners LP submits a Notice of Non-Material Change in Status relating to their upstream ownership structure.

Filed Date: 10/05/2006.

Accession Number: 20061010-0211.
Comment Date: 5 p.m. Eastern Time on Thursday, October 26, 2006.

Docket Numbers: ER05-1508-003.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits an amendment to its 9/8/06 filing of the Large Generator Interconnection Agreement with Power Partners Midwest, LLC *et al.*

Filed Date: 10/04/2006

Accession Number: 20061006-0005.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER06-690-004.
Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to Attachment HH (Dispute Resolution Procedures) of the Open Access Transmission and Energy Markets Tariff.

Filed Date: 10/10/2006.

Accession Number: 20061011-0200.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER06-731-003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an amended compliance filing re Broad Constrained Area Mitigation.
Filed Date: 10/11/2006.

Accession Number: 20061013-0055.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 1, 2006.

Docket Numbers: ER06-1001-001.
Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits a correction to its 10/2/06 filing re: Substitute Third Revised Sheet 969 *et al* to FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 10/04/2006.

Accession Number: 20061005-0188.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER06-1234-002.
Applicants: Southern Company Services, Inc.

Description: Southern Company Services Inc, acting as agent for Alabama Power Co *et al* submits an interconnection agreement in accordance with FERC's September Order.

Filed Date: 10/10/2006.

Accession Number: 20061011-0198.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER06-1295-001.
Applicants: Boston Edison Company.
Description: Boston Edison Company submits a response to 9/26/06 FERC Deficiency Letter of NSTAR Electric & Gas Corp.

Filed Date: 10/05/2006.

Accession Number: 20061005-5031.
Comment Date: 5 p.m. Eastern Time on Thursday, October 26, 2006.

Docket Numbers: ER06-1331-000.
Applicants: CalPeak Power LLC.
Description: CalPeak Power LLC supplements its 8/2/06 application for acceptance of their initial market-based rate tariff *et c.* to clarify a statement in the application.

Filed Date: 10/04/2006.

Accession Number: 20061006-0001.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER06-1422-001.
Applicants: Louisville Gas & Electric Company Kentucky Utilities Company.

Description: Louisville Gas and Electric Co and Kentucky Utilities Co requests that the Commission find that they continue to be authorized to make sales of ARS energy to BREC notwithstanding recent changes to market based rate tariff.

Filed Date: 10/04/2006.

Accession Number: 20061006-0004.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER06-1458-002.
Applicants: E. ON U.S., LLC; Louisville Gas and Electric Company; Kentucky Utilities Company.

Description: E.On U.S. LLC on behalf of Louisville Gas, *et al* submit supplements to its 9/21/06 filing with supporting testimony and data of LG & E Companies *et al* substitute unexecuted Service Agreement for Integration Transmission Service.

Filed Date: 09/28/2006.

Accession Number: 20061005-0166.
Comment Date: 5 p.m. Eastern Time on Thursday, October 19, 2006.

Docket Numbers: ER06-1502-001.
Applicants: Round Rock Energy LLC.
Description: Round Rock Energy LLC submits amendments to its market based rate, Rate Schedule No. 1.

Filed Date: 10/05/2006.

Accession Number: 20061010-0218.
Comment Date: 5 p.m. Eastern Time on Thursday, October 26, 2006.

Docket Numbers: ER06-1503-001.
Applicants: Nordic Marketing of Ohio, LLC.

Description: Nordic Marketing of Ohio LLC *et al* submits further information and rate schedule cancellation sheet (Second Revised Sheet 1 *et al*) to supplement their 9/15/06 submission under ER06-1503 *et al.*

Filed Date: 10/06/2006.

Accession Number: 20061011-0010.
Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER07-4-001.
Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc supplements its 10/2/06 filing by submitting Exhibit I a redlined version of the Agreement against the 1981 Agreement to comply with Order 614.

Filed Date: 10/10/2006.

Accession Number: 20061011-0017.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER07-12-000.
Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised rate sheets to the Interconnection Facilities Agreement with NM Mid Valley Genco, LLC.

Filed Date: 10/04/2006.

Accession Number: 20061006-0006.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER07-13-000.
Applicants: Dynegy Midwest Generation, Inc.

Description: Dynegy Midwest Generation, Inc submits revisions to its market-based rate tariff that would remove the outdated restriction on sales to Illinois Power Co.

Filed Date: 10/04/2006.

Accession Number: 20061006-0009.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER07-14-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits notices of cancellation for Network Operating Agreements and on 10/10/06 submit a supplement to this filing.

Filed Date: 10/04/2006; 10/10/2006.

Accession Number: 20061006-0008; 20061011-0203.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER07-15-000.

Applicants: Florida Power Corporation.

Description: Florida Power Corp dba Progress Energy Florida Inc submits a modification of the 10/12/95 Agreement for Sale & Purchase of Capacity & Energy with Seminole Electric Cooperative Inc, First Rev Rate Schedule 176.

Filed Date: 10/06/2006.

Accession Number: 20061010-0213.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER07-17-000.

Applicants: Alloy Power L.L.C.

Description: Alloy Power, LLC submits a Notice of Cancellation and cancellation tariff sheet for the purpose of canceling its Shared Facilities Agreement for service to West Virginia Alloys, Inc etc.

Filed Date: 10/06/2006.

Accession Number: 20061010-0214.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER07-18-000.

Applicants: New York Independent System Operator, Inc.

Description: New York State Electric & Gas Corp submits an Original Service Agreement 921 between NYSEG and Indeck Energy Services of Silver Springs Inc under its OATT.

Filed Date: 10/06/2006.

Accession Number: 20061010-0215.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER07-19-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits its proposed revisions to its Open Access Transmission Tariff.

Filed Date: 10/06/2006.

Accession Number: 20061011-0012.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER07-20-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits proposed revisions to its Open Access Transmission Tariff by amending the timing requirement for Short Term Firm Transmission Service.

Filed Date: 10/06/2006.

Accession Number: 20061011-0013.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER07-21-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed Interconnection service agreement with Camp Grove Wind Farm, LLC and Commonwealth Edison Company.

Filed Date: 10/06/2006.

Accession Number: 20061011-0014.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER07-22-000.

Applicants: Jump Power, LLC.

Description: Jump Power submits a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, FERC Electric Tariff, Original Volume 1 etc.

Filed Date: 10/10/2006.

Accession Number: 20061011-0199.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER07-23-000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Co submits its proposed FERC Electric Tariff, Volume 5 which provides for cost-based sales of capacity and energy with a duration of less than one year.

Filed Date: 10/10/2006.

Accession Number: 20061012-0170.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER07-24-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a Letter Agreement between Southwestern Public Service Co d/b/a Xcel Energy and Lea Power Partners, LLC.

Filed Date: 10/10/2006.

Accession Number: 20061012-0172.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER07-25-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a Letter Agreement between Southwestern Public Service Co dba Xcel Energy and Golden Spread Electric Cooperative, Inc.

Filed Date: 10/10/2006.

Accession Number: 20061012-0171.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 31, 2006.

Docket Numbers: ER07-26-000.

Applicants: AEP Energy Partners, LP.

Description: AEP Energy Partners, LP (AEP) submits its Notice of Succession to reflect a name change on its market-based tariff from CSW Power Marketing Inc to AEP.

Filed Date: 10/11/2006.

Accession Number: 20061012-0174.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 1, 2006.

Docket Numbers: ER07-27-000.

Applicants: Wisconsin Public Power, Inc.

Description: Wisconsin Public Power, Inc submits an Initial Rate Schedule 1 and supporting cost data to establish its annual revenue requirement.

Filed Date: 10/11/2006.

Accession Number: 20061013-0075.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 1, 2006.

Docket Numbers: ER07-28-000.

Applicants: Wisconsin Public Power, Inc.

Description: Wisconsin Public Power, Inc submits its Initial Rate Schedule 2 and supporting cost data to establish its annual revenue requirement.

Filed Date: 10/11/2006.

Accession Number: 20061013-0079.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 1, 2006.

Docket Numbers: ER07-29-000.

Applicants: Wisconsin Public Power, Inc.

Description: Wisconsin Public Power, Inc submits its Initial Rate Schedule 3 and supporting cost data to establish its annual revenue requirement.

Filed Date: 10/11/2006.

Accession Number: 20061013-0078.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 1, 2006.

Docket Numbers: ER07-30-000.

Applicants: RC Cape May Holdings, LLC.

Description: RC Cape May Holdings, LLC submits an application for market based rate authority (Electric Tariff, Original Volume 1), certain waivers and blanket authorizations.

Filed Date: 10/11/2006.

Accession Number: 20061013-0077.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 1, 2006.

Docket Numbers: ER07-31-000.

Applicants: Endeavor Power Partners, LLC.

Description: Endeavor Power Partners, LLC submits an application for market-based rate authority under Section 205 of the Federal Power Act,

Request for expedited consideration and for waivers and pre-approvals.

Filed Date: 10/11/2006.

Accession Number: 20061013-0076.

Comment Date: 5 p.m. Eastern Time

on Wednesday, November 1, 2006.

Docket Numbers: ER07-33-000.

Applicants: New York Independent System Operator, Inc.

Description: NYISO submits a request for temporary tariff waiver.

Filed Date: 10/06/2006.

Accession Number: 20061013-0082.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER07-34-000.

Applicants: Plains End II, LLC.

Description: Petition of Plains End II, LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals and request for expedited action.

Filed Date: 10/12/2006.

Accession Number: 20061013-0081.

Comment Date: 5 p.m. Eastern Time on Thursday, November 2, 2006.

Docket Numbers: ER96-1551-018.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits a compliance Electric Refund Report of Public Service Company of New Mexico.

Filed Date: 10/06/2006.

Accession Number: 20061006-5052.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07-1-000.

Applicants: Edison Sault Electric Company.

Description: Edison Sault Electric Co submits an application for authorization to borrow under Section 204 of the Federal Power Act.

Filed Date: 10/10/2006.

Accession Number: 20061012-0099.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 24, 2006.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07-1-000.

Applicants: Uskmouth Power Limited.

Description: Uskmouth Power Limited submits a Notice of Self Certification.

Filed Date: 10/03/2006.

Accession Number: 20061003-5016.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 24, 2006.

Docket Numbers: FC07-2-000.

Applicants: Enel Latin America, LLC.

Description: Enel Latin America, LLC submits a Self-Certification of Foreign Utility Company Status.

Filed Date: 10/06/2006.

Accession Number: 20061006-5064.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17467 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98-150-006, -007, and -008; Docket Nos. CP98-151-003, -004 and CP05-19-000; Docket Nos. CP06-5-000, CP06-6-000, and CP06-7-000; Docket No. CP06-76-000; Docket No. CP02-31-002]

Millennium Pipeline L.L.C.; Columbia Gas Transmission Corporation; Empire State Pipeline and Empire Pipeline, Inc.; Algonquin Gas Transmission System; Iroquois Gas Transmission System; Notice of Availability of the Final Supplemental Environmental Impact Statement for the Proposed Northeast-07 Project

October 13, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Supplemental Environmental Impact Statement (FSEIS) on the natural gas pipeline facilities proposed for the Northeast (NE)-07 Project in Genesee, Ontario, Yates, Schuyler, Steuben, Chemung, Tioga, Broome, Delaware, Orange, Rockland, Putnam, and Dutchess Counties, New York; Morris County, New Jersey; and Fairfield and New Haven Counties, Connecticut, proposed by Millennium Pipeline L.L.C. (Millennium), Columbia Gas Transmission Corporation (Columbia), Empire State Pipeline and Empire Pipeline, Inc. (collectively referred to as Empire), Algonquin Gas Transmission System (Algonquin), and Iroquois Gas Transmission System (Iroquois) in the above-referenced dockets.

The FSEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FSEIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for compressor stations, and pipeline alternatives.

The FSEIS addresses the potential environmental effects of the construction and operation of the following natural gas pipeline facilities:

Millennium Pipeline Project—Phase I

- Construction of about 181.7 miles of 30-inch-diameter pipeline from Corning, New York, to Ramapo, New York, (from milepost [MP] 190.6 to MP 376.6), with four proposed route modifications within this area;
- Acquisition from Columbia and continued use of about 7.1 miles of 24-

inch-diameter Line A-5 pipeline from MP 340.5 to MP 347.7;

- Construction of the new Corning Compressor Station and measuring and regulating (M&R) facilities at MP 190.6;
- Installation of upgrades to the Ramapo M&R station in Ramapo, Rockland County, New York; and
- Construction of the Wagoner M&R station in Deer Park, Orange County, New York, at MP 337.9.

Columbia would abandon certain facilities related to the Millennium Pipeline Project—Phase I. Columbia proposes the following:

- Abandonment in place of about 4.5 miles of 10-inch-, 82.2 miles of 12-inch-, 0.2 mile of 16-inch-, and 2.5 miles of 20-inch-diameter pipeline in Steuben, Chemung, Tioga, Broome, Orange, and Delaware Counties, New York, designated as Line A-5;
- Abandonment by removal (Millennium would remove Columbia's pipeline when it installs its pipeline via same ditch replacement) of about 55.5 miles of 12-inch-, 16.6 miles of 10-inch-, and 8.8 miles of 8-inch-diameter pipeline in Delaware, Sullivan, Orange, and Rockland Counties, New York, designated as Line A-5, and of the Walton Deposit M&R station at MP 276.1 in Delaware County (Millennium would relocate this facility at the landowner's request and to move it closer to Line A-5);
- Abandonment by conveyance to Millennium of:
 - About 3.1 miles of 10- and 12-inch-diameter pipeline in Steuben County, New York, designated as Line 10325;
 - About 0.4 mile of 10-inch-diameter pipeline in Broome County, New York, designated as Line 10356;
 - About 52.5 miles of 10-, 12-, and 24-inch-diameter pipeline in Steuben, Chemung, Broome, and Orange Counties, New York, designated as Line A-5;
 - About 2.6 miles of 6-inch-diameter pipeline in Tioga County, New York, designated as Line AD-31;
 - About 0.1 mile of 12-inch-diameter pipeline in Broome County, New York, designated as Line N;
 - About 6.7 miles of 24-inch-diameter pipeline in Rockland County, New York, designated as Line 10338;
 - The following M&R stations in New York:

—Corning Natural Gas, MP 180.4, Steuben County;

—Cooper Planes, MP 182.1, Steuben County;

—M Account, MP 187.5, Steuben County;

—Corning Glass, MP 188.4, Steuben County;

—Spencer, MP 217.3, Tioga County;

—Catatunk, MP 228.2, Tioga County;

—Owego, MP 231.5, Tioga County;

—Union Center, MP 240.2, Broome County;

—Endicott, MP 241.7, Broome County;

—Westover, MP 245.7, Broome County;

—Willis Road, MP 248.1, Broome County;

—Port Dickinson, MP 250.8, Broome County;

—Kirkwood, MP 253.8, Broome County;

—Hancock, MP 285.6, Delaware County;

—Hartwood Club, MP 332.1, Sullivan County;

—Middletown, MP 347.7, Orange County;

—Huguenot, MP 3440.5, Orange County;

—Warwick, MP 359.3, Orange County;

—Greenwood Lake, MP 364.2, Orange County;

—Central Hudson/Tuxedo, MP 367.9, Orange County;

—Sloatsburg, MP 373.3, Rockland County;

—Ramapo, MP 376.4, Rockland County; and

—Buena Vista, MP 383.3, Rockland County.

Millennium would replace the facilities Columbia would abandon in place or by removal with its proposed project facilities, or it would continue to use those it would acquire by conveyance.

Millennium proposes to construct Columbia's Line A-5 Replacement Project as part of the Phase I Project.

Columbia Line A-5 Replacement Project

- Replacement of 8.8 miles of 8- and 16-inch-diameter segments of Columbia's existing Line A-5 pipeline with larger 30-inch-diameter pipeline in Orange and Rockland Counties, New York;
- Modification of three existing M&R stations (the Tuxedo, Sloatsburg, and Ramapo M&R stations) on this segment of Line A-5 to accommodate the larger diameter pipeline; and
- Abandonment in place of about 1.0 mile of the existing Line A-5 pipeline.

Empire Connector Project

- Construction of about 78 miles of new 24-inch-diameter pipeline and associated facilities in Ontario, Yates, Schuyler, Chemung, and Steuben Counties, New York; and
- Construction of a new compressor station in Genesee County, New York.

Algonquin Ramapo Expansion Project

- Replacement about 4.9 miles of existing 26-inch-diameter pipeline with 42-inch-diameter pipeline in Rockland County, New York;

- Construction of miscellaneous pipeline modifications and meter station modifications at several locations in Rockland County, New York, and Fairfield County, Connecticut;

- Modifications to three existing compressor stations in Rockland and Putnam Counties, New York, and Morris County, New Jersey; and
- Construction of one new natural gas compressor station in New Haven County, Connecticut.

Iroquois MarketAccess Project

- Reduction of the proposed size of the compressor to be constructed in the Town of Brookfield, Connecticut, from 10,000 hp to 7,700 hp;
- Installation of natural gas cooling and related facilities at the Brookfield Compressor Station; and
- Installation of gas cooling and related facilities at Iroquois' existing compressor station in Town of Dover, Dutchess County, New York.

The FSEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502-8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the FSEIS have been mailed to federal, state, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the FSEIS; libraries; newspapers; and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached toll free at 1-866-208-3676, for TTY at (202) 502-8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching

proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17473 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-455-000]

Kinder Morgan Illinois Pipeline LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Kinder Morgan Illinois Pipeline Project and Request for Comments on Environmental Issues

October 13, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Kinder Morgan Illinois Pipeline Project involving construction and operation of facilities by Kinder Morgan Illinois Pipeline LLC (KMIP) in Cook, Kankakee and Will Counties, Illinois.¹ KMIP proposes to install approximately 3.1 miles of new 24-inch-diameter pipeline and three new meter stations. In addition, KMIP plans to lease 360,000 decatherms/day (Dth/day) in about 26 miles of existing pipeline facilities owned by Natural Gas Pipeline Company of America (Natural). This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the public comment period that will be used to gather environmental input from the public and interested agencies on the project. Comments are requested by November 13, 2006.

With this notice, the FERC staff is asking other Federal, state, local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated KMIP's proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the

instructions for filing comments described in Appendix 1.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A brochure prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site at <http://www.ferc.gov>. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project

KMIP seeks authority to construct and operate the following pipeline facilities:

Cook County, IL

- About 2.6 miles of new 24-inch-diameter pipeline, installed along existing utility corridors. The new pipeline would connect a new KMIP-Natural meter station to Natural's existing Calumet #3 pipeline;

- A new meter station with a capacity of up to 360,000 Dth/day, installed adjacent to an existing Natural meter station and would measure gas flow from the Natural system to the KMIP pipeline;

Will County, IL

- Approximately 0.47 mile of new 24-inch-diameter pipeline, installed along existing utility corridors. The new pipeline would connect a new KMIP-ANR meter station with Natural's existing Herscher-Dyer pipeline;

- A new meter station with a capacity of up to 360,000 Dth/day, installed adjacent to ANR Pipeline Company's (ANR's) existing meter station and would measure gas flow from the ANR system to the new KMIP-ANR pipeline connector; and

Kankakee County, IL

- A new meter station with a capacity of up to 360,000 Dth/day, installed adjacent to Natural's existing meter station located along the border of Illinois and Indiana. The new meter station would measure gas flow from the

Northern Border Pipeline (NBPL) system to the KMIP system.

The general location of the project facilities is shown in Appendix 2.²

Land Requirements

Construction of the proposed pipeline and aboveground facilities would affect about 54.1 acres of land and includes access roads, pipe/contractor yards, and extra work areas. Following construction, roughly 4.63 acres would be permanently maintained. The remaining 49.5 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our³ independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

² The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 2 (map), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

³ "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

¹ KMIP's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Currently Identified Environmental Issues

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the proposed project. We will also evaluate reasonable alternatives to the proposed project or portions of the project.

We have already identified the following issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by KMIP:

- One residence located within 50 feet of the construction workspace;
- Three public water supply wellhead protection areas within 150 feet of the construction workspace;
- Three private water wells located within 150 feet of the construction workspace;
- Two septic tank fields within 200 feet of the construction workspace;
- Six waterbody crossings; and
- Six wetlands.

The above preliminary list of issues may be changed based on your comments and our analysis.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow the instructions below to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP06-455-000.
- Mail your comments so that they will be received in Washington, DC on or before November 13, 2006.

The Commission strongly encourages electronic filing of comments. Please refer to 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Prepare your submission in the

same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments, you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

The determination of whether to distribute the EA for public comment will be based on the response to this notice. If you are interested in receiving a copy of the EA, please return the Information Request form (Appendix 3). Please also indicate on the form whether you would prefer a paper or an electronic copy of the EA. An effort is being made to send this notice to all individuals affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or "intervenor". To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenor has the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at <http://www.ferc.gov>. Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

If you wish to remain on our environmental mailing list, please return the Information Request form included in Appendix 3. If you do not return this form, you will be removed from our mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17486 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 13, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Original Major License under 5 megawatts (MW).
- b. *Project No:* 11879-002.

c. *Date filed*: May 20, 2004.

d. *Applicant*: Symbiotics, LLC.

e. *Name of Project*: Chester Diversion Hydroelectric Project.

f. *Location*: On Henry's Fork of the Snake River, near the Town of Rexburg, in Fremont County, Idaho.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact*: Brent L. Smith, Northwest Power Services, Inc. P.O. Box 535, Rigby, Idaho 83442, (208) 745-0834.

i. *FERC Contact*: Emily Carter, 202-502-6512, Emily.Carter@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions* is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link.

k. This application has been accepted and is now ready for environmental analysis.

l. The Applicant proposes to utilize the existing BOR Chester Diversion dam on the Henry's Fork of the Snake River. The dam has an overall structural height of 17 feet and a total length of 457 feet, spanning the river. Operation of the project would depend on flows in the Henry's Fork and would be dependent on the irrigation season. It would be operated run-of-river and no storage would occur at the project.

The proposed project would consist of the following facilities: (1) A new three-foot-high inflatable rubber dam bolted to the crest of the existing spillway; (2) a new 50-foot-wide concrete spillway; (3) two new Kaplan-type turbine generator units with a combined generating capacity of 3.3 MW; (4) a new low-

profile powerhouse; and (5) appurtenant facilities.

The applicant estimates that the average annual generation would be about 16.8 gigawatthours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "Comments", "Reply Comments", "Recommendations," "Terms and Conditions," or "Prescriptions;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at <http://www.ferc.gov/docs-filing/subscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. *Procedural schedule and final amendments*: Revisions to the schedule will be made as appropriate. The schedule given in the September 6,

2005, Scoping Document 1 is revised as follows:

Notice that application is ready for environmental analysis (EA): October 2006.

Notice of the availability of the EA: March 2007.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17502 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

October 13, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use Of Project Lands And Waters.

b. *Project No*: 2232-526.

c. *Date Filed*: October 3, 2006.

d. *Applicant*: Duke Power Company LLC.

e. *Name of Project*: The Catawba-Wateree Project, which includes Lake Wylie.

f. *Location*: The proposed action will take place at Lake Wylie, which is located in Gaston County, North Carolina on the Catawba River, at the Reflection Point Subdivision.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact*: Mr. Kelvin K. Reagan, Senior Lake Services Representative, Duke Energy Corporation, P.O. Box 1006, Charlotte, NC 28201-1006; (704) 382-9386.

i. *FERC Contact*: Any questions on this notice should be addressed to Lesley Kordella at (202) 502-6406, or by e-mail: Lesley.Kordella@ferc.gov.

j. *Deadline for filing comments and or motions*: November 13, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-2232-526) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The

Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power Company LLC, licensee for the Catawba Wateree Hydroelectric Project, has requested Commission approval to lease to the North Star Investors II, LLC, 2.31 total acres of project lands on Lake Wylie for a commercial/ residential marina to serve the Reflection Point Subdivision, a commercial residential development located in Gaston County, North Carolina. The marina will consist of four cluster docks with ninety-eight boat docking locations. There will be no dredging during construction and the docks will be constructed off site and floated into place during low peak recreation usage times.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "Comments", "Recommendations for Terms and Conditions", "Protest", or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications

may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.

[FR Doc. E6-17503 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

October 13, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2696-027.

c. *Date Filed:* September 26, 2006.

d. *Applicants:* Stuyvesant Falls Hydro Corporation and the Town of Stuyvesant, New York (transferors); and Albany Engineering Corporation and the Town of Stuyvesant, New York (transferees).

e. *Name and Location of Project:* The Stuyvesant Falls Project is located on the Kinderhook Creek in Columbia County, New York.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

g. *Applicant Contacts:* For the transferors: James A. Besha, Stuyvesant Falls Hydro Corporation, C/O Albany Engineering Corporation, 447 New Karner Road, Albany, NY, (518) 456-7712.

For the transferee: James A. Besha, Albany Engineering Corporation, 447 New Karner Road, Albany, NY, (518) 456-7712.

h. *FERC Contact:* Robert Bell at (202) 502-6062.

i. *Deadline for filing comments, protests, and motions to intervene:* November 13, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

"e-Filing" link. The Commission strongly encourages electronic filings. Please include the Project Number on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:*

Applicants seek Commission approval to transfer the license for the Stuyvesant Falls Project from Stuyvesant Falls Hydro Corporation and the Town of Stuyvesant, New York to Albany Engineering Corporation and the Town of Stuyvesant, New York.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "Ferris" link. Enter the docket number (P-9985) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "Comments", "Protest", or "Motion to Intervene", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17504 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Notice of Technical Conference

October 13, 2006.

Midwest Independent Transmission System Operator, Inc	Docket No. ER05-6-044, Docket No. ER05-6-054, Docket No. ER05-6-055.
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL04-135-046, Docket No. EL04-135-056, Docket No. EL04-135-057.
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL02-111-064, Docket No. EL02-111-074, Docket No. EL02-111-075.
Ameren Services Company	Docket No. EL03-212-060, Docket No. EL03-212-070, Docket No. EL03-212-071.

Take notice that the Commission will convene a technical conference on Tuesday, December 5, 2006, at 9 a.m., in room 3M-1 of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. As required by the September 21, 2006, order in Midwest Independent Transmission System Operator, Inc., 116 FERC ¶ 61,260 (2006), the conference will discuss proposals to allocate between Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., the cost responsibility for constructing facilities that benefit both regional transmission organizations.

The conference is open for the public to attend. The conference will not be transcribed and telephone participation will not be available.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-502-8659 (TTY).

For more information about the conference, please contact: Fernando Rodriguez at (202) 502-8231 or fernando.rodriquez@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. E6-17474 Filed 10-18-06; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2006-0413; FRL-8232-3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Secondary Lead Smelters (Renewal), EPA ICR Number 1128.08, OMB Control Number 2060-0080

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before November 20, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA-HQ-OECA-2006-0413, to (1) EPA online using <http://www.regulations.gov> (our preferred method), or by e-mail to docket.oeca@epa.gov, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725

17th Street, NW., Washington, DC 20503.

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 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 status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243-05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0296; fax number: (919) 541-3207; e-mail address: schaefer.john@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006 (71 FR 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA-HQ-OECA-2006-0413, which is available for public viewing online at <http://www.regulations.gov>, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 Reading Room is (202) 566-1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

Use EPA's electronic docket and comment system at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: NSPS for Secondary Lead Smelters (Renewal).

ICR Numbers: EPA ICR Number 1128.08, OMB Control Number 2060-0080.

ICR Status: This ICR is scheduled to expire on November 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) renewal is being submitted for the NSPS for Secondary Lead Smelters (40 CFR part 60, subpart L), which was promulgated on March 8, 1974. This standard applies to owners and operators of secondary lead smelters facilities. Owners and operators of secondary lead smelters subject to NSPS must notify EPA of construction, reconstruction, anticipated and actual startup dates, and results of performance tests. Records of performance test results, shutdowns, and malfunctions must be maintained.

These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Secondary lead smelters.

Estimated Number of Respondents: 25.

Frequency of Response: Initially and on occasion.

Estimated Total Annual Hour Burden: 38.

Estimated Total Annual Cost: \$0 in annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: October 6, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6-17423 Filed 10-18-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2006-0454; FRL-8232-8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Community Water System Survey 2006; EPA ICR No. 2232.01; OMB Control No. 2040—New

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document

announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 20, 2006.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OW-2006-0454, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to OW—OW-Docket@epa.gov, or by mail to Water Docket, EPA Docket Center, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Brian Rourke, Standards and Risk Management Division (Mailcode 4607M), Office of Ground Water and Drinking Water, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-564-5241; fax number 202-564-3760; e-mail address: rourke.brian@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 1, 2006 71 FR 31176-31177), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 2 comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2006-0454, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Water Docket is 202-566-2422.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Community Water System Survey 2006.

ICR numbers: EPA ICR No. 2232.01, OMB Control No. 2040—new.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Last conducted in 2001, the Community Water System Survey is conducted about every 5 years to gather information on the operating and financial characteristics of a nationally representative sample of community water systems. The agency uses the data provided by this survey to meet its Regulatory Impact Analysis obligations under EO 12866 and its obligations to assess and mitigate regulatory impacts on small entities under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. Also, under Section 1412(b)(3)(C) of the Safe Drinking Water Act, the Agency must prepare a Health Risk Reduction and Cost Analysis for any proposed National Primary Drinking Water Regulation. Through this survey EPA seeks to gather information on community drinking water system finances, as well as infrastructure characteristics that bear on both present costs and future cost impacts, including current treatment, storage and

distribution system configurations, to help inform the Agency's determination of baseline conditions for effective economic analysis. In addition, the survey will provide a limited amount of information to help the agency better conduct its outreach efforts to assist the regulated community and gauge the effectiveness of current program initiatives in the area of water security. This is a one-time collection effort. Responses are voluntary and are not required in order to obtain or retain any benefit. The Agency does not intend to share or make public the names or identities of survey participants.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one to five hours per response, depending on the size of the water system sampled. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Investor-owned water systems (SIC 4941) and publicly owned water systems (SIC 9511).

Estimated Number of Respondents: 1,692.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 6,060 (respondents); 300 (States).

Estimated Total Annual Cost: \$191,693 (respondents); \$10,830 (States), includes \$0 annualized capital or O&M costs.

Dated: October 11, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6-17446 Filed 10-18-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2006-0439; FRL-8232-6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Phosphate Fertilizer Industry (Renewal), EPA ICR Number 1061.10, OMB Control Number 2060-0037

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before November 20, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA-OECA-2006-0439, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to docket.oeca@epa.gov, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

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 by people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 15, 2006) at the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket status; locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT:

Learia Williams, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200

Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-4113; fax number: (202) 564-0050; e-mail address: williams.learia@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006 (71 FR 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA-HQ-OECA-2006-0439, which is available for public viewing online at <http://www.regulations.gov>, and in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket Center is (202) 566-1927.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: NSPS for the Phosphate Fertilizer Industry (Renewal).

ICR Numbers: EPA ICR Number 1061.10; OMB Control Number 2060-0037.

ICR Status: This is a request to renew an existing approved collection that is scheduled to expire on November 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The NSPS for the Phosphate Fertilizer Industry, published at 40 CFR part 60, subparts T, U, V, W, and X, were proposed on October 22, 1974, and promulgated on August 6, 1975. These standards apply to each wet-process phosphoric acid plant, each superphosphoric acid plant, each granular diammonium phosphate plant, and each triple superphosphate plant, having a design capacity of more than 15 tons of equivalent phosphorous pentoxide (P₂O₅) feed per calendar day. These standards also apply to granular triple superphosphate storage facilities.

Owners or operators of affected facilities described must make the following one-time-only initial notifications and reports on the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The owners or operators must install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the scrubbing system.

Semiannual reports are required. The owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements. Responses to the collection of information are mandatory and are being collected to assure compliance with 40 CFR part 60, subparts T, U, V, W, and X. These notifications, reports and records are essential in determining compliance.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 46 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Phosphate Fertilizer Industry.

Estimated Number of Respondents: 13.

Frequency of Response: Initial and Semiannual.

Estimated Total Annual Hour Burden: 1,194 hours.

Estimated Total Annual Cost: \$388,363, which includes \$0 annual Start Up costs, \$320,190 annualized operations & maintenance (O&M) costs, and \$68,173 annualized labor costs.

Changes in the Estimates: There is no change of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. It is determined that the number of respondents subject to the rules addressed by this ICR is 13, with no additional new sources expected over the three-year period of this ICR.

Dated: October 10, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6-17447 Filed 10-18-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2006-0427; FRL-8232-5]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request: Federal Emissions Guidelines for Existing Municipal Solid Waste Landfills (Small) (Renewal); EPA ICR Number 1893.04, OMB Control Number 2060-0430

AGENCY: Environmental Protection Agency

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing collection. The ICR, which is abstracted below, describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before November 20, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA-HQ-OECA-2006-0427, to (1) EPA online using www.regulations.gov (our preferred method) or by e-mail to docket.oeca@epa.gov, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

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 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 status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: For questions about this ICR, contact Zofia Kosim, Air Enforcement Division, Office Civil Enforcement, Mail Code 2242A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; phone number: (202) 564-8733; fax number: (202) 564-0068; e-mail address: kosim.zofia@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2006 (71 FR 35652), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA-HQ-OECA-2006-0427, which is available for online viewing at <http://www.regulations.gov>, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

Use EPA's electronic docket and comments system at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Federal Emissions Guidelines for Existing Municipal Solid Waste Landfills (Small) (Renewal).

ICR Numbers: EPA ICR Number 1893.04, OMB Control Number 2060-0430.

ICR Status: This ICR is scheduled to expire on November 30, 2006. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Environmental Protection Agency (EPA) is required

under section 111 of the Clean Air Act, as amended, to collect data. The information will be used by Agency enforcement personnel to (1) identify existing sources subject to these standards; (2) ensure that Best Demonstrated Technology is being properly applied; and (3) ensure that the emission control device is being properly operated and maintained on a continuous basis. In addition, records and reports are necessary to enable the EPA to identify landfills that may not be in compliance with these standards. Based on reported information, the EPA can decide which landfills should be inspected and what records or processes should be inspected at the landfill. The records that landfills maintain would indicate to the EPA whether the personnel are operating and maintaining control equipment properly. The type of data required is principally emissions data and would not be confidential. If any information is submitted to the EPA for which a claim of confidentiality is made, the information would be safeguarded according to the Agency policies set forth in 40 CFR, chapter 1, part 2, subpart B.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 72 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Solid Waste Landfills.

Estimated Number of Respondents: 173.

Frequency of Response: Annually.
Estimated Total Annual Hour Burden: 12,456.

Estimated Total Annual Cost: \$242,000 for operating and maintenance costs. There are no capital/startup costs associated with this ICR.

Changes in Estimates: There is an increase of 778 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR

Burdens. This adjustment is due to a mathematical error.

Dated: October 11, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6-17448 Filed 10-18-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OA-2006-0513; FRL-8232-7]

Agency Information Collection Activities: Request for Renewal of Information Collection for EPA's National Environmental Performance Track Program (Renewal), EPA ICR No. 1949.05, OMB Control No. 2010-0032

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 20, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OA-2006-0513 to: (1) EPA online using www.regulations.gov (our preferred method), by e-mail to oei.docket@epa.gov or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert D. Sachs, Office of Policy, Economics and Innovation, Mail Code 1807T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566-2884; fax number: (202) 566-0966; e-mail address: Sachs.Robert@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for

review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 22nd, 2006 (71 FR 35904), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 1 comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OA-2006-0513, which is available for online viewing at www.regulations.gov, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Office of Environmental Information Docket is (202) 566-1752.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at www.regulations.gov as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to www.regulations.gov.

Title: Information Collection Request for EPA's National Environmental Performance Track Program (Renewal).
ICR Numbers: EPA ICR No. 1949.05, OMB Control No. 2010-0032.

ICR Status: This ICR is scheduled to expire on October 31, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in

the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA's National Environmental Performance Track is a voluntary program that recognizes and rewards private and public facilities that demonstrate top environmental performance beyond current requirements. The program is based on the premise that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring technological innovation.

Performance Track is a facility based program (not company-wide) that solicits and receives applications and makes acceptance decisions twice per year from February through April, and August through October. Applying facilities must meet four basic criteria: (1) A history of sustained compliance with environmental regulations; (2) an Environmental Management System (EMS) in place that has undergone an assessment by an independent third party; (3) past and future environmental achievements, and a commitment to quantified continuous environmental improvement; and (4) public involvement and annual reporting. Once accepted, members remain in the program for three years, as long as they continue to meet the program criteria. After three years, they may apply to renew their membership through a streamlined application process.

No confidential information is requested in this notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16.4 hours per facility per year. This includes all applications, compliance screens, annual reporting, incentives participation, and site visits. EPA estimates that all facilities who voluntarily respond to this information collection by electing to participate in the Performance Track program have determined that the expected benefits of participation outweigh any burdens associated with preparing the response. Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Performance track member facilities and States.

Estimated Number of Respondents: 476.

Frequency of Response: Annually, triennially, and biennially.

Estimated Total Annual Hour Burden: 7,750.

Estimated Total Annual Cost: \$514,521, which includes \$0 capital and O&M costs.

Changes in the Estimates: There is a decrease of 105,689 annual hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to an adjustment to the estimated program participation burden.

Dated: October 11, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6-17449 Filed 10-18-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8232-4]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a lawsuit filed by Natural Resources Defense Council, Environmental Defense, Montana Environmental Information Center, American Lung Association of Metropolitan Chicago, Ohio

Environmental Council, Valley Watch, Inc., and Sierra Club (collectively "Petitioners") in the United States Court of Appeal for the District of Columbia Circuit: *Natural Resources Defense Council v. EPA*, No. 06-1059 (consolidated with Nos. 06-1062 and 06-1063) (DC Cir.). Petitioners requested judicial review of a December 13, 2005 letter sent by the Director of EPA's Office of Air Quality Planning and Standards in response to an inquiry from an environmental consulting firm concerning how to address Integrated Gasification Combined Cycle (IGCC) technology in preconstruction permit reviews for coal-fired electric generating facilities under the New Source Review program.

DATES: Written comments on the proposed settlement agreement must be received by November 20, 2006.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2006-0813, online at <http://www.regulations.gov> (EPA's preferred method); by e-mail to oei.docket@epa.gov; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 6146F, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

As of September 22, 2006, the EPA Docket Center (EPA/DC) Public Reading Room will be temporarily inaccessible to the public until November 6, 2006. Public access to docket materials will still be provided by appointment.

FOR FURTHER INFORMATION CONTACT: Brian Doster, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564-1932; fax number (202) 564-5603; e-mail address: doster.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

On December 13, 2005, the Director of the EPA Office of Air Quality Planning and Standards responded by letter to an inquiry from an environmental consulting firm concerning the treatment of Integrated Gasification Combined Cycle (IGCC) technology in

preconstruction permit reviews for coal-fired electric generating facilities under the New Source Review program. Under this program, construction and modification of major sources of air pollution are required to meet emissions limitations based on either Best Available Control Technology (BACT) or the Lowest Achievable Emissions Rate (LAER), depending on whether the area in which the source is located is meeting the National Ambient Air Quality Standards (NAAQS). 42 U.S.C. 7475(a)(4); 42 U.S.C. 7503(a)(1). In the letter, EPA expressed the view that the IGCC technology need not be evaluated in the BACT or LAER review for a supercritical pulverized coal power facility based on fundamental differences between the IGCC and supercritical pulverized coal technologies. Petitioners requested judicial review of the letter.

The proposed settlement agreement and related correspondence are available for review in the docket described above. For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get a Copy of the Settlement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2006-0813) contains a copy of the settlement. An electronic version of the public docket is available through <http://www.regulations.gov>. You may use the <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the

appropriate docket identification number.

As of September 22, 2006, the EPA Docket Center (EPA/DC) Public Reading Room will be temporarily inaccessible to the public until November 6, 2006. Public access to docket materials will still be provided. The official public docket is available for public viewing by appointment only during this period. Appointments may be made by calling (202) 566-1744 or by e-mail to oei.docket@epa.gov. The telephone number for the OEI Docket is (202) 566-1752.

B. How and to Whom Do I Submit Comments?

Direct your comments to the official public docket for this action under Docket ID No. EPA-HQ-OGC-2006-0813. You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the <http://www.regulations.gov> Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through <http://www.regulations.gov>, your e-mail address is automatically captured and included as part of the comment that is placed in the official

public docket, and made available in EPA's electronic public docket.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at <http://www.regulations.gov> without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

Dated: October 12, 2006.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E6-17430 Filed 10-18-06; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 13, 2006.

SUMMARY: The Federal Communications Commission, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13, and 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). An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 20, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Leslie F. Smith, Federal Communications Commission, Room 1-C216, 445 12th Street, SW., Washington, DC 20554 or via the Internet to Leslie.Smith@fcc.gov or Allison E. Zaleski, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395-6466 or via the Internet at Allison.E.Zaleski@omb.eop.gov.

If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pra>.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418-0217 or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0809.

Title: Communications Assistance for Law Enforcement Act (CALEA) and Broadband Access and Services, FCC Form 445.

Form Number: FCC 445.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents: 5,920.

Estimated Time per Response: 1-80 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; and Third party disclosure.

Total Annual Burden: 75,835 hours.

Total Annual Costs: N/A.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Communications Assistance for Law Enforcement Act (CALEA) requires the Commission to create rules that regulate the conduct and recordkeeping of lawful electronic surveillance. CALEA was enacted in October 1994 to respond to

rapid advances in telecommunications technology and eliminates obstacles faced by law enforcement personnel in conducting electronic surveillance. Section 105 of CALEA requires telecommunications carriers to protect against the unlawful interception of communications passing through their systems. Law enforcement officials use the information maintained by telecommunications carriers to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders.

On May 12, 2006, the Commission released a *Second Report and Order and Memorandum Opinion and Order* in ET Docket No. 04–295, FCC 06–56, which became effective August 4, 2006, except for §§ 1.20004 and 1.2005 of the Commission's rules, which require OMB approval. The *Second Report and Order* established new guidelines for filing section 107(c) petitions, section 109(b) petitions, and monitoring reports (FCC Form 445). CALEA section 107(c)(1) permits a petitioner to apply for an extension of time, up to two years from the date that the petition is filed, and to come into compliance with a particular CALEA section 103 capability requirement. CALEA section 109(b) permits a telecommunication carrier covered by CALEA to file a petition with the FCC and an application with the Department of Justice (DOJ) to request that DOJ pay the costs of the carrier's CALEA compliance (cost-shifting relief) with respect to any equipment, facility or service installed or deployed after January 1, 1995. The *Second Report and Order* required several different collections of information:

(a) Within 90 days of the effective date of the *Second Report and Order*, facilities based broadband Internet access and interconnected Voice over Interconnected Protocol (VOIP) providers newly identified in the *First Report and Order* in this proceeding will be required to file system security statements under the Commission's rules. (Security systems are currently approved under the existing OMB 3060–0809 information collection).

(b) Petitions filed under Section 107(c), request for additional time to comply with CALEA; these provisions apply to all carriers subject to CALEA and are voluntary filings.

(c) Section 109(b), request for reimbursement of CALEA, would be modified; these provisions apply to all carriers subject to CALEA and are voluntary filings.

(d) The revised collection requires each carrier that has a CALEA section

107(c) extension petition currently on file to submit to the Commission a letter documenting that the carrier's equipment, facility or service qualifies for section 107(c) relief under the October 25, 1998, cutoff for such relief.

(e) The revised collection also requires all carriers providing facilities based broadband Internet access or interconnected VOIP services to file monitoring reports on FCC Form 445, "CALEA Monitoring Report for Broadband and VOIP Service," with the Commission to ensure timely CALEA compliance.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E6–17509 Filed 10–18–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 13, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 20, 2006. If you anticipate that you will be submitting PRA comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or via the Internet to PRA@fcc.gov. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), send an e-mail to PRA@fcc.gov or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0719.

Title: Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 400 respondents; 1,600 responses.

Estimated Time Per Response: 3.5 hours.

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Pursuant to the mandate in Section 276(b)(1)(A) to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call". IntraLATA carriers are required to provide to interexchange carriers (IXCs) a quarterly report listing payphone by Automatic Number Identification (ANIs).

Without provision of this report, resolution of disputed ANIs would be rendered very difficult. IXCs would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes. There would be no way to guard against possible fraud. Without this reporting requirement, lengthy investigations would be necessary to verify claims. The quarterly

report allows IXCs to determine which dial-around calls are made from payphones. The data which must be maintained for at least 18 months after the close of a compensation period, will facilitate verification of disputed ANIs.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E6-17511 Filed 10-18-06; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 05-68; DA 06-1948]

Pleading Cycle Established for Petitions for Reconsideration and/or for Clarification of the Prepaid Calling Card Order

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On September 28, 2006 the Commission released a Public Notice seeking comment on Arizona Dialtone Inc.'s petition for declaratory ruling and IDT Telecom, Inc.'s petition for clarification or, in the alternative, for reconsideration of the Commission's *Prepaid Calling Card Order*.

DATES: Interested parties may file comments on or before October 12, 2006 and reply comments on or before October 23, 2006.

ADDRESSES: Comments should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

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

SUPPLEMENTARY INFORMATION: On August 31, 2006, Arizona Dialtone Inc. filed a petition for reconsideration of the Commission's *Prepaid Calling Card Order*. On September 1, 2006, IDT Telecom, Inc. filed a petition for clarification or, in the alternative, for reconsideration of the *Prepaid Calling Card Order*. On September 28, 2006 the Commission released a Public Notice establishing a pleading cycle for comments and reply comments on the two petitions. Interested parties may file comments on or before October 12, 2006 and reply comments on or before October 23, 2006.

Parties filing comments on these petitions must file an original and four copies of each filing. The filings should

reference *WC Docket No. 05-68*. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

The filing hours at this location are 8 a.m. to 7 p.m.

All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes must be disposed of before entering the building.

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

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

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW-A325, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A361, 445 12th Street, SW., Washington, DC 20554, or by e-mail to lynne.engledow@fcc.gov. 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.

Authority: 47 U.S.C. 152, 154, 155, 303; 47 CFR 0.291, 1.749.

Federal Communications Commission.

Thomas J. Navin,
Chief, Wireline Competition Bureau.

[FR Doc. E6-17513 Filed 10-18-06; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this

notice advises interested persons of the final meeting of the Technological Advisory Council ("Council") under its charter renewed as of November 19, 2004.

DATES: October 25, 2006 at 10 a.m. to 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW-C305), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418-1096 (voice), (202) 418-2989 (TTY), or e-mail: Jeffery.Goldthorp@fcc.gov.

SUPPLEMENTARY INFORMATION: Increasing innovation and rapid advances in technology have accelerated changes in the ways that telecommunications services are provided to, and accessed by, users of communications services. The Federal Communications Commission must remain abreast of new developments in technologies and related communications to fulfill its responsibilities under the Communications Act. At this fifth and last meeting under the Council's new charter, the agenda topic will be: Broadband Access Technologies and Services.

The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is Jeffery.Goldthorp@fcc.gov. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7-A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E6-17510 Filed 10-18-06; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

No FEAR Act Notice

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: FDIC is publishing notice to inform its employees, former

employees, and applicants for employment about their rights and remedies under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them. Pursuant to Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act, the Office of Personnel Management promulgated a final rule in 5 CFR part 724 (71 FR 41095 (July 20, 2006)), requiring Federal agencies to provide such notice.

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Vincent L. Johnson, Deputy Director, Office of Diversity and Economic Opportunity, Federal Deposit Insurance Corporation, (703) 562-6092.

I. Background

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is now known as the No FEAR Act. One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws" (Pub. L. 107-174, Summary). In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination" (Pub. L. 107-174, Title I, General Provisions, section 101(1)).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

II. Antidiscrimination Laws

A Federal agency, including the FDIC, cannot discriminate against an employee or an applicant for employment with respect to the terms, conditions, or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791, and 42 U.S.C. 2000e-16.

If you believe you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor in the FDIC's Office of Diversity and Economic Opportunity within 45 calendar days of the alleged discriminatory action, or, in

the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with the FDIC. *See, e.g.*, 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination based on age (age 40 and over), you must either contact an EEO counselor as noted above or give notice of intent to sue to the U.S. Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative, a bargaining unit employee may pursue a discrimination complaint by filing a grievance under the FDIC-NTEU collective bargaining agreement.

III. Whistleblower Protection Laws

A Federal employee, including an FDIC employee, with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee, former employee, or an applicant for employment for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). Additionally, FDIC employees are protected from reprisal for whistleblowing activities under 12 U.S.C. 1831j. The Inspector General Act (5 U.S.C. Appendix 3, section 7) prohibits reprisal against any employee for making a complaint or disclosing information to an Inspector General. If you believe that you have been a victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel (OCS) at 1730 M Street NW, Suite 218, Washington, DC 20036-4505 or online through the OSC Web site—<http://www.osc.gov>.

IV. Retaliation for Engaging in Protected Activity

A Federal agency, including the FDIC, cannot retaliate against an employee, former employee, or an applicant for employment because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the FDIC's administrative or negotiated grievance procedures in order to pursue any legal remedy.

V. Disciplinary Actions

Under the existing laws, each agency, including the FDIC, retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214 (f), agencies, including the FDIC, must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency, including the FDIC, to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

VI. Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the FDIC's Office of Diversity and Economic Opportunity, the Human Resources Branch in the Division of Administration, and the Legal Division. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—<http://www.eeoc.gov> and the OSC Web site—<http://www.osc.gov>.

VII. Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant for employment under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated at Washington, DC, this 13th day of October, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6-17388 Filed 10-18-06; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. *Higher One Inc.*, New Haven, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Higher One Bank, New Haven, Connecticut (in formation).

In connection with this application, Applicant also has applied to engage in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Palmetto State Bankshares, Inc.*, Hampton, South Carolina; to acquire 100 percent of the voting shares of The Exchange Bankshares, Inc., Estill, South Carolina, and thereby indirectly acquire The Exchange Bank, Estill, South Carolina.

In connection with this application, Applicant also has applied to acquire 100 percent of the voting shares of Carolina Commercial Bank, Allendale, South Carolina.

C. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Atlantic Southern Financial Group, Inc.*, Macon, Georgia; to merge with Sapelo Bancshares, Inc., Darien, Georgia, and thereby indirectly acquire Sapelo National Bank, Darien, Georgia.

2. *Embassy Bancshares, Inc.*, Snellville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Embassy National Bank, Lawrenceville, Georgia (in organization).

Board of Governors of the Federal Reserve System, October 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6-17372 Filed 10-18-06; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 13, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *First Internet Bancorp*, Indianapolis, Indiana; to acquire Landmark Financial Corporation, Indianapolis, Indiana, and thereby indirectly acquire Landmark Savings Bank, Indianapolis, Indiana, and Landmark Mortgage Company, Indianapolis, Indiana, and thereby engage in the operation of a savings association and lending activities, pursuant to sections 225.28(b)(1) and (b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Peoples, Inc.*, Colorado Springs, Colorado; to engage indirectly *de novo* through its acquisition of 60 percent of the voting shares of Oread Mortgage, L.L.C., Lawrence, Kansas, in mortgage lending activities, pursuant to section 225.28(b)(1) of Regulation Y. Comments regarding this application must be received by November 2, 2006.

Board of Governors of the Federal Reserve System, October 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6-17371 Filed 10-18-06; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Reinstatement of Existing Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") intends to conduct a pilot study in connection with Section 319 of the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159 (2003). This study is a follow-up to the Commission's previous pilot study conducted from October 2005 through June 2006. Before gathering this information, the FTC is seeking public

comment on its proposed consumer pilot study. Comments will be considered before the FTC submits a request for Office of Management and Budget ("OMB") review under the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

DATES: Public comments must be received on or before December 18, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Accuracy Pilot Study: Paperwork Comment (FTC file no. P044804)" to facilitate the organization of the 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, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." ¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by using the following Web link: <https://secure.commentworks.com/ftc-accuracy> (further following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Web link: <https://secure.commentworks.com/ftc-accuracy>. If this notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

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

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

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 public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

Peter Vander Nat, Economist, (202) 326–3518, Federal Trade Commission, Bureau of Economics, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 319 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act" or the "Act"), Pub. L. 108–159 (2003), requires the FTC to study the accuracy and completeness of information in consumers' credit reports and to consider methods for improving the accuracy and completeness of such information. Section 319 of the Act also requires the Commission to issue a series of biennial reports to Congress over a period of eleven years. The first report was submitted to Congress in December 2004 ("December 2004 Report").²

In July 2005, OMB approved the FTC's request to conduct a pilot study to evaluate the feasibility of a methodology that involves direct review by consumers of the information contained in their credit reports (OMB Control Number 3084–0133).³ After receiving OMB approval, the FTC conducted the pilot study from October 2005 through June 2006. As discussed below, FTC staff believes it is necessary to conduct a follow-up pilot study to evaluate additional design elements prior to carrying out a nationwide survey on the accuracy and completeness of consumer credit reports. The additional design elements would permit the FTC to further assess whether the collection of certain data pertinent to credit report accuracy can be obtained in a way that is not unduly resource-intensive or otherwise cost-prohibitive if extended to a nationwide survey. As with the initial study, the FTC's proposed follow-up study will

² Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003, Federal Trade Commission, December 2004. The December 2004 Report is available at <http://www.ftc.gov/reports/index.htm#2004>.

³ See 70 FR 24583 (May 10, 2005) (discussion of the initial pilot study and related public comments).

not rely on the selection of a nationally representative sample of consumers and statistical conclusions will not be drawn.

Under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3520, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB reinstate the clearance for the pilot study, which expired in September 2006.⁴

The FTC invites comment on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections 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 collecting the information on those who are to respond, including through the use of collection techniques or other form of information technology, e.g., permitting electronic submissions of responses. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before December 18, 2006.

1. Description of the Collection of Information and Proposed Use

A. Initial Pilot Study

The goal of the initial pilot study was to assess the feasibility of directly engaging consumers in an in-depth review of their credit reports for the purpose of identifying alleged material errors and attempting to resolve such errors through the Fair Credit Report Act ("FCRA") dispute resolution process. The FTC's contractor for the initial pilot study—a research team comprised of members from the Center for Business and Industrial Studies (University of Missouri-St Louis),

⁴ The clearance was originally set to expire in December 2006. However, rather than seek a straight extension of the existing clearance in order to conduct the proposed follow-up pilot study, FTC staff asked OMB to discontinue the clearance in September 2006. This procedural approach ensures that the FTC's December 2006 Report to Congress (which will include a detailed review of the results of the initial pilot study) will be available to the public before the expiration of the comments period for this notice. The December 2006 Report is expected to be publicly available on the FTC's Web site by December 2, 2006.

Georgetown University Credit Research Center, and the Fair Isaac Corporation—engaged 30 randomly selected participants in an in-depth review of their credit reports. By using the Web site “myfico.com,” study participants obtained their credit reports and credit scores⁵ from each of the three nationwide consumer reporting agencies (Equifax, Experian, TransUnion—hereinafter, the “CRAs”). The contractor reviewed these credit reports with the participants to identify alleged inaccuracies and further gave advice on the difference between a small inaccuracy and a potentially significant error that could affect credit scores. After an evaluation of alleged errors for materiality by the research team, consumers were asked to channel disputed information through the FCRA dispute resolution process.⁶

Some of the contractor’s key findings concerning the methodology of the initial pilot study include:⁷

(i) Participants were successfully engaged in conducting a thorough and effective review of their credit report information over the telephone. The members of the research team and the participants were unanimous in judging the review of the information as thorough and objective.

(ii) Effective mechanisms to protect consumers’ personal information can be employed. For example, in the protocols of the pilot study, participants were not required to reveal their social security

numbers (“SSNs”) to University members of the research team, who conducted all interviews. Only Fair Isaac received SSNs upon an initial request for credit reports by participants. Moreover, all financial account numbers (including credit and debit card numbers) were truncated to 3 or 4 digits in any information available to University researchers. These restrictions did not hinder the quality of information produced by the study.

(iii) Sufficient information was provided for a subsequent analysis of the accuracy of items placed in CRA files and presented in credit reports. For example, in addition to assessing whether the alleged errors are material, the methodology permitted the contractor to address the following types of questions:

(a) What is the specific nature of the errors alleged by consumers?

(b) Which categories of credit report information generate frequent concerns?

(c) Do consumers take initiative to have the alleged errors corrected (i.e., do they file a formal FCRA dispute)?

(d) Are the alleged errors present in the credit reports from more than one CRA?

(e) Is there consistency over CRA files in representing the creditworthiness of consumers? (Specifically, sufficient information was provided to assess consistency in reporting a wide variety of pertinent information, including: employment status; length of credit history; late payments; public derogatories; utilization of revolving credit; and collection activity.)

The contractor also identified matters that would need to be addressed further, chief among these being: additional procedures to help consumers follow through with the entirety of the study process and additional ways of identifying and recruiting consumers to become participants in the study. For example, the majority of participants who alleged errors on their credit reports and indicated that they would file a formal dispute did not follow through with their intention to file. Considering that this was also true with respect to those who alleged material errors in the expert opinion of the research team, the need to further explore how to best follow-up with consumers who indicate they will file a dispute is clear. Moreover, those who ultimately became study participants tended to be persons who had relatively higher credit scores and were possibly more affluent and better educated. (Ranging from low to high, a broad spectrum of credit scores was attained in the study group; yet, the overall distribution favored the relatively

higher credit scores.) FTC staff believes there is a need to further explore whether Internet access may have played a role in the apparent imbalance. For example, although the contractor would have offered to provide Internet access to otherwise qualified study participants, all of the consumers who ultimately became participants in the study already had Internet access. Accordingly, there is a need to further explore how to best invite and recruit persons to participate in the study. In consideration of these and other matters, the FTC is proposing to conduct a follow-up pilot study.

B. Follow-up Pilot Study

In many respects, the design of the follow-up study will be similar to the initial pilot study. The elements of the proposed follow-up study are as follows:

(i) A study group of 120 consumers will be drawn by a randomized procedure that is screened to consist of adult members of households to whom credit has been extended in the form of credit cards, automobile loans, home mortgages, or other forms of installment credit. The FTC will send a letter to potential study participants describing the nature and purpose of the pilot study. The contractor will screen consumers by conducting telephone interviews. Consumers who qualify and agree to participate will sign a prepared consent form giving the contractor permission to review the consumer’s credit reports.

(ii) In selecting the study group the contractor will use, and may also experiment with, a variety of methods for recruiting participants. For example, in addition to the randomized selection procedure used in the initial pilot study (which made use of telephone directories), the contractor will engage consumers through referrals from financial institutions as they apply for credit, e.g., mortgages, automobile loans, or other forms of credit. (Lenders will know—and have a permissible purpose for knowing—the consumer’s credit score and certain other characteristics; consumers can then be informed of the FTC study and invited to participate.)

The contractor may experiment with additional methods for securing participation, provided that the methods employed do not violate the FCRA, and specifically do not violate the permissible purposes for obtaining a consumer’s credit report (FCRA § 604).

(iii) The selected study group will consist of consumers having a diversity of credit scores over three broad categories: poor, fair, and good. The contractor will monitor the respective

⁵ A credit score is a numerical summary of the information in a credit report and is designed to be predictive of the risk of default. Credit scores are created by proprietary formulas that render the following result: the higher the credit score, the lower the risk of default. The contractor in the initial pilot study employed a score that is commonly used in credit reporting, namely the FICO score. (The same score is anticipated for the proposed follow-up pilot study.)

⁶ The FCRA dispute resolution process involves the review of disputed items by data furnishers and CRAs. The formal dispute process renders a specific outcome for each alleged error. By direct instruction of the data furnisher, the following outcomes may occur: delete the item, change or modify the item (specifying the change), or maintain the item as originally reported. Also, a CRA may delete a disputed item due to expiration of statutory time frame (the FCRA limits the process to 30 days, but the time may be extended to 45 days if the consumer submits relevant information during the 30-day period). These possible actions are tracked by a form called “Online Solution for Complete and Accurate Reporting” (e-OSCAR) that is used by CRAs for resolving FCRA disputes. (See, Federal Trade Commission and Board of Governors of the Federal Reserve System, *Report to Congress on the Fair Credit Reporting Act Dispute Process*, August 2006. The report is available at <http://www.ftc.gov/reports/index.htm#2006>.)

⁷ As previously noted, the FTC’s upcoming December 2006 Report to Congress will contain a more detailed review of the study results. The December 2006 Report is expected to be publicly available on the FTC’s Web site by December 2, 2006.

processes of recruitment so as to attain approximately equal representations of credit scores across the designated categories.

(iv) The contractor will help participants obtain their credit reports from the CRAs. Each participant will request his or her three credit reports on the same day, although different participants will generally request their reports on different days.

(v) The contractor will help the participants review their credit reports by resolving common misunderstandings that they may have about the information in their reports; this will involve educating the consumers wherever appropriate (thereby helping them to distinguish between accurate and inaccurate information).

(vi) The contractor will help participants locate any material differences or discrepancies among their three reports and check whether these differences indicate inaccuracies.

(vii) The contractor will facilitate a participant's contact with the CRAs and data furnishers as necessary to help resolve credit report items that the participant views as inaccurate. To the extent necessary, the contractor will guide participants through the dispute process established by the FCRA. The contractor will not directly contact CRAs or data furnishers during the course of the study, as the outcome of a dispute may still be pending. The contractor will determine if any changes in the participant's credit score result from changes in credit report information.⁸

(viii) For study participants who have alleged material errors and expressed an intention to file a dispute but do not file within 6 weeks, the contractor will prepare draft dispute letters on their behalf (together with stamped envelopes, pre-addressed to the relevant CRAs). The contractor will ascertain from the consumer whether the letter correctly describes the consumer's allegation and, upon confirmation, the participant will be asked to sign and send the letter.

As was true of the initial study, the proposed follow-up pilot study is not intended to replicate normal

circumstances under which consumers generally review their credit reports; nor is it intended to evaluate the adequacy or complexity of the dispute process. The scrutiny applied to the reports of study participants, via the help of expert advice, would not at all be indicative of a consumer's normal experience in reviewing a credit report. The FTC recognizes that consumers often are not familiar with credit reporting procedures and may have difficulties in understanding a credit report (which may be partly due to a consumer's own misconceptions). Also, as noted above, some consumers may need extra guidance and help in completing the process of filing disputes for alleged inaccuracies. In all of the proposed activities, the contractor will use procedures that avoid identification of study participants to CRAs and data furnishers.

Furthermore, as was true of the initial study, the proposed follow-up pilot study will not employ a specific definition of accuracy and completeness and no decision has been made on the definition of these terms for a nationwide survey.⁹ Instead, both the initial and follow-up pilot studies seek to assess a methodology that involves consumer review of credit reports and both seek to ascertain the variety of information pertinent to accuracy and completeness that can be garnered.

Finally, the follow-up pilot study will list an array of possible outcomes for items reviewed on the participants' credit reports. FTC staff anticipates this list will include the following categories (the contractor may supply additional categories as warranted by matters encountered in the study):

“disputed by consumer and deleted due to expiration of statutory [FCRA] time frame”;

“disputed by consumer and data furnisher agrees to *delete* the item”;

“disputed by consumer and data furnisher agrees to *change or modify* the item”;

“disputed by consumer and data furnisher *disagrees*, maintaining the item to be correct”;

“item not disputed by consumer”;

“item not present on the report”.¹⁰

⁹ See also December 2004 Report at 5 n.10, which discusses different definitions of completeness, and at 16–18, which discusses FCRA accuracy and completeness requirements.

¹⁰ The FTC staff recognizes the different reporting cycles of data furnishers and the voluntary basis on which information is reported to a CRA. There may be different explanations why an anticipated item is not on a particular credit report. The item may be missing because a data furnisher did not provide the information to a certain CRA, or—due to the specific reporting cycle of the data furnisher—because it was provided at a time after the credit

report was viewed by the consumer. Alternatively, the item may have been submitted to a CRA but placed in the wrong consumer's file. The contractor will seek to determine, to the extent practicable, which of these explanations may apply. For example, at the end of the study the contractor may contact XYZ Mortgage, give a brief explanation of the FTC's pilot study, and inquire whether this furnisher normally reports information to Credit Bureau A; if so, then inquire about the timing of the reporting cycle. When making such inquiries, the contractor will not disclose the identities of study participants.

2. Estimated Hours Burden

Consumer participation in the follow-up pilot study would involve an initial screening interview and any subsequent time spent by participants to understand, review, and if deemed necessary, dispute information in their credit reports. The FTC staff estimates that up to 800 consumers may need to be screened through telephone interviews to obtain 120 participants, and that each screening interview may last up to 10 minutes, yielding a total of approximately 133 hours (800 screening interviews × 1/6 hour per contact).

With respect to the hours spent by study participants, in some cases the relative simplicity of a credit report may render little need for review and the consumer's participation may only be an hour. For reports that involve difficulties, it may require a number of hours for the participant to be educated about the report and to resolve any disputed items. For items that are disputed formally, the participant must submit a dispute form, identify the nature of the problem, present verification from the participant's own records to the extent possible, and, upon furnisher response, perhaps submit follow-up information. As was true of the initial study, FTC staff again estimates the participants' time for reviewing their credit reports at an average of 5 hours per participant, resulting in a total of 600 hours (5 hours × 120 participants).¹¹ Total consumer burden hours are thus approximately 750 hours (derived as 133 screening hours plus 600 participant hours,

¹¹ This general estimate is given for the purpose of calculating burden under the PRA. Information contained in the contractor's report to the FTC regarding the initial study may indicate a somewhat lower estimate of the average time spent by the 30 participants, but it would not render a noticeably different result for the overall consumer burden. In an effort not to underestimate the time spent by additional study participants, FTC staff has retained the estimate used for the initial study.

⁸ In making this comparison, the contractor will not just obtain a new credit report and score from the relevant CRAs after items have been corrected (although such reports will be obtained). The contractor is required to have the expertise to re-score the original credit report in the context of those changes directly related to the contractor's review, thus resulting in a re-scoring of the consumer's “frozen file.” This method addresses the concern that changes in credit scores retrieved from CRAs could be the result of the addition of new items rather than corrected items.

further rounding upwards to the nearest 50 hours).

3. Estimated Cost Burden

The cost per participant should be negligible. Participation is voluntary, and will not require any start-up, capital, or labor expenditures by study participants. As with the initial study, participants will not pay for their credit reports or credit scores.

William Blumenthal,
General Counsel.

[FR Doc. E6-17507 Filed 10-18-06; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS-0990-0304; 30 day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection.

Title of Information Collection: National Outcomes Performance Assessment of the Collaborative Initiative to Help End Chronic Homelessness.

Form/OMB No.: OS-0990-0304.

Use: The goals of this 3-year program for persons experiencing chronic homelessness include: (1) Increase the effectiveness of integrated systems of care for chronically homeless persons by providing comprehensive services and treatment and linking them to

housing; (2) create additional permanent housing for chronically homeless persons; (3) increase the use of underused mainstream resources that pay for services and treatment for chronically homeless persons (e.g., Medicaid, TANF, Food Stamps, block grants, state-funded children's health insurance programs); (4) replicate service, treatment, and housing models known to be effective based on sound evidence; and, (5) support the development of infrastructures that sustain the housing, services, treatments, and inter-organizational partnerships beyond the 3-year Initiative.

Frequency: Reporting, on occasion, quarterly, annually.

Affected Public: Individuals or Households.

Annual Number of Respondents: 723.

Total Annual Responses: 1857.

Average Burden per Response: .9.

Total Annual Hours: 1857.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at <http://www.hhs.gov/ocio/infocollect/pending/> or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to Sherrette.funncoleman@hhs.gov, or call the Reports Clearance Office on (202) 690-6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990-0304), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: October 11, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6-17424 Filed 10-18-06; 8:45 am]

BILLING CODE 4150-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D-0220 (Formally Docket No. 01D-0220)]

Guidance for Industry: Biological Product Deviation Reporting for Blood and Plasma Establishments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Biological Product Deviation Reporting for Blood and Plasma Establishments," dated October 2006. The guidance provides blood and plasma establishments, including licensed blood establishments, unlicensed registered blood establishments, and transfusion services, with the FDA's current thinking related to the biological product deviation reporting requirements. The guidance document will assist blood and plasma establishments in determining when a report is required, who submits the report, what information to submit in the report, the timeframe for reporting, and how to submit the report. The guidance finalizes the draft guidance document under the same title dated August 2001.

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

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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>.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Jr., Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Biological Product Deviation Reporting for Blood and Plasma Establishments" dated October 2006. The guidance is intended to provide

assistance to blood and plasma establishments in the reporting of any event associated with the manufacturing, to include testing, processing, packing, labeling, or storage, or with the holding or distribution, of blood or blood components that may effect the safety, purity, or potency of a distributed product as required under §§ 600.14 and 606.171 (21 CFR 600.14 and 606.171). The guidance provides additional information regarding the regulations in § 606.171 by describing who must report, what must be included in the report, when the establishment must report, and how to report either electronically or by mail using Form FDA-3486, a standardized reporting format. Examples of reportable and non-reportable events concerning donor suitability, product collection, component preparation, testing, labeling, quality control and distribution are discussed. The guidance also contains a Biological Product Deviation Reporting Flow Chart to aid the blood or plasma establishment in determining if an event is reportable.

In the **Federal Register** of August 13, 2001 (66 FR 42546) FDA announced the availability of the draft guidance of the same title. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated August 2001.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the FDA's current thinking on this topic. 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 requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information under § 606.171 and 21 CFR 606.100 were approved under OMB control number 0910-0116. The collection of information under § 600.14 was approved under OMB control number 0910-0139. The collections of information under 21 CFR 820.90 and 820.100 were approved under OMB control number 0910-0458. The

collections of information under 21 CFR 211.192 and 211.198 were approved under OMB control number 0910-0139.

III. Comments

Interested persons may, at any time, submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. 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 the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/cber/guidelines.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: October 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-17378 Filed 10-18-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D-0221 (Formally Docket No. 01D-0221)]

Guidance for Industry: Biological Product Deviation Reporting for Licensed Manufacturers of Biological Products Other than Blood and Blood Components; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Biological Product Deviation Reporting for Licensed Manufacturers of Biological Products Other than Blood and Blood Components," dated October 2006. The guidance document provides licensed manufacturers of biological products other than blood and blood components with the FDA's current thinking related to the biological product deviation reporting requirements. The guidance document will assist the licensed manufacturers of biological products other than blood and blood components

in determining when a report is required, who submits the report, what information to submit in the report, the timeframe for reporting, and how to submit the report. This guidance finalizes the draft guidance document of the same title dated August 2001.

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

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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>.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Jr., Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Biological Product Deviation Reporting for Licensed Manufacturers of Biological Products Other than Blood and Blood Components," dated October 2006. The guidance is intended to provide assistance to licensed manufacturers of biological products other than blood and blood components in the reporting of any event associated with the manufacturing, to include testing, processing, packing, labeling, or storage, or with the holding or distribution of a licensed biological product which may affect the safety, purity, or potency of a distributed licensed product as required under § 600.14 (21 CFR 600.14). The guidance provides additional information regarding the regulations in § 600.14, which describe who must report, when the licensed manufacturer must report, and provides that the licensed

manufacturer must report either electronically or by mail using Form FDA-3486, a standardized reporting format. Examples of reportable and nonreportable events concerning the incoming material specifications, process controls, product specifications, product testing, product labeling, quality control procedures, and product distribution are discussed. These examples may not apply to all establishments because they include deviations and unexpected events related to standard operating procedures implemented at individual establishments and may not be an industry standard or a procedure at your facility. The guidance also contains a Biological Product Deviation Reporting Flowchart to aid in determining if an event is reportable.

In the **Federal Register** of August 13, 2001 (66 FR 42547), FDA announced the availability of the draft guidance of the same title. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated August 2001.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the FDA's current thinking on this topic. 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 requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collection of information under § 600.14 was approved under OMB control number 0910-0458. The collections of information under 21 CFR 606.100 and 606.171 were approved under OMB control number 0910-0116. The collections of information under 21 CFR 820.90 and 820.100 were approved under OMB control number 0910-0139, and the collections of information under 21 CFR 211.192 and 211.198 were approved under OMB control number 0910-0073.

III. Comments

Interested persons may, at any time, submit written or electronic comments

to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. 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 the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/cber/guidelines.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: October 10, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-17374 Filed 10-18-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Resources and Training Review Teleconference.

Date: November 8, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Keith McKenney, PhD, Scientific Review Administrator, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814. 301-594-4280, mckenneyk@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 10, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8777 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Conference Grants Review.

Date: October 20, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 908, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, 301-594-2242, sahaia@nidk.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 10, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8772 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Glioma Therapies SEP.

Date: November 3, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shantadurga Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, 301-435-6033, rajarams@mail.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Epilepsy Studies SEP.

Date: November 6, 2006.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shantadurga Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, 301-435-6033, rajarams@mail.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, K99/R00 REVIEW.

Date: November 15, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC., 2401 M Street, NW., Washington, DC 20037.

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-5324, mcconnej@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NINDS Roadmap HTS Assay Development.

Date: November 16-17, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Ave., NW., Monticello, Washington, DC 20037.

Contact Person: Shantadurga Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, 301-435-6033, rajarams@mail.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Fellowship Review.

Date: November 17, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Topaz Hotel, 1733 N Street, NW., Washington, DC 20036.

Contact Person: JoAnn McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-5324, mcconnell@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Mechanisms of Epilepsy.

Date: November 28, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shantadurga Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, 301-435-6033, rajarams@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 10, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8773 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Mechanisms of Preeclampsia; Impact of Obesity.

Date: October 25, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, 301-435-6889, bhatnagg@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Health, Behavior, and Context Subcommittee.

Date: October 26-27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health, and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812-7510, 301-435-8382, hindialm@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research;

93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 10, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8774 Filed 10-18-06; 8:45am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Innovative Therapies and Clinical Studies for Screenable Disorders.

Date: October 31, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites Hotel, 2505 Wisconsin Ave., NW., Washington, DC 20007.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301-496-1485, changn@mail.nih.gov.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Maternofetal Signaling and Lifelong Consequences.

Date: October 31, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100

Executive Blvd., Room 5B01, Rockville, MD 20892, 301-435-6889, bhatnagg@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 10, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8775 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Genetic Factors in Birth Defects.

Date: October 24, 2006.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301-435-6902, khanh@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation

Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 10, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8776 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: November 2-3, 2006.

Time: 8:15 a.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 9000 Rockville Pike, Room 9S235, Bethesda, MD 20892.

Contact Person: Marvin C. Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222, Bethesda, MD 20892, 301-496-4129.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes,

Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 10, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8778 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel ZEB1 OSR-C J2 (P) Point of Care Nanodiagnostics.

Date: November 13, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 200 Small Conference Room, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, 301-496-8633, atreya@pr@mail.nih.gov.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel ZEB1 OSR-C J3 (P) Medical Image Presentation.

Date: November 17, 2006.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 200 Small Conference Room, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, 301-496-8633, atreya@pr@mail.nih.gov.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel ZEB1 OSR-C J1 (P) Integrated Microfluids.

Date: November 28, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 900 Conference Room, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, 301-496-8633, atreya@pr@mail.nih.gov.

Dated: October 11, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8780 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2006, 8 a.m. to October 17, 2006, 3 p.m. Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21201 which was published in the **Federal Register** on September 15, 2006, 71 FR 54511-54512.

The meeting will be held October 15, 2006, 7 p.m. to October 16, 2006, 4 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 11, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8779 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetic Associations of Complex Behaviors.

Date: October 19, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Washington Doubletree, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301-435-0906, kosse@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EMNR-G 02: Diabetes.

Date: October 26, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, 301-435-1042, shaikha@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Vector Biology.

Date: October 27, 2006.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joseph D. Mosca, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301-435-2344, moscajos@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Cognition, Perception and Language.

Date: November 1, 2006.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301-435-2309, pluded@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Renin-Angiotensin-Aldosterone System, Hypertension and Microcirculation.

Date: November 1, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, 301-451-1375, ot3d@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Pain and Chemosensation.

Date: November 7-10, 2006.

Time: 6 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301-435-2212, josephru@csr.nih.gov.

Name of Committee: Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.

Date: November 7-8, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel, Downtown Market Square, 502 W. Durango Street, San Antonio, TX 78207.

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301-594-6375, mcintyrt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices and Neuroprosthetics.

Date: November 7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301-435-0902, charlesvi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell Biology SBIR.

Date: November 7, 2006.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301-402-8228, rayam@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cellular and Molecular Immunology.

Date: November 7, 2006.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301-435-1187, jh377p@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BMRB Research Methods and Design Member SEP.

Date: November 7, 2006.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-435-1262, chanetsaf@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Platelet Production System.

Date: November 7, 2006.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bukhtiar H. Shah, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040-F, MSC 7822, Bethesda, MD 20892, 301-435-1233, shahb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Signal Transduction.

Date: November 7, 2006.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, 301-435-1850, dowellr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Addiction.

Date: November 8-9, 2006.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301-435-1713, melchioc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RNA Dynamics Program Project.

Date: November 8-10, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892, 301-435-1220, chackoge@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Respiratory Sciences.

Date: November 8, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Park Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2191C, MSC 7818, Bethesda, MD 20892, 301-435-1783, beusseb@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IRAP Member Applications.

Date: November 8-9, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301-435-1503, elwoodwi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, LCMI Member Conflict Applications.

Date: November 8, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, 301-594-1321, diramig@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Motor Dysfunction, Learning, and Voice Treatment.

Date: November 8, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, 301-435-1507, niw@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Arrhythmias.

Date: November 8, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301-435-4522, gibsonj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Neural Systems.

Date: November 8, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301-435-1242, driscolb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Contractile Protein.

Date: November 8, 2006.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, 301-435-1850, dowellr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemoprevention Research.

Date: November 8, 2006.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301-435-1211, quadris@csr.nih.gov.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Rehabilitation Sciences Study Section.

Date: November 8-10, 2006.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, 301-435-1786, pelhamj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurogenetics and Neuroimaging.

Date: November 9, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301-435-3009, elliottro@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetics of Adaptive Variation.

Date: November 9-10, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2220, MSC 7890, Bethesda, MD 20892, 301-435-0603, bthomas@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes, Genetics, Genomics Fellowships.

Date: November 9-10, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, 301-435-1047, mccormim@csr.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Discovery and Development of Therapeutics Study Section.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Shiv A. Prasad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301-443-5779, prasads@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical and Biological Sciences.

Date: November 9-10, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, 301-435-1722, jollieda@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health of the Population Fellowship Review Special Emphasis Panel.

Date: November 9, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hamilton Crowne Plaza, 14th & K Streets, Washington, DC 20005.

Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-435-1262, chanetsaf@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nutrition.

Date: November 9, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, 301-435-1042, shaikha@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Memory.

Date: November 9, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301-435-1242, driscob@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.

Date: November 9, 2006.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301-451-4467, choe@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epidemiology of Cancer (EPIC) Member Conflict SEP.

Date: November 9, 2006.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, 301-451-1329, semposch@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Vector Biology Study Section.

Date: November 10, 2006.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Renaissance Atlanta Hotel, 590 West Peachtree Street, NW., Atlanta, GA 30308.

Contact Person: John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, 301-435-2398, pughjohn@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Materials Science and Environment Monitoring.

Date: November 10, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301-435-2902, gubina@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Psychopathology and Adult Disorders.

Date: November 10, 2006.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301-435-2309, pluded@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BGES Genetics and Mental Health Member Panel.

Date: November 10, 2006.

Time: 9:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-435-1262, chanetsaf@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Ion Channels.

Date: November 10, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301-435-4522, gibsonj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Genetics.

Date: November 10, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301-435-1715, nga@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Renal Pathophysiology.

Date: November 10, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, Renal and Urological Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301-435-1215, mcdonald@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Development.

Date: November 10, 2006.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, 301-435-1214, pinkusl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Erythrocyte Membrane Proteins and Erythropoiesis.

Date: November 10, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, 301-435-1195, sur@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 11, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8781 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting s will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Basic Mechanisms of Cancer Therapeutics Study Section.

Date: October 12–13, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Crystal City, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892. 301–451–0131. forryscs@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Progression and Metastasis Study Section.

Date: October 15–16, 2006.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza Hamilton, 14th and K Street, NW., Washington, DC 20005.

Contact Person: Manzoor Zarger, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892. 301–435–2477. zargerma@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.

Date: October 20, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Chhanda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892. 301–435–1739. gangulyc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retinopathy Studies.

Date: October 26, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892. 301–402–8228. rayam@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroinformatics SEP.

Date: October 30, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. elliott@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroimaging SEP.

Date: October 31, 2006.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert C. Elliott, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. elliott@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology Study Section.

Date: November 5–7, 2006.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892. 301–435–1213. meyerjl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Development of Methods for in vivo Imaging and Bioengineering Research.

Date: November 6–7, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. 301–435–2409. shabestb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Immunopathology and Immunotherapy.

Date: November 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Elaine Sierra-Rivera, BS, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892. 301–435–1779. riverase@csr.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.

Date: November 6, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 15th & Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Shiv A. Prasad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892. 301–443–5779. prasads@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brain Disorders Study Section.

Date: November 6–7, 2006.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7846, Bethesda, MD 20892. 301–435–1785. stuesses@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN Fellowship SEP.

Date: November 6–7, 2006.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Suzan Nadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892. 301–435–1259. nadis@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment, SBIR/STTR.

Date: November 6, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214,

MSC 7804, Bethesda, MD 20892. 301-435-1720. shauhung@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognition, Perception and Language Fellowships.

Date: November 6, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. 301-435-2309. pluded@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, LCMI Member Conflict Applications.

Date: November 6, 2006.

Time: 1 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892. 301-594-1321. diramig@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bone Marrow Stem Cells, Hemangioblast and Hematopoietic Differentiation.

Date: November 6, 2006.

Time: 1 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892. 301-435-1739. gangulyc@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 10, 2006.

Linda Payne,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8782 Filed 10-18-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application for Foreign Trade Zone Admission and/or Status Transaction; Application for Foreign Trade Zone Activity Report

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Foreign Trade Zone Admission, Status Designation, and Activity Permit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 47509) on August 17, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 20, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION: CBP encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application for Foreign Trade Zone Admission and/or Status Transaction; Application for Foreign Trade Zone Activity Report.

OMB Number: 1651-0029.

Form Number: CBP Forms 214, 214A, 214B, 214C, and 216.

Abstract: CBP Forms 214, 214A, 214B, and 214C, Application for Foreign-Trade Zone Admission and/or Status Designation, are used by business firms that bring merchandise into foreign trade zones in order to register the admission of such merchandise to zones, and to apply for the appropriate zone status.

Current Actions: This submission is being submitted to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 7.9 hours.

Estimated Total Annual Burden Hours: 79,500.

Estimated Total Annualized Cost on the Public: \$2,000,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: October 12, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6-17442 Filed 10-18-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY**Bureau of Customs and Border Protection****Agency Information Collection Activities: Serially Numbered Substantial Containers Entering the United States Duty-Free**

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: CBP has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Serially Numbered Substantial Containers Entering the U.S. Duty-Free. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 47509) on August 17, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 20, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION: CBP encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Serially Numbered Substantial Containers Entering the U.S. Duty-Free.
OMB Number: 1651-0035.

Form Number: N/A.

Abstract: Marking is used to provide for duty-free entry of holders or containers that were manufactured in the United States, exported, and then returned without having been advanced in value or improved in condition. The regulations provide for duty-free entry of holders or containers of foreign manufacture if duty has been paid previously.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, or other for-profit.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 4.5 hours.

Estimated Total Annual Burden Hours: 90.

Estimated Total Annualized Cost on the Public: \$1,350.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: October 12, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6-17443 Filed 10-18-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY**Bureau of Customs and Border Protection****Agency Information Collection Activities: Application for Allowance in Duties**

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Allowance in Duties. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 47508) on August 17, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 20, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component'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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application for Allowance in Duties.

OMB Number: 1651-0007.

Form Number: Form CBP-4315.

Abstract: This collection is required by the CBP in instances of claims of damaged or defective merchandise on which an allowance in duty is made in the liquidation of the entry. The information is used to substantiate importer's claims for such duty allowances.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 1,600.

Estimated Total Annualized Cost on the Public: \$29,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: October 12, 2006.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E6-17444 Filed 10-18-06; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before November 20, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232-

4181 (telephone: 503-231-2063; fax: 503-231-6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address.

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE-131084

Applicant: Angie Harbin-Ireland, Walnut Creek, California.

The applicant requests a permit to take (capture, measure, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE-131083

Applicant: Lynn Hermansen, Walnut Creek, California.

The applicant requests a permit to take (capture, measure, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE-128295

Applicant: Nicolas H. Bauer, Arcata, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you

wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: September 28, 2006.

Linda Belluomini,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 06-8766 Filed 10-18-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service announces that the Sport Fishing and Boating Partnership Council (Council) will meet November 8-9, 2006.

DATES: The meeting will be held on Wednesday, November 8, 2006, from 12 p.m. to 5 p.m., and on Thursday, November 9, 2006, from 8:30 a.m. to 1 p.m. Members of the public wishing to attend the meeting must notify Douglas Hobbs by close of business on Monday, November 6, 2006, per instructions under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Mills House Hotel, 115 Meeting Street, Charleston, SC 29401; telephone (843) 577-2400.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103-AEA, Arlington, Virginia 22203; telephone (703) 358-2336; fax (703) 358-2548; or via e-mail at doug_hobbs@fws.gov.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Sport Fishing and Boating

Partnership Council will meet on Wednesday, November 8, 2006, from 12 p.m. to 5 p.m., and on Thursday, November 9, 2006, from 8:30 a.m. to 1 p.m. at the Mills House Hotel in Charleston, South Carolina.

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, about sport fishing and boating issues. The Council represents the interests of the public and private sectors of the sport fishing and boating communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Director of the Service and the president of the Association of Fish and Wildlife Agencies, who both serve in *ex officio* (by virtue of office) capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, aquatic resource outreach and education, and tourism.

Background information on the Council is available at <http://www.fws.gov/sfbpc>. The Council will convene to discuss: (1) The Council's continuing role in providing input to the Fish and Wildlife Service on the Service's strategic plan for its Fisheries Program; (2) the Council's work in addressing the issue of boating and fishing access; (3) the Council's work in its role as a facilitator of discussions with Federal and State agencies and other sport fishing and boating interests concerning a variety of national boating and fisheries management issues; (4) the Council's work to assess the clean Vessel Act Grant Program; (5) a possible Council role in communicating with partners and stakeholders about the Sport Fish Restoration and Boating Trust Fund; and (6) the Council's role in providing the Secretary of the Interior with information about the implementation of the Strategic Plan for the National Outreach and Communications Program, authorized by the 1998 Sportfishing and Boating Safety Act, that is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization. The agenda may change to accommodate Council business. The final agenda will be posted on the Internet at <http://www.fws.gov/sfbpc>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Council's affairs are invited to request a place on the agenda. On November 9, 2006, time will be reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be 5 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the Sport Fishing and Boating Partnership Council, 4401 North Fairfax Drive, Mailstop 3103-AEA, Arlington, Virginia 22203; via fax at (703) 358-2548; or via e-mail to doug_hobbs@fws.gov.

All visitors are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Monday, November 6, 2006. Please submit your name, estimated time of arrival, e-mail address, and phone number to Douglas Hobbs, and he will provide you with instructions for admittance. Mr. Hobbs' e-mail address is doug_hobbs@fws.gov and his phone number is (703) 358-2336.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS-3101-AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: September 26, 2006.

Marshall P. Jones, Jr.,

Acting Director.

[FR Doc. E6-17418 Filed 10-18-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft National Management and Control Plan for the New Zealand Mudsnail (*Potamopyrgus antipodarum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and request for comments.

SUMMARY: This notice announces the availability of the draft "National Management and Control Plan for the

New Zealand Mudsnail (*Potamopyrgus antipodarum*)." The draft was prepared by the New Zealand Mudsnail Working Group of the Aquatic Nuisance Species Task Force. We are seeking public comments on this draft document. Comments received will be considered during the preparation of the final national management and control plan, which will guide cooperative and integrated management of Zealand mudsnails in the United States.

DATES: Submit your comments on the draft "National Management and Control Plan for the New Zealand Mudsnail (*Potamopyrgus antipodarum*)" by December 4, 2006.

ADDRESSES: The draft document is available from the Executive Secretary, Aquatic Nuisance Species Task Force, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA, 22203; FAX (703) 358-1800. It also is available on our Web page at <http://www.anstaskforce.gov/>. Comments may be hand-delivered, mailed, or sent by fax to the address listed above. You may send comments by e-mail to: NZmudsnailPlan@fws.gov.

FOR FURTHER INFORMATION CONTACT: Scott Newsham, Executive Secretary, Aquatic Nuisance Species Task Force, at scott_newsham@fws.gov or (703) 358-1796.

SUPPLEMENTARY INFORMATION: The New Zealand mudsnail (*Potamopyrgus antipodarum*) is indigenous to New Zealand and its adjacent islands. In New Zealand, the snails have been found in nearly every aquatic habitat including large rivers, forested tributary streams, thermal springs, ponds, glacial lakes, and estuaries. Over the past 150 years, New Zealand mudsnails have spread in three continents.

Three different clones of New Zealand mudsnails have been identified in the United States: one is found in Lakes Ontario, Erie and Superior and is the same as Clone A found in Europe; the second is found in nine western States, having spread out from an initial population in the Snake River in Idaho; and the third has recently been identified in the Snake River, Idaho. It is speculated that the eastern U.S. clone came in ballast water from Europe and the western U.S. clones came from the commercial movement of aquaculture products such as trout eggs or live fish from Australia or New Zealand.

The introduced populations of these tiny snails (up to 6 mm) are mostly all female, and the snails are live bearers. Males are present only rarely in North America. Densities of New Zealand mudsnails fluctuate widely, reaching

500,000 snails per square meter in some locations.

A database established on the "New Zealand Mudsail in the Western USA" Web site (<http://www.esg.montana.edu/aim/mollusca/nzms/>) is being used to track new populations and keep people informed about the latest research. A map showing affected watersheds is kept current by the Department of Ecology at Montana State University-Bozeman.

In 2003, the Aquatic Nuisance Species Task Force (ANSTF), which is authorized by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*), established the New Zealand Mudsail Management Plan Working Group (Working Group) to create a national management and control plan for New Zealand mudsnails. The goal of the national management and control plan for New Zealand mudsnails is to prevent and delay the spread to new areas of the United States, reduce the impacts of existing and new populations, and continue developing information to meet this goal. The Working Group developed the following objectives: (1) Identify foci, pathways and vectors; (2) develop methods of detecting new populations; (3) develop strategies and methods to control and manage populations; (4) develop further understanding of ecological and economic impacts; and (5) increase public understanding of the need to deal with New Zealand mudsnails and gain political support for implementing national plan objectives.

We are seeking public comments on all aspects of the Working Group's draft "National Management and Control Plan for the New Zealand Mudsail (*Potamopyrgus antipodarum*)." Submit your comments by the date listed in **DATES** using one of the methods listed in **ADDRESSES**.

Authority: The authority for this action is the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*).

Dated: September 25, 2006.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. E6-17403 Filed 10-18-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-910-07-0777-XX]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the 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, New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting dates are December 6-7, 2006, at the Drury Inn and Suites, 4310 The 25 Way Northeast, Albuquerque, New Mexico. An optional field trip is planned for December 5, 2006. The public comment period is scheduled December 5, 2006, from 6-7 p.m. at the Drury Inn and Suites. The public may present written comments to the RAC. Depending on the number of individuals wishing to comment and time available, oral comments may be limited. The three established RAC working groups may have a late afternoon or an evening meeting.

SUPPLEMENTARY INFORMATION: The 15-member RAC 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 New Mexico. All meetings are open to the public. At this meeting, topics include issues on renewable and nonrenewable resources.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505.438.7517.

Dated: October 13, 2006.

Linda S.C. Rundell,

State Director.

[FR Doc. E6-17439 Filed 10-18-06; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-065-5870-EU; N-74961]

Notice of Realty Action: Direct (Non-Competitive) Sale of Public Lands, Esmeralda County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: A 16.06 acre parcel of public land located near Dyer, Esmeralda County, Nevada, has been examined and found suitable for sale utilizing direct sale procedures. The authority for the sale is found under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) [Pub. L. 94-579].

DATES: Comments regarding the proposed sale or the environmental assessment (EA) must be received by the Bureau of Land Management (BLM) on or before December 4, 2006.

ADDRESSES: Comments regarding the proposed sale or EA, should be addressed to the Assistant Field Manager, BLM Tonopah Field Station, 1553 South Main Street, P.O. Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Information regarding the proposed sale and the lands involved, can be obtained at the public reception desk at the BLM, Tonopah Field Station from 7:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays), or by contacting Wendy Seley, Realty Specialist, at the above address, or at (775) 482-7800 or by e-mail at wseley@nv.blm.gov. For general information on BLM's public land sale procedures, refer to the following Web address: <http://www.blm.gov/nhp/what/lands/realty/sales.htm>.

SUPPLEMENTARY INFORMATION: The land is located approximately two miles west of Dyer, Nevada, and lies on the west side of Fish Lake Valley, Nevada.

Mount Diablo Meridian, Nevada

T. 3 S., R. 35 E.,

Sec. 21, Lots 8, 9, 10, and 11.

The area described contains 16.06 acres, more or less, in Esmeralda County.

This parcel of public land is being offered for sale to Della Patterson of Dyer, Nevada, at no less than the appraised fair market value (FMV) of \$56,000.00, as determined by the authorized officer after appraisal. An appraisal report has been prepared by a state certified appraiser for the purposes of establishing FMV.

These lands meet the criteria for direct sale, under 43 CFR 2711.3–3(a)(5), to resolve inadvertent unauthorized use and occupancy of the lands. Multiple dwellings, old cars, car parts, and a corral occupy the subject land. The size of the unauthorized use has been reduced to the smallest aliquot part identified through development of a supplemental plat. These lands are not required for Federal purposes. The disposal (sale) of the parcel would serve an important public objective by resolving the management costs of an inadvertent unauthorized use of the public lands. As such, these lands meet the criteria found under Title 43 CFR 2710.0–3(a)(3) which states “Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.” Direct sale would not change the status quo in that no other land uses are expected for these lands. These lands are identified as suitable for disposal in the BLM Tonopah Resource Management Plan (RMP) approved in October 1997. The proposed disposal action is consistent with the objectives, goals, and decisions of the RMP.

The BLM provided a 30-day comment period for the preliminary EA as part of its public involvement. All comments received have been considered and incorporated into the EA and Decision Record. The environmental assessment, EA Number NV065–EA06–066, Decision Record, Environmental Site Assessment, map, and approved appraisal report covering the proposed sale, are available for review at the BLM, Tonopah Field Station, Tonopah, Nevada.

Segregation

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent, upon publication in the **Federal Register** of a termination of the segregation or July 16, 2007, which ever occurs first.

Terms and Conditions of Sale

The patent issued would contain the following reservations, covenants, terms and conditions:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, and geothermal resources are reserved on the land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

3. All existing and valid land uses, including livestock grazing leases, unless waived.

4. Valid existing rights.

5. The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third party arising out of or in connection with the patentee's use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now, or in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property, and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

6. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat.1670), notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, physical condition or potential uses of the parcel of land proposed for sale, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a \$50.00 non-refundable filing fee for conveyance of the available mineral interests. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price, the \$50.00 filing fee for conveyance of mineral interests, and for payment of publication costs. The purchaser must remit the remainder of the purchase price within 180 days from the date the sale offer is received. Payments must be by certified check, postal money order, bank draft or cashier's check, payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited.

Public Comments

The subject parcel of land will not be offered for sale prior to the 60-day publication of this notice of realty action. For a period until December 4, 2006, interested parties may submit written comments to the BLM Tonopah Field Station, P.O. Box 911, Tonopah, Nevada 89049. Facsimiles, telephone calls, and electronic mails are unacceptable means of notification. Comments including names and street addresses of respondents will be available for public review at the Tonopah Field Station during regular business hours, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your

comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law.

Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1-2(a))

Dated: August 31, 2006.

Alan R. Buehler,

Acting Assistant Field Manager, Tonopah.

[FR Doc. E6-17399 Filed 10-18-06; 8:45 am]

BILLING CODE 4310-HC-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: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101-4669, telephone (406) 896-5124 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. 27 N., R. 50 E.

The plat, in 2 sheets, representing the corrective dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of sections 15 and 16, and the division of accretion lines in sections 15 and 16, and the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of sections 14, 15, and 16, the adjusted original meanders of the former left bank of the Missouri River, downstream through sections 14, 15, and 16, and the subdivision of section 14, and the survey of

the meanders of the present left bank of the Missouri River, downstream through sections 14 and 15, and through a portion of section 16, the limits of erosion, downstream through sections 14 and 15, the meanders of the former left bank of certain relicted channels in sections 14 and 15, and the medial line of certain relicted channels in sections 14 and 15, certain division of accretion and partition lines, and two islands Tracts 37 and 38, Township 27 North, Range 50 East, Principal Meridian, Montana, was accepted October 5, 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 12, 2006.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. E6-17422 Filed 10-18-06; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a new information collection (1010-NEW).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) for a new approval of the paperwork requirements that address the narrative portion only of MMS's Coastal Impact Assistance Program (CIAP) which is a grant program.

The Energy Policy Act of 2005 gave responsibility to MMS for CIAP by amending Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a; Appendix A).

This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by November 20, 2006.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395-6566; identify with (1010-NEW).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, *https://occonnect.mms.gov*. Follow the instructions on the Web site for submitting comments.

- E-mail MMS at *rules.comments@mms.gov*. Use Information Collection Number 1010-NEW, CIAP, in the subject line.

- Fax: 703-787-1093. Identify with Information Collection Number 1010-NEW, CIAP.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; *Attention:* Rules Processing Team (RPT); 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference "Information Collection 1010-NEW, CIAP" in your comments.

FOR FURTHER INFORMATION CONTACT:

Cheryl Blundon, Rules Processing Team, (703) 787-1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the ICR and the authority that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Coastal Impact Assistance Program.

OMB Control Number: 1010-NEW.

Abstract: With the passage of the Energy Policy Act of 2005 (EPA), the Minerals Management Service (MMS) was given responsibility for the Coastal Impact Assistance Program (CIAP) through the amendment of Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a Appendix A). The program was authorized for FY 2007, 2008, 2009, and 2010.

The CIAP recognizes that impacts from Outer Continental Shelf (OCS) oil and gas activities fall disproportionately on the coastal states and localities nearest to where the activities occur, and where associated facilities are located. The CIAP legislation appropriates money for eligible states and coastal political subdivisions for coastal restoration/improvement projects. MMS shall disburse \$250 million for each FY 2007 through 2010

to eligible producing states and coastal political subdivisions (CPSs) through a grant program. The funds allocated to each state are based on the proportion of qualified OCS revenues offshore the individual state to total qualified OCS revenues from all states. In order to receive funds, the states submit CIAP narratives detailing how the funds will be expended. Alabama, Alaska, California, Louisiana, Mississippi, and Texas are the only eligible states under EPAct. Counties, parishes, or equivalent units of government within those states lying all or in part within the coastal zone, as defined by section 304(1) of the Coastal Zone Management Act (CZMA) 1972, as amended, are the coastal political subdivisions eligible for CIAP funding, a total of 67 local jurisdictions.

To approve a plan, legislation requires that the Secretary of the Interior must be able to determine that the funds will be used in accordance with EPAct criteria and that projects will use the funds according to the EPAct. To confirm appropriate use of funds, MMS requires affirmation of grantees meeting Federal, state, and local laws and adequate project descriptions. To accomplish this, MMS is providing in its CIAP Environmental Assessment a suggested narrative format to be followed by each applicant for a CIAP grant. This narrative will assist MMS in its review of applications to determine that adequate and appropriate measures were taken to meet the laws that affect the proposed coastal projects. This narrative will be submitted electronically as part of the grant application. At that time, applicants will be obliged to fill out several OMB-approved standard forms as well. Most of the eligible states and CPSs, as experienced grant applicants, will be familiar with this narrative request.

This information collection request (ICR) addresses the narrative portion only of the MMS CIAP grant program.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 73 total respondents. This includes 6 states and 67 boroughs, parishes, etc.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 12,600 hours. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden. There are approximately six states and 67 parishes, boroughs, counties, etc. Submissions are generally on an

occasion basis. The estimated annual "hour" burden for this information collection is a total of 12,600 hours. We expect each project narrative will take 42 hours to complete. We anticipate an average of 300 projects per year. Based on a cost factor of \$50 per hour, we estimate the total annual cost to industry is \$630,000 (42 hrs × 300 projects = 12,600 hrs × \$50 per hour = \$630,000).

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * ". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process according to section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*), we published a **Federal Register** notice (71 FR 29666, May 23, 2006) outlining the collection of information and announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We have received no comments in response to this effort.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days.

Therefore, to ensure maximum consideration, OMB should receive

public comments by November 20, 2006.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure "would constitute an unwarranted invasion of privacy." Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: August 2, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.
[FR Doc. E6-17514 Filed 10-18-06; 8:45 am]
BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Upper Truckee River and Marsh Restoration Project, El Dorado County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/ environmental impact statement/ environmental impact report (EIS/EIS/EIR) and notice of scoping meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA), the Tahoe Regional Planning Agency (TRPA) Compact and Chapter 5 of the TRPA Code of Ordinances, and the California Environmental Quality Act (CEQA), the Department of the Interior, Bureau of

Reclamation (Reclamation), the TRPA, and the California Tahoe Conservancy (Conservancy), intend to prepare a joint EIS/EIS/EIR. The EIS/EIS/EIR would evaluate a joint Reclamation and TRPA restoration project along the reach of the Upper Truckee River that extends from U.S. Highway 50 north to Lake Tahoe and its adjacent wetland. The purpose of the proposed action is to restore natural geomorphic processes and ecological functions in this lowest reach of the Upper Truckee River and the surrounding marsh to improve ecological values of the study area and help reduce the river's discharge of nutrients and sediment that diminish Lake Tahoe's clarity.

The Upper Truckee River and Marsh Restoration Project is identified in TRPA's Environmental Improvement Program (EIP) as a project that is necessary to restore and maintain environmental thresholds for the Lake Tahoe Basin. EIP projects are designed to achieve and maintain environmental thresholds that protect Tahoe's unique and valued resources.

Two public scoping meetings will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis, including the alternatives to be addressed, and to identify the significant environmental issues related to the proposed action.

DATES: The public scoping meeting dates are:

- Tuesday, October 24, 2006, 12 to 2 p.m., South Lake Tahoe, California.
- Tuesday, October 24, 2006, 6 to 8 p.m., South Lake Tahoe, California.

In addition, the proposed project will be an agenda item at a TRPA Governing Board Meeting on Wednesday, October 25, 2006 in Stateline, Nevada (see agenda item at <http://www.trpa.org/default.aspx?tabid=258>).

All comments are requested to be received by October 31, 2006.

ADDRESSES: Scoping meetings will be held at the Inn By The Lake, Sierra Nevada Room, 3300 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150.

The TRPA meeting will be held at the TRPA Governing Board Rooms, 128 Market Street, Stateline, NV 89449.

Written comments on the scope of the environmental document, alternatives, and impacts to be considered should be sent to Ms. Jacqui Grandfield, Natural Resources Program Manager, California Tahoe Conservancy, 1061 Third Street, South Lake Tahoe, CA 96150.

If you would like to be included on the EIS/EIS/EIR mailing list, please contact Ms. Grandfield by e-mail at upper_truckee_marsh.tahoicons.ca.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Myrnie Mayville, Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Room E-2606, Sacramento, CA, 95825-1898, (916) 978-5037, mmayville@mp.usbr.gov; Ms. Jacqui Grandfield at the above address or (530) 542-5580, upper_truckee_marsh@tahoicons.ca.gov or Mr. Mike Elam, Associate Environmental Planner, Tahoe Regional Planning Agency, P.O. Box 5310, Stateline, NV, 89448 or (775) 588-4547 ext. 308, MElam@trpa.org.

SUPPLEMENTARY INFORMATION:

Background

The Upper Truckee River has been substantially altered by land practices during the past 150 years. Throughout its watershed, the river has experienced ecosystem degradation typical of what has occurred elsewhere in the Basin. The river has been modified from its original conditions by human activities, such as logging; livestock grazing; roads; golf courses; an airport; and residential, commercial and industrial developments. These conditions have resulted in increased sediment and nutrient loads discharging into Lake Tahoe from the river, which contribute to the declining clarity of the lake. Human influences have also resulted in reduced habitat quality for plant, wildlife, and fish species in the watershed. Restoration of natural processes and ecological functions of the river is an important part of the response to the decline in lake clarity.

Restoration planning for the marsh began in the early 1990s with studies conducted by the University of California. In 1995, the Conservancy commissioned a restoration planning and design study, which identified a tentatively preferred river restoration concept 2 years later. However, it was determined that river restoration required use of the entire Upper Truckee Marsh and, at that time the east side of the marsh was not owned by the Conservancy; therefore, this tentatively selected concept could not be pursued. In 1998, the Conservancy began planning and design of an initial phase of wetland restoration on a 23-acre portion of a study area located on the east side of the Upper Truckee River near Lake Tahoe. This is an area, called the Lower West Side Wetland Restoration Project (LWS), where the marsh had been previously filled during the construction of the adjacent Tahoe Keys. After careful investigations, planning, and design; extensive environmental review; and community outreach, the Conservancy approved

restoration of 12 acres of wetland through fill removal as the LWS Project in 2001. Construction commenced in the summer of 2001 and was completed in the summer of 2003. In 2000, the Conservancy purchased 311 acres of land in the center of the marsh from a private party, bringing nearly the entire Truckee Marsh into public ownership. Currently, the majority of the study area is owned by the Conservancy, including the marsh and meadows surrounding the lower reach of Trout Creek. Restoration concepts encompassing the whole marsh and the lower reach of the river could be developed after the acquisition. As part of this process, the Conservancy has also conducted public access and recreation use management planning for the river, marsh, and beach.

Initially, the Conservancy defined project objectives and desired outcomes to direct the restoration planning process. A comprehensive evaluation and documentation of the existing natural processes and functions in the study area were conducted to begin the alternatives planning process. This evaluation enabled the identification of potential restoration opportunities and constraints. Armed with detailed information about the river and marsh processes and ecological functions, the Conservancy hosted a design charrette (*i.e.*, interactive workshop) for agencies and other stakeholders to identify the spectrum of potentially feasible restoration ideas to be considered in the development of concept plan alternatives. Four alternative concept plans, all developed to be potentially feasible, were formulated to represent a reasonable range of restoration approaches. The four concepts generated by this extensive process are four action alternatives being evaluated in the EIS/EIS/EIR. A preferred alternative will be identified after public review of the alternatives and public comments are received on the Draft EIS/EIS/EIR.

To date, key stages of the Upper Truckee River and Wetland Restoration project have included the following:

- Evaluating existing natural processes and functions of the Upper Truckee River and marsh in 2000 and 2001.
- Establishing project objectives and desired outcomes in 2002, and updating them in 2005.
- Defining restoration opportunities and constraints in 2002 and 2003.
- Conducting a restoration design charrette in 2003 to receive input from stakeholders on project priorities, concerns and constraints, and design ideas.

- Conducting hydraulic modeling studies to support the development and evaluation of project alternatives.

- Initial development and comparative evaluation of four conceptual restoration alternatives in 2004 and 2005.

- Regulatory agency review of alternative concepts for key issues and regulatory requirements in 2005.

- Further refinement and evaluation of the alternatives, and preparation of a Concept Plan Report (July 2006).

Project Objectives

The following objectives were developed for the proposed action:

- Objective 1. Restore natural and self-sustaining river and floodplain processes and functions.

- Objective 2. Protect, enhance, and restore naturally functioning habitats.

- Objective 3. Restore and enhance fish and wildlife habitat quality.

- Objective 4. Improve water quality through enhancement of natural physical and biological processes.

- Objective 5. Protect and, where feasible, expand Tahoe yellow cress populations.

- Objective 6. Provide public access, access to vistas, and environmental education at the Lower West Side and Cove East Beach.

- Objective 7. Avoid increasing flood hazard on adjacent private property.

- Objective 8. Design with sensitivity to the site's history and cultural heritage.

- Objective 9. Design the wetland/urban interface to help provide habitat value and water quality benefits.

- Objective 10. Implement a public health and safety program, including mosquito monitoring and control.

The following alternatives will be considered at an equal level of detail in the EIS/EIS/EIR:

- Alternative 1, Channel Aggradation and Narrowing (Maximum Recreation Infrastructure);

- Alternative 2, New Channel—West Meadow (Minimum Recreation Infrastructure);

- Alternative 3, Middle Marsh Corridor (Moderate Recreation Infrastructure);

- Alternative 4, Inset Floodplain (Moderate Recreation Infrastructure); and

- Alternative 5, No Project/No Action.

Alternative 1 would include raising and reconfiguring a portion of the main channel, reconfiguring two sections of split channel, reducing the capacity of the river mouth, changing the hydrologic connectivity of the sailing lagoon, constructing a river corridor

barrier to reduce wildlife disturbance, restoring sand dunes at Cove East, re-routing an existing recreational trail, and developing several new recreational components (i.e., full- and self-service visitor centers, pedestrian and bicycle trails, boardwalks, viewing platforms), an interpretive program, and signage.

Alternative 2 would include excavation of a new channel and fill of a portion of the existing channel, constructing a new river mouth, changing the hydrologic connectivity of the sailing lagoon, constructing a river corridor barrier to reduce wildlife disturbance, and restoring sand dunes at Cove East, re-routing an existing recreational trail, constructing observation platforms, and developing an interpretive program and signage.

Alternative 3 would include excavation of a new channel and fill of a portion of the existing channel, reducing the capacity of the river mouth, changing the hydrologic connectivity of the sailing lagoon, re-routing an existing recreational trail, developing several new recreational components (i.e., self-service visitor center, pedestrian and bicycle trails, boardwalks, viewing platforms), and an interpretive program and signage.

Alternative 4 would include excavation of portions of the meadow surface along the corridor of the existing channel to create an inset floodplain, reducing the capacity of the river mouth, constructing a river corridor barrier to reduce wildlife disturbance, (i.e., self-service visitor center, pedestrian and bicycle trails, boardwalks, viewing platforms), and an interpretive program and signage.

Under Alternative 5, existing conditions on the project site would be projected into the future.

Potential Federal involvement may include the approval of the proposed action and partial funding of the river restoration component of the proposed action. The EIS will be combined with an EIR prepared by the Conservancy pursuant to the CEQA and an EIS prepared by the TRPA pursuant to its Compact and Chapter 5 of the TRPA Code of Ordinances.

Additional Information

The environmental review will be conducted pursuant to NEPA, CEQA, TRPA's Compact and Chapter 5 of the TRPA Code of Ordinances, the Federal and State Endangered Species Acts, and other applicable laws, to analyze the potential environmental impacts of implementing a range of feasible alternatives. Public input on the range of alternatives proposed for detailed

consideration will be sought through the public scoping process.

The EIS/EIS/EIR will assess potential impacts to any Indian Trust Assets or environmental justice issues. There are no known Indian Trust Assets or environmental justice issues associated with the proposed action. Input about concerns or issues related to Indian Trust Assets are requested from potentially affected federally recognized Indian Tribes and individual Indians.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Robert Eckart,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E6-17427 Filed 10-18-06; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-585]

In the Matter of Certain Engines, Components Thereof, and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 19, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of American Honda Motor Company, Incorporated of Torrance, California. A supplement to the complaint was filed on October 10,

2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States and sale of certain engines, components thereof, and products containing the same by reason of infringement of U.S. Patent No. 5,706,769 and U.S. Patent No. 6,250,273. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 13, 2006, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain engines, components thereof, or products containing the same by reason of infringement of one or more of claims 1-5 of U.S. Patent No. 5,706,769 and

claims 1 and 2 of U.S. Patent No. 6,250,273, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—American Honda Motor Company, Incorporated, 1919 Torrance Boulevard, Torrance, CA 90501.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Wuxi Kipor Power Co., Ltd., Jingyi Road, Wangzhuang High Tech Industrial Development Zone Stage 3, Wuxi, Jiangsu, China 214028.

(c) The Commission investigative attorney, party to this investigation, is Vu Q. Bui, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 13, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6-17512 Filed 10-18-06; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on August 30, 2006, Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, Missouri 63021-7683, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Marijuana (7360), a basic class of controlled substance listed in schedule I.

The company plans to import this product for non-clinical laboratory based research only.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 20, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-46), all applicants for

registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: October 12, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6-17525 Filed 10-18-06; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-300P]

Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2007: Proposed

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed year 2007 assessment of annual needs.

SUMMARY: This notice proposes initial year 2007 assessment of annual needs for certain List I chemicals in accordance with the Combat Methamphetamine Epidemic Act of 2005 (CMEA), enacted on March 9, 2006. The Act required DEA to establish production quotas and import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. This effort was done in order to prevent the illicit use of these three chemicals in the clandestine manufacture of methamphetamine. The enactment of the CMEA places additional regulatory controls upon the manufacture, distribution, importation and exportation of the three List I chemicals.

DATES: Comments or objections must be received on or before December 4, 2006.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-300P" on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL. Written comments sent via express mail should be sent to

DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT:

Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, by e-mail, *ode@dea.usdoj.gov* or by fax, (202) 353-1263.

SUPPLEMENTARY INFORMATION: Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (Title VII of Pub. L. 109-177) (CMEA) amended section 306 of the Controlled Substances Act (CSA) (Title 21 United States Code (U.S.C.) § 826 "Production quotas for controlled substances") by adding ephedrine, pseudoephedrine, and phenylpropanolamine to existing language to read as follows: "The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks." Further, § 715 of CMEA amended 21 U.S.C. § 952 "Importation of controlled substances" by adding the same List I chemicals to the existing language in paragraph (a), and by adding a new paragraph (d) to read as follows:

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions:

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, or ephedrine, pseudoephedrine, and phenylpropanolamine, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves, and of ephedrine, pseudoephedrine, and phenylpropanolamine, as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and * * *

(d)(1) With respect to a registrant under section 958 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 952(a) and (d)(1).

The responsibility for establishing the assessment of annual needs has been delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to the Code of Federal Regulations Title 28 § 0.104.

The proposed year 2007 assessment of annual needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States to provide adequate supplies of each substance for: The estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

Calculation of the Assessment: Medical Needs of the United States for Ephedrine and Pseudoephedrine

Since the manufacture and importation of ephedrine, pseudoephedrine, and phenylpropanolamine have not been previously regulated through the establishment of an assessment of annual needs, the Drug Enforcement Administration obtained assistance from a private independent contractor, IMS Health Government Solutions (IMS), to develop the proposed initial estimate of the medical needs of the United States of ephedrine and pseudoephedrine.

IMS' estimates of medical needs for ephedrine and pseudoephedrine were derived from 2005 data that the company routinely collects and offers to customers in order to understand the pharmaceutical market. For this analysis, IMS utilized the following types of data: (1) Sales to retail establishments (including pharmacies), (2) sales by retail establishments to patients, and (3) medical insurance claims. IMS' estimates of medical needs were intended to encompass only those products containing either ephedrine or pseudoephedrine, whether requiring a

prescription or available over-the-counter (OTC). Its estimates of use encompassed those products containing ephedrine and pseudoephedrine which are lawfully marketed under the Food, Drug and Cosmetic Act.

Although no direct estimates for the assessment of annual needs are currently available, IMS utilized information from a variety of data sources to develop three independent measures (as described in the next paragraph). After each of the three independent measures were calculated for ephedrine and pseudoephedrine, IMS then took a weighted average of the three individual estimates in order to derive its final estimate which was then considered by DEA. The weighted average was determined based on IMS' confidence in each individual estimate such that estimates with less confidence were given less weight.

The first estimate was based upon product sales to retail outlets, from IMS' National Sales Perspective (NSP) service. This estimate was supplemented with information from: IMS' Drug Distribution Database (DDD) and National Prescription Audit (NPA), ACNielsen's Scantrack (ST) and Homescan (HS) services. The second estimate was based upon product sales to customers, from NPA, ST, and HS services, supplemented with information from DDD and NSP services. The third estimate was based upon patient prescription claims data from IMS' ReferencePoint (RP) database, supplemented with information from United States Census Bureau population estimates and IMS' National Disease and Therapeutic Index (NDTI), NSP, DDD, ST, and HS services. A copy of the IMS report may be obtained from DEA Diversion Web site at: <http://www.deadiversion.usdoj.gov>.

Based on the IMS report, DEA concluded that 3,800 kg of ephedrine and 350,700 kg of pseudoephedrine were required to meet the medical needs of the United States.

Calculation of the Assessment: Medical Needs of the United States for Phenylpropanolamine

DEA did not request that IMS determine the medical needs for phenylpropanolamine. In November 2000, the Food and Drug Administration (FDA) issued a public health warning for phenylpropanolamine and requested that all drug companies discontinue marketing products containing phenylpropanolamine due to the drug's association with risk for hemorrhagic stroke. In response to the FDA's warning, many companies voluntarily reformulated their products to exclude

phenylpropanolamine. Subsequently, on December 22, 2005, FDA published a Notice of Proposed Rulemaking (70 FR 75988) to reclassify all over-the-counter nasal decongestants and weight control drug products containing phenylpropanolamine preparations from their previously proposed monograph status (Category 1) to nonmonograph (Category II). FDA concluded that drug products containing phenylpropanolamine cannot be generally recognized as safe and should no longer be available for over-the-counter use in humans. Therefore, for purposes of calculating the medical needs of the United States for phenylpropanolamine, DEA considered the drug's use in veterinary products only.

DEA obtained from the FDA a list of all companies that manufacture veterinary products containing phenylpropanolamine. DEA contacted each company and requested information relating to sales of their phenylpropanolamine-containing products. Based on this review, DEA concluded that 4,354 kg were required to meet the medical needs of the United States.

Calculation of the Assessment: Industrial Needs, Export and Inventory Requirements

After DEA considered the medical needs for ephedrine, pseudoephedrine and phenylpropanolamine (veterinary products), it then considered: (1) Industrial needs of the United States, (2) lawful export requirements, and (3) maintenance of reserve stocks to determine the assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine.

In consideration of the industrial needs of the United States for these three chemicals, DEA considered the use of ephedrine for the domestic manufacture of pseudoephedrine in 2005 and the amount of phenylpropanolamine used for the domestic manufacture of amphetamine in 2005.

In consideration of the requirements for lawful export purposes for these three chemicals, DEA considered total 2005 exports as provided on the DEA-Form 486 entitled "Import/Export Declaration—Precursors and Essential Chemicals." Exports reported on the DEA-486 were as follows:

List I chemicals	2005 export quantity (kg)
Ephedrine	2,540
Pseudoephedrine	90,260

List I chemicals	2005 export quantity (kg)
Phenylpropanolamine	320

In consideration of the amounts required for the maintenance of reserve stocks, DEA considered 20% of the estimated medical and industrial requirements.

Based on this information, the Deputy Administrator hereby proposes that the year 2007 assessment of annual needs for the following List I chemicals, expressed in kilograms of anhydrous base or acid, be established as follows:

List I chemicals	Proposed year 2007 quotas (kg)
Ephedrine (for sale)	7,100 kg
Ephedrine (for conversion)	128,760 kg
Pseudoephedrine (for sale)	511,100 kg
Phenylpropanolamine (for sale)	5,545 kg
Phenylpropanolamine (for conversion)	6,240 kg

Ephedrine (for conversion) refers to the industrial use of ephedrine, i.e., that which will be converted to pseudoephedrine. Phenylpropanolamine (for conversion) refers to the industrial use of phenylpropanolamine, i.e., that which will be converted to amphetamine by the pharmaceutical industry. The "for sale" quotas refer to the amount of ephedrine, pseudoephedrine, and phenylpropanolamine used for purposes outside of the above-mentioned conversions.

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the ADDRESSES section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned chemicals without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this action does not have any federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of quotas for ephedrine, pseudoephedrine, and phenylpropanolamine is mandated by law. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

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

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

This action is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This action will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: October 13, 2006.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E6-17526 Filed 10-18-06; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-270F]

Controlled Substances: Final Revised Aggregate Production Quotas for 2006

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Notice of final aggregate production quotas for 2006.

SUMMARY: This notice establishes final 2006 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act of 1970 (CSA). The DEA has taken into consideration comments received in response to a notice of the proposed revised aggregate production quotas for 2006 published July 5, 2006 (71 FR 38174).

EFFECTIVE DATE: October 19, 2006.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (Title 21 United States Code (U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 Code of Federal Regulations (CFR) 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

The 2006 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2006 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances.

On July 5, 2006, a notice of the proposed revised 2006 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (71 FR 38174). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before July 26, 2006.

Eight companies commented on a total of 22 Schedules I and II controlled substances within the published comment period. Eight companies proposed that the aggregate production quotas for alfentanil, amphetamine, codeine (for conversion), dihydrocodeine, dihydromorphine, diphenoxylate, fentanyl, gamma hydroxybutyric acid, hydrocodone, hydromorphanol, hydromorphone, methadone, methylphenidate, morphine (for conversion), N,N-dimethylamphetamine, opium, oxycodone, oxycodone (for conversion), oxymorphone, oxymorphone (for conversion), tetrahydrocannabinols, and thebaine were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2005 year-end inventories, initial 2006 manufacturing quotas, 2006 export requirements, actual and projected 2006 sales, research, product development requirements and additional applications received. Based on this information, the DEA has adjusted the final 2006 aggregate production quotas for alfentanil, codeine (for conversion), dextropropoxyphene, dihydromorphine, hydrocodone, hydromorphone, morphine (for conversion), N,N-dimethylamphetamine, opium, oxycodone, oxycodone (for conversion), oxymorphone, oxymorphone (for conversion), tetrahydrocannabinols, and thebaine to meet the legitimate needs of the United States.

Regarding amphetamine, dihydrocodeine, diphenoxylate, fentanyl, gamma hydroxybutyric acid, hydromorphanol, methadone, and methylphenidate, the DEA has determined that the proposed revised 2006 aggregate production quotas are sufficient to meet the current 2006 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate inventories.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator, pursuant to 28 CFR 0.104, the Deputy Administrator hereby orders that the 2006 final aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class—schedule I	Final revised 2006 quotas
2,5-Dimethoxyamphetamine	2,801,000 g
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2 g
3-Methylfentanyl	2 g
3-Methylthiofentanyl	2 g
3,4-Methylenedioxyamphetamine (MDA)	20 g
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10 g
3,4-Methylenedioxymethamphetamine (MDMA)	22 g
3,4,5-Trimethoxyamphetamine	2 g
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2 g
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	2 g
4-Methoxyamphetamine	77 g
g 4-Methylaminorex	2 g
4-Methyl-2,5-dimethoxyamphetamine (DOM)	12 g
5-Methoxy-3,4-methylenedioxyamphetamine	2 g
Acetyl-alpha-methylfentanyl	2 g
Acetyldihydrocodeine	2 g
Acetylmethadol	2 g
Allylprodine	2 g
Alphacetylmethadol	2 g
Alpha-ethyltryptamine	2 g
Alphameprodine	2 g
Alphamethadol	3 g
Alpha-methylfentanyl	2 g
Alpha-methylthiofentanyl	2 g
Aminorex	2 g
Benzylmorphine	2 g
Betacetylmethadol	2 g
Beta-hydroxy-3-methylfentanyl	2 g
Beta-hydroxyfentanyl	2 g
Betameprodine	2 g
Betamethadol	2 g
Betaprodine	2 g
Bufotenine	5 g
Cathinone	3 g
Codeine-N-oxide	302 g
Diethyltryptamine	2 g
Difenoxin	5,000 g
Dihydromorphine	2,449,000 g
Dimethyltryptamine	3 g
Gamma-hydroxybutyric acid	8,000,000 g
Heroin	5 g
Hydromorphenol	2 g
Hydroxypethidine	2 g
Lysergic acid diethylamide (LSD)	61 g
Marihuana	4,500,000 g
Mescaline	2 g
Methaqualone	10 g
Methcathinone	4 g
Methyldihydromorphine	2 g
Morphine-N-oxide	310 g
N,N-Dimethylamphetamine	7 g
N-Ethylamphetamine	2 g
N-Hydroxy-3,4-methylenedioxyamphetamine	2 g
Noracymethadol	2 g
Norlevorphanol	52 g
Normethadone	2 g
Normorphine	16 g
Para-fluorofentanyl	2 g
Phenomorphan	2 g
Pholcodine	2 g
Psilocybin	7 g
Psilocyn	7 g
Tetrahydrocannabinols	338,000 g
Thiofentanyl	2 g
Trimeperidine	2 g
Basic class—schedule II	Final revised 2006 quotas
1-Phenylcyclohexylamine	2 g
Alfentanil	7,200 g
Alphaprodine	2 g
Amobarbital	101,000 g

Basic class—schedule II	Final revised 2006 quotas
Amphetamine	17,000,000 g
Cocaine	286,000 g
Codeine (for sale)	39,605,000 g
Codeine (for conversion)	59,000,000 g
Dextropropoxyphene	120,000,000 g
Dihydrocodeine	1,261,000 g
Diphenoxylate	828,000 g
Ecgonine	83,000 g
Ethylmorphine	2 g
Fentanyl	1,428,000 g
Glutethimide	2 g
Hydrocodone (for sale)	42,000,000 g
Hydrocodone (for conversion)	1,500,000 g
Hydromorphone	2,500,000 g
Isomethadone	2 g
Levo-alphaacetylmethadol (LAAM)	6 g
Levomethorphan	5 g
Levorphanol	5,000 g
Meperidine	9,753,000 g
Metazocine	1 g
Methadone (for sale)	25,000,000 g
Methadone Intermediate	26,000,000 g
Methamphetamine	3,130,000 g
[680,000 grams of levo-desoxyephedrine for use in a non-controlled, non prescription product; 2,405,000 grams for methamphetamine mostly for conversion to a Schedule III product; and 45,000 grams for methamphetamine (for sale)]	
Methylphenidate	35,000,000 g
Morphine (for sale)	35,000,000 g
Morphine (for conversion)	100,000,000 g
Nabilone	2 g
Noroxymorphone (for sale)	1,002 g
Noroxymorphone (for conversion)	5,600,000 g
Opium	1,360,000 g
Oxycodone (for sale)	56,000,000 g
Oxycodone (for conversion)	4,610,000 g
Oxymorphone	806,000 g
Oxymorphone (for conversion)	2,400,000 g
Pentobarbital	28,000,000 g
Phencyclidine	2,021 g
Phenmetrazine	2 g
Racemethorphan	2 g
Remifentanyl	2,700 g
Secobarbital	2 g
Sufentanyl	6,500 g
Thebaine	78,000,000 g

The Deputy Administrator further orders that the aggregate production quotas for all other Schedules I and II controlled substances included in 21 CFR 1308.11 and 1308.12 shall be zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order (E.O.) 12866.

This action does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of E.O. 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities

whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and

3(b)(2) of E.O. 12988 Civil Justice Reform.

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

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the

ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: October 13, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6-17524 Filed 10-18-06; 8:45 am]

BILLING CODE 4410-09-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Nuclear Management Company, LLC, Palisades Nuclear Plant; Notice of Availability of the Final Supplement 27 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding the License Renewal of Palisades Nuclear Plant

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, Commission) has published a final plant-specific supplement to the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS), NUREG-1437, regarding the renewal of operating license DPR-20 for the Palisades Nuclear Plant (Palisades) for an additional 20 years of operation. Palisades is located on the eastern shore of Lake Michigan in Covert Township on the western side of Van Buren County, Michigan, approximately 4.5 miles south of the city limits of South Haven, Michigan. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final Supplement 27, based on: (1) The analysis and findings in the GEIS; (2) the Environmental Report submitted by Nuclear Management Company, LLC; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Palisades are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 27 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at <http://>

adamswebsearch.nrc.gov/dologin.htm. The Accession Number for the final Supplement 27 to the GEIS is ML062710300. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail at pdr@nrc.gov. In addition, the South Haven Memorial Library, 314 Broadway Street, South Haven, Michigan, has agreed to make the final supplement 27 to the GEIS available for public inspection.

FOR FURTHER INFORMATION, CONTACT: Mr. Bo M. Pham, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001. Mr. Pham may be contacted by telephone at 1-800-368-5642, extension 8450 or via e-mail at PalisadesEIS@nrc.gov.

Dated at Rockville, Maryland, this 12th day of October, 2006.

For the Nuclear Regulatory Commission.

Bo M. Pham,

Acting Branch Chief, Environmental Branch B, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6-17435 Filed 10-18-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 1-3, 2006, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Tuesday, November 22, 2005 (70 FR 70638).

Wednesday, November 1, 2006, Conference Room T-2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.-8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.-10 a.m.: Final Review of the License Renewal Application for the Palisades Nuclear Plant (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Management Company, LLC regarding the license renewal

application for the Palisades Nuclear Plant and the associated NRC staff's final Safety Evaluation Report.

10:15 a.m.-11:45 a.m.: Proposed Revisions to Regulatory Guide 1.189, "Fire Protection for Operating Nuclear Power Plants" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to Regulatory Guide 1.189, and related matters.

1:30 p.m.-3:30 p.m.: Draft Final Rule to Risk-Inform 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final rule to risk-inform 10 CFR 50.46, and related matters.

3:45 p.m.-4:45 p.m.: Proposed Revisions to Regulatory Guides and Standard Review Plan (SRP) Sections in Support of New Reactor Licensing (Open)—The Committee will discuss the proposed revisions to Regulatory Guides and SRP Sections that are being made in support of new reactor licensing.

5 p.m.-7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, November 2, 2006, Conference Room T-2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.-8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.-10 a.m.: Potential Collaborative Research on Human Reliability Analysis Methods (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding potential collaborative research on human reliability analysis methods.

10:15 a.m.-11:15 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

11:15 a.m.-11:30 a.m.: Reconciliation of ACRS Comments and

Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

12:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, November 3, 2006, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 2006 (71 FR 58015). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4 p.m., (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public

Document Room at pdr@nrc.gov, or by calling the PDR at 1–800–397–4209, 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/> (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), 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 videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 13, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–17433 Filed 10–18–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on October 31, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 31, 2006—8:30 a.m. until 12:30 p.m.

The Subcommittee will review the details of the draft final rule 10 CFR 50.46, "Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Plants." The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Eric A. Thornsbury (telephone 301/415–8716), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 12, 2006.

Michael R. Snodderly,

Branch Chief, ACRS/ACNW.

[FR Doc. E6–17436 Filed 10–18–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on October 31, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 31, 2006–1:30 p.m. Until the Conclusion of Business

The purpose of this meeting is to review Regulatory Guide 1.189, "Fire Protection for Operating Nuclear Power Plants," and associated SRP Section 9.5.1, "Fire Protection Program." The Subcommittee will hear presentations by and hold discussions with the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael A. Junge (Telephone: 301–415–6855) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are

urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 12, 2006.

Michael R. Snodderly,

Branch Chief, ACRS/ACNW.

[FR Doc. E6-17437 Filed 10-18-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 1, 2006, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 1, 2006, 12 Noon-1:15 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301-415-7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 11, 2006.

Michael R. Snodderly,

Branch Chief, ACRS/ACNW.

[FR Doc. E6-17438 Filed 10-18-06; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS285]

WTO Dispute Settlement Proceeding Regarding United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice that the World Trade Organization Dispute Settlement Body (DSB), at the request of Antigua and Barbuda, has established a panel under Article 21.5 of the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”) to examine the compliance of the United States with the DSB recommendations and rulings in the matter of *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*. The panel request may be found at www.wto.org in a document designated as WT/DS285/18. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 23 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to FR0701@ustr.eop.gov, Attn: “Gambling and Betting Dispute (DS285)” in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

FOR FURTHER INFORMATION CONTACT: William Busis, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-3150.

SUPPLEMENTARY INFORMATION:

Prior WTO Proceedings

On June 12, 2003, Antigua and Barbuda requested a dispute settlement panel to consider its claims that U.S.

Federal, State and territorial laws on gambling violate U.S. commitments under the General Agreement on Trade in Services (GATS), to the extent that such laws prevent or can prevent operators from Antigua and Barbuda from lawfully offering gambling and betting services in the United States. The WTO ruled on April 20, 2005, rejecting all of Antigua and Barbuda’s claims except the WTO ruled that for the United States to show that the Federal gambling laws meet the requirements of the chapeau to Article XIV of the GATS, the United States needed to clarify an issue concerning Internet gambling on horse racing. On May 19, 2005, the United States stated its intention to implement the DSB recommendations and rulings. On April 10, 2006, the United States informed the DSB that the United States had complied with the DSB recommendations and rulings.

Issues Raised by Antigua and Barbuda

In its panel request under Article 21.5 of the DSU, Antigua disputes that the United States has complied with the DSB recommendations and rulings. Antigua raises the following issues:

(1) Antigua and Barbuda argues that the United States has not taken any measure to comply with the DSB recommendations and rulings.

(2) Second, Antigua and Barbuda characterizes U.S. compliance as relying on a “restatement of a legal position taken by a party to a dispute,” and argues that such action is legally insufficient under the DSU to amount to compliance.

(3) Third, Antigua and Barbuda disputes that the U.S. compliance brings the measures at issue within the scope of the GATS Article XIV public morals/public order exception.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) electronically, to FR0701@ustr.eop.gov, Attn: “Gambling and Betting Dispute (DS285)” in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover

letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "Business Confidential" at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "Submitted in Confidence" at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; and the U.S. submissions, the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel and; if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS285, Gambling and Betting Dispute) may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E6-17527 Filed 10-18-06; 8:45 am]

BILLING CODE 3190-W7-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Regulation SHO; SEC File No. 270-534; OMB Control No. 3235-0589.

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") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Regulation SHO

Proposed Regulation SHO, Rule 201 (17 CFR 242.200 through 242.203) requires each broker-dealer that effects a sell order in any equity security to mark the order "long," "short," or "short exempt." Proposed Regulation SHO, Rule 201 causes a collection of information because the rule's requirement that each order ticket be marked either "long," "short," or "short exempt" is a disclosure to third parties and the public imposed on ten or more persons.

The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. The purpose of the information collected is to enable regulators to monitor whether a person effecting a short sale is acting in accordance with proposed Regulation SHO. Without the requirement that each order or an equity security be marked either "long," "short," or "short exempt," there would be no means to police compliance with Regulation SHO.

We assume that all of the approximately 6,752 registered broker-dealers effect sell orders in securities covered by proposed Regulation SHO. For purposes of the Paperwork Reduction Act, the Commission staff has estimated that a total of 1,164,755,007 trades are executed annually.

This is an average of approximately 172,505 annual responses by each respondent. Each response of marking orders "long," "short," or "short exempt" takes approximately .000139 hours (.5 seconds) to complete. Thus, the total approximate estimated annual hour burden per year is 161,900 burden

hours (1,164,755,007 responses @ 0.000139 hours/response). A reasonable estimate for the paperwork compliance for the proposed rules for each broker-dealer is approximately 24 burden hours (172,505 responses @ .000139 hours/response) or (161,900 burden hours / 6,752 respondents).

The retention period for the recordkeeping requirement under Regulation SHO is three years following the trade date. The recordkeeping requirement under this Rule is mandatory to assist the Commission with monitoring the short sales of securities. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: David_Rostker@omb.eop.gov; and (ii) R. Corey Booth, Director/CIO, Office of Information Technology, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 10, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-17397 Filed 10-18-06; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54593; File No. SR-Amex-2006-97]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Electronic Access Fee

October 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") submitted

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amex filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act³ 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 Amex's Member Fee Schedule to reduce the Electronic Access Fee from \$61,363 to \$30,000. The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at the principal office of Amex, 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, Amex 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend Amex's Member Fee Schedule to reduce the Electronic Access Fee from \$61,363 to \$30,000. Amex currently charges a \$61,363 electronic access fee ("Fee") to Associate member firms⁵ which route order flow to the Exchange. Eleven out of the 42 Associate member firms currently registered with Amex pay the Fee each year.⁶

All new Associate members were required to pay the Fee when it was established in August of 2000.⁷ The

Exchange proposes to revise the Fee to reflect the current prices of seats and the prices to lease a seat. The fee change will not affect the value of the regular seats.

Of the 42 current Associate member firms, only two have been approved since August 2000, subjecting them to payment of the Fee. Furthermore, the number of Associate member firms with electronic access capability has significantly decreased over the past few years as such firms either terminate or change their status to an off-floor, regular membership.

The Exchange believes that the new reduced Fee will not undermine other Amex member firms and will appeal to regional firms interested in sending order flow to Amex, without the need for a physical presence at the Exchange. The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.

2. Statutory Basis

Amex 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)(4) of the Act,⁹ 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 exchange facilities.

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.

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 rule change establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange, and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹¹ At any time within 60 days of the filing of such proposed rule

change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2006-97 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-2006-97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-97 and should be submitted on or before November 9, 2006.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ An Associate member firm is not required to own or lease a seat to qualify as a member firm.

⁶ The Fee is billed once a year in the fall for the upcoming fiscal year.

⁷ See Securities Exchange Act Release No. 43279 (September 11, 2000), 65 FR 56606 (September 19, 2000) (approving File No. SR-Amex-2000-44); see

also Securities Exchange Act Release No. 44337 (May 22, 2001), 66 FR 29369 (May 30, 2001) (approving File No. SR-Amex-2001-15).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-17392 Filed 10-18-06; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54595; File No. SR-Amex-2006-78]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Generic Listing Standards for Series of Portfolio Depository Receipts and Index Fund Shares Based On International or Global Indexes

October 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 18, 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 Exchange. On October 12, 2006, submitted Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for series of portfolio depository receipts ("PDRs") and index fund shares ("IFSs") that are based on international or global indexes or on indexes. Additionally, the Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for PDRs and IFSs that are based on indexes or portfolios previously approved by the Commission as an underlying benchmark for the trading of PDRs, IFSs, options or other specified index-based securities. The Amex also proposes to

make minor changes to Amex Rules 1000, 1002, 1000A and 1002A.

The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at Amex's principal office, and at the Commission's Public Reference Room. The text of Exhibit 5 to the proposed rule change is also available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 proposes to revise Commentary .03 to Rule 1000 and Commentary .02 to Rule 1000A to include generic listing standards for series of PDRs and IFSs (PDRs and IFSs together referred to as "exchange-traded funds" or "ETFs") that are based on international or global indexes, or on indexes previously approved by the Commission under Section 19(b)(2) of the Exchange Act for the trading of ETFs, options or other index-based securities. This proposal will enable the Exchange to list and trade exchange-traded funds pursuant to Rule 19b-4(e)⁴ of the Exchange Act if each of the conditions set forth in Commentary .03 to Rule 1000 or Commentary .02 to Rule 1000A is satisfied. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.⁵

Exchange-Traded Funds

Amex Rules 1000 *et seq.* allow for the listing and trading on the Exchange of PDRs. PDRs represent interests in a unit investment trust registered under the Investment Company Act of 1940⁶ ("1940 Act") that operates on an open-end basis and that holds the securities that comprise an index or portfolio. Amex Rules 1000A *et seq.* provide standards for the listing and trading of IFSs, which are securities issued by an open-end management investment company (open-end mutual fund) based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index. Pursuant to Rules 1000 *et seq.* and 1000A *et seq.*, PDRs and IFSs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, PDRs and IFSs must be redeemed by the issuer for the securities and/or cash, with a value equal to the next determined net asset value. The net asset value is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price, dividend and yield performance of the underlying index, ETFs may use a "replication" strategy or a "representative sampling" strategy with respect to the ETF portfolio.⁷ An ETF, using a replication strategy, will invest in each stock found in the underlying index in about the same proportion as that stock is represented in the index itself. An ETF, using a representative sampling strategy, will generally invest in a significant number of the component securities of the underlying index, but it may not invest in all of the component securities of its underlying index and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as

five business days after the SRO begins trading the new derivative securities products. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

⁶ 15 U.S.C. 80a.

⁷ In either case, many ETFs, by their terms, may be considered invested in the securities of the underlying index to the extent the ETFs invest in sponsored American Depository Receipts ("ADRs"), Global Depository Receipts ("GDRs"), or European Depository Receipts ("EDRs") representing securities in the underlying index that trade on an exchange with last sale reporting.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Amex revised the proposed rule text and clarified certain aspects of its proposal.

⁴ 17 CFR 240.19b-4(e).

⁵ When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within

price/earnings ratio, earnings growth, and dividend yield.

In addition, ETF portfolios may be adjusted in accordance with changes in the composition of the underlying indexes or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code ("IRC").⁸

Generic Listing Standards for Exchange-Traded Funds

The Exchange notes that the Commission has previously approved generic listing standards pursuant to Rule 19b-4(e)⁹ of the Exchange Act for ETFs based on indexes that consist of stocks listed on U.S. exchanges.¹⁰ In general, the proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications as appropriate for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved the listing and trading of ETFs based on international indexes—those based on non-U.S. component stocks—as well as global indexes—those based on non-U.S. and U.S. component stocks.¹¹

The Exchange notes that the Commission has also approved listing standards for other index-based derivatives that permit the listing and trading pursuant to Rule 19b-4(e)¹² of such securities where the Commission had previously approved the trading of

specified index-based derivatives on the same index, on the condition that all of the standards set forth in those orders, in particular with respect to surveillance sharing agreements, continued to be satisfied.¹³

In approving ETFs for Exchange trading, the Exchange states that the Commission thoroughly considered the structure of the ETFs, their usefulness to investors and to the markets, and Amex rules that govern their trading. The Exchange believes that adopting additional generic listing standards for these ETFs based on international and global indexes and applying Rule 19b-4(e)¹⁴ should fulfill the intended objective of that Rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b-4(e)¹⁵ would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2),¹⁶ requesting Commission approval to list and trade a particular ETF.

Requirements for Listing and Trading ETFs Based on International and Global Indexes

The Exchange states that exchange-traded funds listed pursuant to these generic standards for international and global indexes would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs and would be covered under the Exchange's surveillance program for ETFs.¹⁷

In order to list a PDR or an IFS pursuant to the proposed generic listing standards for international or global indexes, the index underlying the PDR or IFS must satisfy all the conditions contained in proposed Commentary .03 to Rule 1000 (for PDRs) or proposed Commentary .02 to Rule 1000A (for IFSs). As with the existing generic standards for ETFs based on domestic indexes, the Exchange states that these generic listing standards are intended to

ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes, they have been adapted as appropriate to apply to international and global indexes.

As proposed, the definition section of each of Rule 1000 and Rule 1000A—section (b)—would be revised to include definitions of US Component Stock and Non-US Component Stock. These new definitions would provide the basis for the standards for indexes with either domestic or international stocks, or a combination of both. A "Non-US Component Stock" would mean an equity security issued by an entity that (a) is not organized, domiciled or incorporated in the United States; (b) is not registered under Sections 12(b) or 12(g) of the Exchange Act; and (c) is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). This definition is designed to create a category of component stocks that are issued by companies that are not based in the U.S., but that also are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. This definition would appear in new subsection (4) of Rule 1000(b) and new subsection (5) of Rule 1000A(b). A "US Component Stock" would mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act, which would include an equity security registered under Section 12(b) or 12(g) of the Exchange Act underlying ADRs.

Equity securities underlying ADRs that are registered pursuant to the Exchange Act are considered US Component Stocks because the issuers of those securities are subject to Commission jurisdiction and must comply with Commission rules. This definition would appear in new subsection (3) of Rule 1000(b) and new subsection (4) of Rule 1000A(b).

The Exchange proposes that in order to list a PDR or an IFS based on an international or global index pursuant to the generic standards, the index must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum worldwide market value of at least \$100 million (Rule 1000, Commentary .03(a)(B)(1) and Rule 1000A, Commentary .02(a)(B)(1));

⁸ In order for an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the ETF's taxable year, (i) at least 50% of the market value of the ETF's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value if the ETF's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the ETF (within the meaning of Section 851 (b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

⁹ 17 CFR 240.19b-4(e).

¹⁰ See Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A. See also Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000).

¹¹ See, e.g., Securities Exchange Act Release Nos. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (approving the listing and trading of certain Vanguard International Equity Index Funds); 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (approving the listing and trading of series of the iShares Trust based on certain S&P global indexes).

¹² 17 CFR 240.19b-4(e).

¹³ See *Amex Company Guide* Section 107D (Index-Linked Securities), Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005).

¹⁴ 17 CFR 240.19b-4(e).

¹⁵ 17 CFR 240.19b-4(e).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See Amex Rules 1000 through 1006 and 1000A through 1005A.

- Component stocks representing at least 90% of the weight of the index or portfolio shall have a minimum monthly worldwide trading volume during each of the last six months of at least 250,000 shares (Rule 1000, Commentary .03(a)(B)(2) and Rule 1000A, Commentary .02(a)(B)(2));

- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (Rule 1000, Commentary .03(a)(B)(3) and Rule 1000A, Commentary .02(a)(B)(3));

- The index or portfolio shall include a minimum of 20 component stocks (Rule 1000, Commentary .03(a)(B)(4) and Rule 1000A, Commentary .02(a)(B)(4)); and

- Each U.S. Component Stock in the index or portfolio shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Exchange Act, and each Non-US Component Stock in the index or portfolio shall be listed on an exchange that has last-sale reporting (Rule 1000, Commentary .03(a)(B)(5) and Rule 1000A, Commentary .02(a)(B)(5)).

The Exchange believes that these proposed standards are reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, will result in ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards will result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in the ETFs based on international or global indexes could become a surrogate for trading in unregistered securities.

The Exchange further notes that, while these standards are similar to those for indexes that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$100 million, compared to a minimum market value of at least \$75 million for indexes with only U.S. Component

Stocks.¹⁸ Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks. Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-US Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify Commentary .03(b)(iii) to Rule 1000 and Commentary .02(b)(iii) to Rule 1000A to require that the index value for ETFs listed pursuant to the proposed standards for international and global indexes be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF trades on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. In contrast, index values for ETFs listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-US Component Stocks and that in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange trading hours. In addition, Commentary .03(c) to Rule 1000 and Commentary .02(c) to Rule 1000A are being modified to define the term "Indicative Intraday Value" as the estimate that is updated every 15 seconds of the value of a share of each ETF, for ease of reference in these rules and also in Rules 1002 and 1002A regarding continued listing standards. The Exchange also proposes to clarify in Commentary .03(c) to Rule 1000 and Commentary .02(c) to Rule 1000A that the Intraday Indicative Value will be updated during the hours the ETF

shares trade on the Exchange to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated.

The Exchange is also proposing to add a subsection (i) to Commentary .03 to Rule 1000 and a subsection (j) to Commentary .02 to Rule 1000A regarding the creation and redemption process for ETFs and compliance with Federal securities laws for, in particular, ETFs listed pursuant to the generic standards for international and global indexes. These new subsections will apply to PDRs listed pursuant to Commentary .03(a)(B) or (C) and for IFSS listed pursuant to Commentary .02(a)(B) or (C). They will require that the statutory prospectus or the application for exemption from provisions of the 1940 Act for the ETF being listed pursuant to these new standards must state that the ETF must comply with the Federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.¹⁹

The Exchange states that the Commission has approved generic standards providing for the listing pursuant to Rule 19b-4(e)²⁰ of other derivative products based on indexes previously approved by the Commission under Section 19(b)(2) of the Exchange Act. The Exchange proposes to include in the generic standards for the listing of PDRs and IFSS, in new Commentary .03(a)(C) to Rule 1000 and Commentary .02(a)(C) to Rule 1000A, indexes that have been approved by the Commission as underlying benchmarks in connection with the listing of options, PDRs, IFSS, Index-Linked Exchangeable Notes or Index-Linked Securities. The Exchange believes that the application of this standard to ETFs is appropriate because the underlying index will have been subject to detailed and specific Commission review in the context of the approval of listing of other derivatives. For example, Section 107D (Index-Linked Securities) of the Amex Company Guide includes as one element of the standards for listing Index-Linked Exchangeable Notes pursuant to Rule 19b-4(e)²¹ the previous review and approval for trading of options or other derivatives by the Commission under Section

¹⁸ The Exchange states that "market value" is calculated by multiplying the total shares outstanding by the price per share of the component stock.

¹⁹ 15 U.S.C. 77a *et seq.*

²⁰ 17 CFR 240.19b-4(e).

²¹ 17 CFR 240.19b-4(e).

19b(2) of the Exchange Act and rules thereunder.²²

This new generic standard will be limited to stock indexes and will require that each component stock be either (i) a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Exchange Act or (ii) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange is also proposing to include additional continued listing standards relating to ETFs that substitute new indexes, either in the instance where the value of the index or portfolio of securities on which the ETF is based is no longer calculated or available, or in the event that the ETF chooses to substitute a new index or portfolio for the existing index or portfolio. In both instances, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the requirements of and listing standards set forth in Rules 1000 *et seq.* or Rules 1000A *et seq.*, as applicable. If, for example, an ETF chose to substitute an index that did not meet any of the generic listing standards for listing of ETFs pursuant to Rule 19b-4(e),²³ then for continued listing, approval by the Commission of a separate filing pursuant to Section 19(b)(2)²⁴ to list and trade that ETF would be required.

The Exchange proposes to modify the initial and continued listing standards relating to disseminated information to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Pursuant to Rules 1002(a)(ii) and 1002A(a)(ii), prior to approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the net asset value per share will be calculated daily and made available to all market participants at the same time. Proposed Rules 1002(b)(ii) and 1002A(b)(ii) set out the trading halt parameters for ETFs. In particular, the proposed rules specifically set out that if the Intraday Indicative Value (as defined in Commentary .03 to Rule 1000 and Commentary .02 to Rule 1000A) or the index value applicable to that series of ETFs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative

Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Exchange is proposing other minor and clarifying changes to Rules 1000, 1002, 1000A and 1002A. The standards set out in Commentary .03(a)(A) to Rule 1000 and Commentary .02(a)(A) to Rule 1000A are being modified to make the wording of each requirement consistent; in addition, standard (5) has been modified to reflect the adoption of Regulation NMS.²⁵ Proposed Commentary .03(b)(iv) to Rule 1000 and Commentary .02(b)(iv) to Rule 1000A have been added reflect make sure that entities that advise index providers or calculators and related entities have in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Exchange Act,²⁶ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,²⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

²⁵ 17 CFR 242.600 *et seq.* See also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Approval Order").

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change, as amended, at the end of a 15-day comment period.²⁸

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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-2006-78 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-Amex-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

²⁸ Amex has requested accelerated approval of this proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of the filing thereof, following the conclusion of a 15-day comment period.

²² See *supra* note 5.

²³ 17 CFR 240.19b-4(e).

²⁴ 15 U.S.C. 78s(b)(2).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-78 and should be submitted on or before November 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-17396 Filed 10-18-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54598; File No. SR-NASDAQ-2006-042]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Nasdaq Rule 4760 Relating to the Operation of the Nasdaq Crossing Network

October 13, 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 4, 2006, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to modify Nasdaq Rule 4760 relating to the operation of the Nasdaq Crossing Network. Nasdaq plans to implement the proposed rule change on November 6, 2006. The text of the proposed rule change is available on Nasdaq's Web site (<http://www.nasdaq.com>), at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 5, 2006, the Commission approved Nasdaq Rule 4760 which governs the operation of the Nasdaq Crossing Network.⁵ The Nasdaq Crossing Network will provide a new execution option to market participants trading in Nasdaq and other exchange-listed securities that will facilitate the execution of trades quickly and anonymously. Nasdaq expects to launch the operation of the Crossing Network on or about November 6, 2006.⁶

In anticipation of the launch, Nasdaq has proposed some minor modifications to Nasdaq Rule 4760. Due to the intervening approval of Nasdaq's Single

⁵ See Securities Exchange Act Release No. 54248 (July 31, 2006), 71 FR 44738 (August 7, 2006) (SR-NASDAQ-2006-019). Prior to the effective date of Nasdaq's operation as an exchange for Nasdaq-listed securities, the rule governing the Nasdaq Crossing Network had been approved as an NASD rule (NASD Rule 4716). Securities Exchange Act Release No. 54101 (July 5, 2006), 71 FR 39382 (July 12, 2006) (SR-NASD-2005-140).

⁶ Telephone conference between Jan Woo, Attorney, Division of Market Regulation, Commission, and Jeffrey Davis, Senior Associate General Counsel, Nasdaq, on October 4, 2006 (correcting a typographical error in the filing which stated that Nasdaq plans to launch the operation of the Crossing Network on or about October 30, 2006).

Book integration rule proposal⁷ which has caused a conflict regarding the numbering of certain Nasdaq rules, Nasdaq proposes to renumber the provisions governing the operation of the Nasdaq Crossing Network as Nasdaq Rule 4770.

In addition, in response to input from our members and other market participants, Nasdaq proposes to modify the times of the Reference Price Crosses during the regular hours session. Under the proposed rule change, the regular hours session crosses would commence at 10:45 a.m., 12:45 p.m., and 2:45 p.m. Eastern Time.

Nasdaq also proposes to add a clarification to Nasdaq Rule 4770 about how Reference Price Cross orders will be allocated. The existing rule provides that Reference Price Cross orders will be allocated on a pro-rata basis, so that shares will be allocated pro-rata in round lots to eligible orders based on the original size of the order. If additional shares remain after the initial pro-rata allocation, those shares will continue to be allocated pro-rata to eligible orders until a number of round lots remain that is less than the number of eligible orders. The proposed rule change clarifies that any remaining shares will be allocated to the order which has designated the smallest minimum acceptable execution quantity. If more than one such order exists, any remaining shares will be allocated to the oldest eligible order.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,⁸ in general and with section 6(b)(5) of the Act,⁹ in particular, in that it 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. Nasdaq believes that the proposed rule change is consistent with these requirements in that the changes are designed to address market participant input and issues raised in testing relating to Nasdaq's proposed reference price crossing product, which

⁷ See Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001).

⁸ 5 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

²⁹ 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).

⁴ 17 CFR 240.19b-4(f)(6).

will provide the Nasdaq additional means for facilitating transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6) thereunder.¹¹

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-NASDAQ-2006-042 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-NASDAQ-2006-042. 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 Nasdaq.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASDAQ-2006-042 and should be submitted on or before November 9, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54601; File No. SR-NASDAQ-2006-037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Modify NASDAQ Rules 3350 and 4755

October 13, 2006.

Pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on

September 27, 2006, The NASDAQ Stock Market LLC ("Nasdaq"), 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 Nasdaq. On October 12, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.³ Nasdaq has requested that this proposal, as amended, be approved on an accelerated basis by October 16, 2006 to coincide with the launch of Nasdaq's new Single Book execution system. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Nasdaq Rule 3350(a) to establish the national best bid rather than the Nasdaq best bid, as the basis for determining compliance with Nasdaq Rule 3350(a).

Nasdaq also proposes to amend Nasdaq Rule 4755(a)(2) to clearly describe the test that Nasdaq's Single Book execution system will use to validate for compliance with applicable short sale rules for all securities that trade through the system.

The text of the proposed rule change, as amended, is below. Proposed new language is italicized; proposed deletions are in brackets.⁴

* * * * *

3350 Short Sale Rule

(a) With respect to trades executed on Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq Global Market security at or below the current best (inside) bid displayed in the [Nasdaq Market Center] *National Market System* when the current best (inside) bid is below the preceding best (inside) bid in the security. For purposes of this rule, the term "customer" includes a non-member broker-dealer.

(b)-(1) No Change.

* * * * *

4755. Order Entry Parameters

(a) System Orders

(1) No Change.

³ In Amendment No. 1, which supplemented the original filing, Nasdaq made certain technical and clarifying changes following discussions with Commission staff.

⁴ Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at <http://www.nasdaqtrader.com>.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(2) Short Sale Compliance-System orders to sell short shall not be executed if the execution of such an order would violate any applicable short sale regulation of the SEC or Nasdaq. *For Nasdaq securities, the System shall validate for short sale compliance using a bid tick based upon changes to the national best bid and offer disseminated pursuant to an effective transaction reporting plan. For NYSE and Amex securities, the System shall validate for short sale compliance based upon changes to the consolidated last sale disseminated pursuant to an effective transaction reporting plan.*

(3)–(4) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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

Nasdaq proposes to modify Rule 3350(a) and Rule 4755(a)(2) to state that short sale compliance for Nasdaq securities will be based upon changes to the national best bid and offer ("NBBO") as is currently the case in the INET system, as opposed to changes in the Nasdaq best bid as is currently the case in the Nasdaq Market Center.

Background. Nasdaq states that section 10(a) of the Act gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Nasdaq notes that although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. Nasdaq states that in 1992, Nasdaq, believing that short-sale regulation was important to the orderly operation of securities markets, proposed a short sale rule for trading of Nasdaq National Market securities that incorporated the protections provided by SEC Rule 10a–1. Nasdaq notes that

on June 29, 1994, the SEC approved the NASD's short sale rule applicable to short sales in Nasdaq Global Market securities.⁵ Nasdaq states that in its January 13, 2006, order approving Nasdaq's registration as a national securities exchange, the Commission granted Nasdaq an exemption from Rule 10a–1 to permit the application of Nasdaq Rule 3350 (the "Nasdaq Rule") rather than SEC Rule 10a–1 to the trading of Nasdaq-listed securities on Nasdaq.⁶ Nasdaq notes, however, that SEC Rule 10a–1 continues to apply to the trading of securities listed on other national securities exchanges.

Nasdaq states that the Nasdaq Rule employs a "bid" test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. Nasdaq notes that, currently, its short sale rule prohibits short sales at or below the inside bid when the current inside bid is below the previous inside bid. Nasdaq notes that it calculates the inside bid from all market makers in the security and disseminates symbols to denote whether the current inside bid is an "up-bid" or a "down-bid." In addition, Nasdaq notes that to effect a "legal" short sale on a down-bid, the short sale must be executed at a price at least \$.01 above the current inside bid. Nasdaq states that the Nasdaq Rule is in effect from 9:30 a.m. until 4 p.m. each trading day. Also, Nasdaq notes that from the time the Nasdaq Rule was implemented until December of 2002, Nasdaq utilized the NBBO to calculate the bid tick used to determine short sale compliance.

Nasdaq states that in December of 2002, Nasdaq modified the method it used to calculate the last bid by having it refer to the "Nasdaq Inside" which is comprised of quotations from all participants in the Nasdaq Market Center (known then as SuperMontage), rather than referring to the NBBO.⁷ Nasdaq notes that it currently calculates and applies the Nasdaq-based bid tick indicator to all Nasdaq Market Center trades. With respect to trades executed outside Nasdaq execution systems and reported to Nasdaq, however, Nasdaq states that Nasdaq participants have been permitted to validate for short sale compliance by reference either to the NBBO-based bid tick or to the Nasdaq-based bid tick, provided that each firm

selects and applies a single bid tick indicator for all such trades executed by that firm.

Nasdaq notes that it elected to apply the Nasdaq-based bid tick because at that time the NBBO was regularly different from the best bid that was reasonably accessible to many market participants. Nasdaq states that this would occur when a market that was relatively inaccessible, such as a manual, floor-based market with no electronic linkages, submitted a bid to the network processor that became part of the NBBO. When that bid created a down arrow for the NBBO-based bid tick, Nasdaq participants would be precluded from executing short sales, absent an exemption. Nasdaq notes that this was true even where Nasdaq participants could not access the other market and even though that market did not itself impose a bid-based short sale restriction. In that case, Nasdaq states that the Nasdaq participant could not execute a short sale on Nasdaq due to the downward bid tick, nor could it execute the sale on the inaccessible market due to the absence of a linkage with that market. Nasdaq notes that at the same time, Nasdaq's execution system could be forced to halt processing while the inaccessible market set the NBBO. Nasdaq believed that this situation was inequitable and that the appropriate outcome was to establish a bid tick based upon quotes that were accessible through Nasdaq systems.

Rationale for Proposal. Nasdaq states that its rationale for using the Nasdaq-based bid tick rather than the NBBO-based bid tick for short sale compliance is less powerful today, and there are countervailing interests today that did not exist in 2002. Nasdaq states that as Nasdaq and the rest of the industry approach the implementation of Regulation NMS, the NBBO has assumed, and will continue to assume, increased importance, and participants will modify their systems to utilize the NBBO for a variety of trading, routing, and compliance purposes. Nasdaq notes that the majority of Nasdaq members are using the NBBO-based bid tick rather than the Nasdaq-based bid tick, and it is expected that more firms will do so as they program their systems to comply with Regulation NMS. Thus, Nasdaq states that to maintain its use of the Nasdaq-based bid tick would, at this point in time, fly in the face of overwhelming regulatory and industry momentum.

Nasdaq believes that due to the relative activity on Nasdaq's systems, it will be far more disruptive for Nasdaq to apply the Nasdaq-based bid tick than

⁵ Formerly referred to as "Nasdaq National Market" securities. See Securities Exchange Act Release No. 54071 (June 29, 2006); 71 FR 38922 (July 10, 2006) (approving name change).

⁶ Securities Exchange Act Release No. 53128 (January 13, 2006).

⁷ See Securities Exchange Act Release No. 46999 (December 13, 2002); 67 FR 78534 (December 24, 2002).

to apply the NBBO-based bid tick. Nasdaq states that the INET system currently uses the NBBO-based bid tick, and it accounts for approximately 32 percent of consolidated trading in Nasdaq securities, whereas the Nasdaq Market Center accounts for approximately 11 percent market share in Nasdaq securities. Therefore, Nasdaq believes it will be less disruptive to continue using the NBBO-based bid tick employed by current INET users.

In addition, Nasdaq notes that the NASD recently announced that all NASD members that execute short sales in the over-the-counter market must utilize the NBBO-based bid tick no later than November 3, 2006. Thus, Nasdaq states that since the vast majority of Nasdaq members are also NASD members that trade over-the-counter, Nasdaq members are already on notice that their systems must use the NBBO-based bid tick for short sale compliance by November 3. Nasdaq states that by moving to the NBBO-based bid tick, Nasdaq will be creating uniformity among joint NASD/Nasdaq members that trade Nasdaq securities on Nasdaq and in the over-the-counter markets. In addition, Nasdaq notes that this coincides almost exactly with the final roll-out of Nasdaq's new Single Book execution system. Nasdaq states that it would be more disruptive to require Nasdaq to continue to apply the Nasdaq-based bid tick during the roll-out of the Single Book execution system.

Nasdaq is also proposing to amend Rule 4755(a)(2) to clearly describe the test that Nasdaq's Single Book execution system will use to validate for compliance with applicable short sale rules for all securities that trade through the system. Nasdaq states that for Nasdaq-listed securities, the rule states that the system will use a bid tick based upon the NBBO. For NYSE- and Amex-listed securities, the system will use a tick based upon changes to the last sale reported pursuant to an effective transaction reporting plan for those securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 6 of the Act,⁸ in general, and with section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to 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

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2006-037 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-NASDAQ-2006-037. 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 NASD. All

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-037 and should be submitted on or before November 9, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that modification of the method used to calculate the bid tick indicator to determine the permissibility of a short sale and the clarification regarding which short sale price test Nasdaq's Single Book execution system will use to validate for compliance for short sales traded through the system are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Act,¹¹ which requires, among other things, that Nasdaq's rules be 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.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the 30th day after publication of notice thereof in the **Federal Register**. Nasdaq has confirmed to the Commission that it would be more disruptive to market participants to continue to determine the permissibility of a short sale based on the Nasdaq-based bid tick rather than on the NBBO-based bid tick following implementation of Nasdaq's Single Book execution system. In addition, Nasdaq has stated that it does not believe that firms will face compliance issues, from a systems perspective or otherwise, if Nasdaq's Single Book execution system validates for short sale compliance based on the NBBO-based bid tick rather than on the Nasdaq-based bid tick. Thus, the Commission finds good cause exists, consistent with sections 6(b)(5)

¹⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

and 19(b)(2) of the Act,¹² to approve the proposed rule change, as amended, on an accelerated basis, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change (SR-NASDAQ-2006-037) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-17441 Filed 10-18-06; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54594; File No. SR-NYSE-2006-81]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Addition of Real-Time Quotation Information to the NYSE OpenBook™ Service

October 12, 2006

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 5, 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 NYSE. The Exchange has 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 proposes to add real-time quotation information to the limit order information that it makes

available through its NYSE OpenBook™ service. The NYSE has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁵ The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 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

Currently, NYSE OpenBook™ consists of a compilation of limit order data that the Exchange makes available to market data vendors, broker-dealers, private network providers and other entities. With this proposed rule change, the Exchange proposes to add the Exchange’s quotation information to the NYSE OpenBook™ package. The Exchange’s quotes include the best bid and offer available for a security on the Exchange. That best bid and offer reflects not only the limit orders resident in OpenBook™, but interest in the trading crowd and specialists’ proprietary interest as well.

The quotation information regarding the best NYSE bid or offer is the same quotation information that the Exchange provides to the Processor under the CQ Plan for consolidation with other markets’ quotation information. That is, the Exchange is proposing to add the information that it makes available under the CQ Plan to its NYSE OpenBook™ service. The Exchange will make NYSE quotation information available through NYSE OpenBook™ in real-time and no earlier than it provides that quotation information to the Processor under the CQ Plan.

The Exchange notes that the limit order products of fully automated markets, such as NYSE Arca’s ArcaBook and Nasdaq’s TotalView, already provide users with the quotation information that those markets provide under the CQ Plan.⁶

The Exchange believes that the addition of NYSE quotation information to NYSE OpenBook™ will make NYSE OpenBook™ a more attractive product to the trading desks of broker-dealers and institutional investors.

At this time, the Exchange is not proposing to add or change any OpenBook™ fee or to revise any OpenBook™ contract because of the addition of NYSE quotation information.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,⁷ in general, and with Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

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 necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the

⁶ The Commission made minor clarifying changes to this paragraph of the purpose section. Telephone conversation between Ron Jordan, Senior Vice President, NYSE, and Rahman Harrison, Special Counsel, Division of Market Regulation, Commission on October 12, 2006.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b)(2).

¹³ 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).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

Act⁹ and Rule 19b-4(f)(6) thereunder¹⁰ because the proposal: (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 prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(b)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.¹² The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would provide market participants that use OpenBook™ with more information about the current state of the NYSE market. For this reason, the Commission designates the proposed rule change to be effective upon filing with the Commission.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

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:

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2006-81 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-2006-81. 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 the 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-2006-81 and should be submitted on or before November 9, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-17394 Filed 10-18-06; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the

¹⁴ 17 CFR 200.30-3(a)(12).

optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.125 (5 1/8) percent for the October-December quarter of FY 2007.

Janet A. Tasker,

Acting Associate Administrator for Financial Assistance.

[FR Doc. E6-17445 Filed 10-18-06; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for approval of existing information collections and revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB),
Office of Management and Budget,
Attn: Desk Officer for SSA,
Fax: 202-395-6974.

(SSA),
Social Security Administration,
DCFAM,
Attn: Reports Clearance Officer,
1333 Annex Building,
6401 Security Blvd.,
Baltimore, MD 21235,
Fax: 410-965-6400.

The information collection listed directly below has been submitted to OMB for Emergency Clearance. SSA is requesting Emergency Clearance from OMB two weeks from the date of publication of this Notice. Your

comments on the information collection are requested by that date. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410-965-0454, or by writing to the address listed above.

1. *Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 405.722, 418.1350—0960-0269.* SSA uses form HA-501 to document when applicants for Social Security benefits have their claims denied and want to request an administrative hearing to appeal SSA's decision. The scope of this form is now being expanded to include people who wish to appeal the decision that has been made regarding their obligation to pay a new Income-Related Monthly Adjustment Amount (IRMAA) for Medicare Part B, as per the requirements of the Medicare Modernization Act of 2003. Although this information will be collected by SSA, the actual hearings will take place before administrative law judges (ALJ) who are employed by the Department of Health and Human Services (HHS). The current respondents include applicants for various Social Security benefits programs who want to request a hearing

where they can appeal their denial; the new additional respondents are Medicare Part B recipients whom SSA has determined will have to pay the new Medicare Part B IRMAA and who wish to appeal this decision at a hearing before an HHS ALJ.

Type of Request: Emergency revision of an OMB-approved information collection.

Number of Respondents: 669,469.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 111,578 hours.

The information collection listed below has been submitted to OMB for clearance. Your comments on the information collection would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410-965-0454, or by writing to the address listed above.

2. *State Supplementation Provisions: Agreement; Payments—20 CFR 416.2095-416.2098, 416.2099—0960-0240.* Section 1618 of the Social Security Act contains pass-along

provisions of the Social Security amendments. These provisions require that States which supplement the Federal Supplemental Security Income (SSI) payments also pass along Federal cost-of-living increases to individuals who are eligible for State supplemental payments. If a State fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under Title XIX of the Social Security Act. In order to make sure the States are maintaining the payment levels, they submit their payment amounts to SSA. Seven of the participating States may use a total-expenditures method, in which they send their total expenditures to SSA four times per year to prove that they are maintaining the regulated cost-of-living increase. The remaining twenty three States send SSA one annual report which shows that they have maintained the cost-of-living increase as per the regulations. Respondents are State agencies administering supplemental programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30.

Estimated Annual Burden: 51 hours.

Reporting method	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden (hours)
Total Expenditures	7	4	60	28
Maintenance of Payment Levels	23	1	60	23
Total	30	.....	.....	51

Dated: October 12, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 06-8770 Filed 10-18-06; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2006-36]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain

petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 8, 2006.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2006-25985 or FAA-2006-25813 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1-800-647-5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Annette Kovite, 425-227-1262, Transport Airplane Directorate (ANM-113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98057-3356; or Frances Shaver (202-267-9681), Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is

published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on October 11, 2006.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25985.

Petitioner: Flight Structures, Inc.

Section of 14 CFR Affected: Sections 25.785(d), 25.813(b), and 25.857(e).

Description of Relief Sought:

Exemption from 14 CFR 25.785(d), 25.813(b), and 25.857(e) for the Airbus A300B4–600/–600R model airplanes to allow carriage of up to 5 non-crewmembers (commonly referred to as supernumeraries) in addition to the maximum 4 flight deck occupants for a total occupancy limit of 9.

Docket No.: FAA–2006–25813.

Petitioner: Dallas/Fort Worth International Airport.

Section of 14 CFR Affected: Section 139.311.

Description of Relief Sought:

Exemption from 14 CFR 139.311 to allow Dallas/Fort Worth International Airport to terminate the use of the airport's existing rotating beacon. Due to development efforts the airport's beacon cannot remain in its current location. The petitioner notes that advanced methods of disseminating airport information to flight crews eliminates the need to operate and maintain a rotating beacon without reducing the level of safety due to not having a beacon.

[FR Doc. 06–8756 Filed 10–18–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25504]

Agency Information Collection Activities; Request for Comments; Renewal of an Information Collection: Medical Qualification Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FMCSA invites comments on its plan to request approval from the Office of Management and Budget (OMB) to renew an information collection concerning the requirements set forth in 49 CFR parts 391 and 398 for the following activities: (1) A medical examination form and

certificate to be completed by a licensed medical examiner; (2) The submission of an application to FMCSA for the Agency to resolve conflicts of medical evaluations between medical examiners; (3) A driver qualification (DQ) file for: (a) Motor carriers to include the medical certificate; (b) motor carriers of migrant workers to include a doctor's certificate for every driver employed or used by them; and (c) motor carriers to include a Skill Performance Evaluation (SPE) certificate issued to a driver with a limb disability; and (4) Information collected from carriers, drivers and interested parties used in Agency determinations for granting exemptions from the vision and diabetes requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). This notice is required by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before December 18, 2006.

ADDRESSES: All comments should reference Docket No. FMCSA–2006–25504. You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493–2251; or submit electronically at <http://dms.dot.gov>. You may examine and copy all comments received at the above address between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. If you desire your comment to be acknowledged, you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, maggi.gunnels@dot.gov, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Medical Qualification Requirements.

OMB Control Number: 2126–0006.

Background: Title 49 U.S.C. 31136 requires the Secretary of Transportation (Secretary) to prescribe regulations to ensure that the physical qualifications of commercial motor vehicle (CMV) operators are adequate to enable them to operate CMVs safely. In addition, 49 U.S.C. 31502 authorizes the Secretary to prescribe requirements for qualifications of employees of a motor carrier when needed to promote safety of operation. Information about an individual's

physical condition must be collected in order for the FMCSA and motor carriers to verify that the individual meets the physical qualification standards for CMV drivers set forth in 49 CFR 391.41; and for the FMCSA to determine whether the individual is physically able to operate a CMV safely. This information collection is comprised of the components listed in the summary above.

Respondents: Medical Examiners, Medical Specialists, Physicians, Licensed Doctors of Medicine, Doctors of Osteopathy, Physician Assistants, Advanced Practice Nurses, Doctors of Chiropractic, motor carriers, and CMV drivers.

Estimated Average Burden Per Record: The following records are

included in the IC pertaining to the Medical Qualifications Requirements: (1) *The Medical Examination Form and Certificate*—Twenty minutes for a medical examiner to complete the medical examination form; One minute for the medical examiner to complete the medical examiner's certificate; One minute for carriers to copy and file the medical examiner's certificate in the DQ file; (2) *Data Resolving Medical Conflicts*—One hour for the Agency to review and resolve an application for resolution of medical conflict; (3) *The SPE Certificate*—Fifteen minutes for the Agency to review and complete an application for an initial SPE certificate; Two minutes for the Agency to review and complete an application for a renewal of a SPE certificate; One minute for carriers to copy and file the SPE certificate application in the DQ file; (4) *Vision Exemptions*—Sixty minutes for the Agency to review and complete an application for a vision exemption with required supporting documents, and for carriers to copy and file the documents in the DQ file; (5) *Diabetes Exemptions*—Ninety minutes for the Agency to review and complete a diabetes exemption with required documentation, and for carriers to copy and file the documents in the DQ file; and (6) *The Doctor's Certificate for Motor Carriers of Migrant Workers*—One minute for a doctor of medicine or osteopathy to complete a doctor's certificate for drivers of motor carriers of migrant workers; and for carriers to place the certificate in the DQ file for every driver employed or used by them. *Frequency of Response:* Biennially, and on occasion, more frequently for drivers who are not eligible to receive a 2-year certificate. A medical certificate usually is valid for 2 years, so FMCSA estimates that half of the drivers subject to its medical standards will take an examination each year. The remaining

medical requirements are submitted on occasion by the respondents.

Total Estimated Annual Burden: 1,186,898 hours [1,184,046 hours for medical examination form and certificate (3,229,215 certificates × 22 minutes/60 minutes per hour + 11 hours for resolution of medical conflicts (3 cases × 1 hour each to prepare, plus 8 hours for one hearing) + 92 hours for SPE certificates (2,100 certificates × 1 minute/60 minutes for motor carriers + 1,700 renewals × 2 minutes/60 minutes) + 946 hours for vision exemptions (168 new vision exemptions + 750 vision exemptions × 1 hour each + 28 hours for motor carriers to retain a copy in the driver's DQ file) + 1,800 for diabetes exemptions (1,200 exemptions × 90 minutes/60 minutes) + 3 (or 3.3 rounded) hours for doctors certificate for drivers of migrant workers (100 certificates × 2 minutes/60 minutes) = 1,186,898 hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: October 11, 2006.

John H. Hill,
Administrator.

[FR Doc. E6-17450 Filed 10-18-06; 8:45 am]
BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-25652]

Agency Information Collection Activities; Request for Comments; Notice of Intent To Survey Motor Carriers Operating Small Passenger-Transporting Commercial Motor Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FMCSA invites comments about our intention to request the Office of Management and Budget (OMB) to approve a new information

collection. The new information collection is associated with an agency study by a research contractor which will investigate motor carriers that operate small passenger-transporting commercial motor vehicles (CMVs). The collected information would assist FMCSA with outreach initiatives to these newly regulated motor carriers of passengers. This notice is required by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before December 18, 2006.

ADDRESSES: All comments should reference Docket No. FMCSA-2006-25652. You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to 202/493-2251; or submit electronically at <http://dms.dot.gov>. You may examine and copy all comments received at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you desire your comment to be acknowledged, you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Commercial Passenger Carrier Safety Division, Washington, DC 20590, phone (202) 366-5763, fax (202) 366-3621, e-mail peter.chandler@dot.gov, Office hours are from 8 a.m. to 4 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On August 12, 2003, FMCSA published a final rule (68 FR 47860) which required motor carriers operating CMVs, designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce to comply with the parts 391 through 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) when they are directly compensated for such services, and the vehicle is operated beyond a 75 air-mile radius from the driver's normal work-reporting location. Affected motor carriers were required to be in compliance with such regulations by December 10, 2003. This rule implemented section 212 of the Motor Carrier Safety Improvement Act of 1999. Section 4136 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU) directed FMCSA to remove the 75 air-mile radius standard. This legislation will result in a greater number of motor

carriers that operate small passenger-transporting CMVs, being subject to the FMCSRs. In order to effectively inform these motor carriers of the regulatory requirements that they will become subject to, and administer an effective educational outreach program to this entire industry segment, FMCSA needs information about all of these motor carriers.

Because motor carriers that operate small passenger-carrying CMVs have either been newly regulated or will be regulated in the near future, FMCSA wants to learn about the safety and/or regulatory compliance challenges of this industry segment. There is no motor carrier industry association that is comprised mostly of commercial companies that primarily operate 9-15 passenger-carrying vehicles. This situation makes obtaining information about this industry segment more difficult and necessitates the assistance of a researcher to obtain information needed by FMCSA to effectively provide outreach to these newly regulated carriers. FMCSA will request a research contractor to obtain information about motor carriers with small passenger-transporting CMV operations. The research contractor will collect information through approximately 50 telephone interviews and 8 site visits at places of business. Information obtained from the study will provide insight into the common safety and regulatory compliance challenges facing motor carriers with small passenger-transporting CMV operations. Such information will be utilized by FMCSA to develop educational outreach initiatives for this newly regulated industry segment.

Title: Survey of Motor Carriers with Small Passenger Vehicle Operations.

Type of Information Collection Request: New one-time survey/information collection.

Respondents: For-hire motor carriers that operate 9-15 passenger-carrying vehicles in interstate commerce.

Number of Respondents: 50 motor carriers.

Estimated Average Burden per Response: The estimated average burden per response for each telephone survey is 30 minutes.

Estimated Total Annual Burden: The estimated total annual burden is 25 hours for the information collection based upon an acceptable level of statistical significance and a confidence interval of 13.6 percent.

Total Annual Burden: 25 hours [(50 responses × 30 minutes per response)/60 minutes = 25 hours].

Frequency: This information collection will be a single, nonrecurring event.

Public Comments Invited

Interested parties are invited to send comments regarding any aspect of this information collection, including but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of FMCSA and specifically the regulatory oversight of small passenger-transporting commercial motor vehicle operations; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection. For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Issued on: October 12, 2006

John H. Hill,
Administrator.

[FR Doc. E6-17451 Filed 10-18-06; 8:45 am]
BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-25853]

Agency Information Collection Activities; Clearance of a New Information Collection: FMCSA COMPASS Portal Customer Satisfaction Assessment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FMCSA invites public comment on its plan to request the Office of Management and Budget's (OMB) approval for a new information collection (IC). The collection involves the assessment of FMCSA's strategic decision to integrate its Information Technology (IT) with its business processes using portal technology to consolidate its systems and databases and launch a modernization initiative to create the FMCSA COMPASS Portal. The information to be collected will be

used to assess the satisfaction of Federal, State and industry customers with the FMCSA COMPASS Portal. FMCSA is required by the Paperwork Reduction Act of 1995 to publish this notice in the **Federal Register**.

DATES: Comments must be submitted on or before December 18, 2006.

ADDRESSES: All comments should reference Docket No. FMCSA-2006-25853. You may mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590; telefax comments to (202) 493-2251; or submit electronically at <http://dms.dot.gov/submit>. You may examine and copy all comments received at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you desire your comment to be acknowledged, you must include a self-addressed stamped envelope or postcard or, if you submit your comments electronically, you may print the acknowledgment.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Coleman, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; phone: (202) 366-4440; fax: (202) 493-0679; e-mail: bill.coleman@dot.gov. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: FMCSA Portal Customer Satisfaction Assessment.

OMB Control No: 2126-xxxx.

Background

Title II, section 207 of the E-Government Act of 2002 requires Government agencies to improve the methods by which government information, including information on the Internet, is organized, preserved, and made accessible to the public. FMCSA has made a strategic decision to integrate its IT with its business processes as it consolidates its systems and databases and launches a modernization initiative called COMPASS. COMPASS is FMCSA's agency wide initiative to improve its business processes; integrate them with the Agency's information systems; and make them more seamless, secure, and supportive of the Agency's mission of saving lives in the years to come.

FMCSA's 21 information systems are currently operational. However, having this many stand-alone systems has led to data quality concerns, a need for excessive IDs and passwords, and significant operational and maintenance costs. Integrating our information

technologies with our business processes will, in turn, improve our operations considerably, particularly in terms of data quality, ease of use, and reduction of maintenance costs.

In early 2007, FMCSA will launch the first of a series of releases of new IT applications to its Federal, State, and industry customers. Over the coming years, more than 15 releases are planned, with four planned for the next 3 years. These releases will use "portal technology" to pull together numerous services and functions on a single screen and provide tailored services that seek to meet the needs of specific constituencies within our customer universe. The FMCSA COMPASS Portal will entail considerable expenditure of Federal Government dollars over the years and fundamentally impact the nature of the relationship between the Agency and its Federal, State, and industry customers. Consequently, the Agency intends to conduct regular and ongoing assessments of customer satisfaction with COMPASS.

The primary purposes of this assessment is to determine the extent to which newly released FMCSA COMPASS Portal services meet the needs of Agency customers, identify and prioritize additional modifications, and determine the extent that the Portal has affected FMCSA's relationships with its main customer groups. The assessment will address:

- Overall customer satisfaction;
- Customer satisfaction with specific items;
- Performance of contractor (for the system) against established objectives;
- Desired adjustments and modifications to systems;
- Value of investment to FMCSA and DOT;
- Features that customers like best; and
- Customer ideas for improving the site.

Respondents: Federal, State, and motor carrier industry customers/users.

Frequency: Three times per year (or every 120 days).

Estimated Average Burden per Response: 5 minutes per response.

Estimated Total Annual Burden Hours: 25,105 hours [(5 minutes to complete survey × 3 times per year/60 minutes × 140,000 annual industry respondents × .70 (70%) response rate = 24,500) × (5 minutes to complete survey × 3 times per year/60 minutes × 2,691 State government users × .90 (90%) response rate) = 25,105]

Public Comments Invited

You are asked to comment on any aspect of this information collection,

including: (1) Whether the proposed collection is necessary for FMCSA's performance including its utility in fostering assessment of the portal; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued on: October 13, 2006.

John H. Hill,

Administrator.

[FR Doc. E6-17455 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-26072]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

DATES: These decisions became effective on the dates specified in Annex A.

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

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused

admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No substantive comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that

each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable FMVSS, is either (1) Substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable FMVSS or (2) has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 13, 2006.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

Annex A—Nonconforming Motor Vehicles Decided to Be Eligible for Importation

1. Docket No. NHTSA-2006-25398

Nonconforming Vehicles: 1999-2006 Suzuki GXS1300R Motorcycles.

Substantially Similar U.S.-Certified Vehicles: 1999-2006 Suzuki GXS1300R Motorcycles.

Notice of Petition Published at: 71 FR 41067 (July 19, 2006).

Vehicle Eligibility Number: VSP-484 (effective date August 29, 2006).

2. Docket No. NHTSA-2006-25516

Nonconforming Vehicles: 1998 Bentley Azure (Left-Hand and Right-Hand Drive) Passenger Cars.

Substantially Similar U.S.-Certified Vehicles: 1998 Bentley Azure (Left-hand drive) Passenger Cars (**Note:** Manufacturer confirmed in writing that non-U.S. certified RHD vehicles are substantially similar to U.S. certified LHD model).

Notice of Petition Published at: 71 FR 45104 (August 8, 2006).

Vehicle Eligibility Number: VSP-485 (effective date September 14, 2006).

3. Docket No. NHTSA-2006-25515

Nonconforming Vehicles: 2004 Mercedes Benz Maybach Passenger Cars.

Substantially Similar U.S.-Certified Vehicles: 2004 Mercedes Benz Maybach Passenger Cars.

Notice of Petition Published at: 71 FR 45103 (August 8, 2006).

Vehicle Eligibility Number: VSP-486 (effective date September 14, 2006).

4. Docket No. NHTSA-2006-24965

Nonconforming Vehicles: 2006 Mercedes Benz Type 463 Short Wheel Base Gelaendewagen Multipurpose Passenger Vehicles Manufactured Before September 1, 2006.

Because there are no substantially similar U.S.-certified versions of the 2006 Mercedes Benz Type 463 Short Wheel Base Gelaendewagen Multipurpose Passenger Vehicles Manufactured Before September 1,

2006, the petitioner sought import eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition Published at: 71 FR 34994 (June 16, 2006).

Vehicle Eligibility Number: VCP-35 (effective date July 24, 2006).

[FR Doc. E6-17454 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-26010]

Notice of Receipt of Petition for Decision That Nonconforming 2003 and 2004 BMW 3 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 and 2004 BMW 3 Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 and 2004 BMW 3 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 20, 2006.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

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

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Sunshine Car Import ("SCI") of Ft. Myers, Florida, (Registered Importer 01-289) has petitioned NHTSA to decide whether nonconforming 2003 and 2004 BMW 3 Series passenger cars are eligible for importation into the United States. The vehicles which SCI believes are substantially similar are 2003 and 2004 BMW 3 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G. (BMW), as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S.-certified 2003 and 2004 BMW 3 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

SCI submitted information with its petition intended to demonstrate that non-U.S.-certified 2003 and 2004 BMW 3 Series passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S.-certified 2003 and 2004 BMW 3 Series passenger cars are identical to their U.S.-certified counterparts with

respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release*.

With regard to compliance with the Bumper Standard found in 49 CFR Part 581, the petitioner claims that the vehicles are equipped with bumpers and support structures identical to those used on U.S. certified models.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Inscription of the word "brake" on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with a unit reading in miles per hour; and (c) installation of U.S.-model software in the vehicle's computer system.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: installation of U.S.-model headlamps, front sidemarker lamps, and a high mounted stop lamp if not already so equipped.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component, or inscription of the required warning statement on that mirror.

Standard No. 114 *Theft Protection*: reprogramming of the vehicle to actuate the appropriate safety systems during conversion of the dash.

Standard No. 118 *Power Window Systems*: alteration of the power window system to operate the required defeat device during reprogramming of the lights and dash. The petitioner states that most vehicles have the required defeat devices as standard equipment.

Standard No. 208 *Occupant Crash Protection*: Petitioner states that the

vehicles are equipped with a seat belt warning lamp that is identical to the component installed on U.S.-certified models, but that the audible warning buzzer must be reprogrammed to meet the standard. Petitioner also states that all vehicles must be inspected and the driver's and passenger's air bags, knee bolsters, control units, sensors, and seat belts must be replaced with U.S.-model components on vehicles not already so equipped.

Petitioner states that the front and rear outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton.

Standard No. 214 Side Impact Protection: inspection of all vehicles and installation of U.S.-model door bar components on vehicles not already so equipped.

Standard No. 301 Fuel System Integrity: inspection of all vehicles and replacement of non-U.S.-model fuel system components with U.S.-model components on vehicles not already so equipped.

The petitioner states that all vehicles will be inspected for compliance with the parts marking requirements of the Theft Prevention Standard at 49 CFR Part 541, and U.S.-model antitheft devices must be installed on vehicles not already so equipped prior to importation.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565. The petitioner further states that a certification label must be affixed to the vehicle to comply with the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 13, 2006.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E6-17456 Filed 10-18-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 13, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 20, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0984.

Type of Review: Extension.

Title: Low-Income Housing Credit.

Form: 8586.

Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 90,007 hours.

OMB Number: 1545-1282.

Type of Review: Extension.

Title: Enhanced Oil Recovery Credit.

Form: 8830.

Description: The enhanced oil recovery credit is 15% of qualified costs paid or incurred during the year. The purpose is to get more oil from the wells. The IRS uses the information on the form to ensure that the credit is correctly computed.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 17,323 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622-3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395-7316.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6-17457 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-209373-81]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-209373-81 (TD 8797), Election to Amortize Start-Up Expenditures for Active Trade or Business (§ 1.195-1).

DATES: Written comments should be received on or before December 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Election to Amortize Start-Up Expenditures for Active Trade or Business.

OMB Number: 1545-1582.

Regulation Project Number: REG-209373-81.

Abstract: Section 1.195-1 of the regulation provides that start-up expenditures may, at the discretion of the taxpayer, be amortized over a period of not less than 60 months beginning with the month the active trade or business begins. Taxpayers may elect to amortize start-up expenditures by filing a statement with their tax return for the taxable year in which the trade or business begins.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 37,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 18, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 06-8758 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-120882-97 (TD 8898), Continuity of Interest (§§ 1.368-1(e)(1)(ii) and 1.368-1(e)(2)(ii)).

DATES: Written comments should be received on or before December 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Continuity of Interest.

OMB Number: 1545-1691.

Regulation Project Number: REG-120882-97.

Abstract: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of § 1.368-1T), and before the effective date of the final regulations under § 1.368-1(e) may request a private letter ruling permitting them to apply § 1.368-1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS, that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes with respect to the applicability of § 1.368-1(e) to the transaction.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This regulation is

being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 150 hours.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 26, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-17393 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI-59-91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI-59-91 (TD 8674), Debt Instructions With Original Issue Discount; Contingent Payment; Anti-Abuse Rule (§§ 1.1275-2, 1.1275-3, 1.1275-4, and 1.275-6).

DATES: Written comments should be received on or before December 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Desk Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule.

OMB Number: 1545-1450.

Regulation Project Number: FI-59-91.

Abstract: This regulation relates to the tax treatment of debt instruments that provide for one or more contingent payments. The regulation also treats a debt instrument and a related hedge as an integrated transaction. The regulation provides general rules, definitions, and reporting and recordkeeping requirements for contingent payment debt instruments and for integrated debt instruments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and state, local, or tribal governments.

Estimated Number of Respondents: 180,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 89,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 29, 2006.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E6-17395 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL-656-87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an

existing final regulation, INTL-656-87 (TD 8701), Treatment of Shareholders of Certain Passive Foreign Investment Companies (§§ 1.1291-9(d) and 1.1291-10(d)).

DATES: Written comments should be received on or before December 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622-3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

OMB Number: 1545-1507.

Regulation Project Number: INTL-656-87.

Abstract: The reporting requirements affect United States persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The requirements enable the Internal Revenue Service to identify PFICs, United States shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions, and deferred tax amounts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 131,250.

Estimated Time Per Respondent: 46 minutes.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 29, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-17398 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG-251698-96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG-251698-96 (TD 8869), Subchapter S Subsidiaries (§§ 1.1361-3, 1.1361-5, and 1.1362-8).

DATES: Written comments should be received on or before December 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue

Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Subchapter S Subsidiaries.

OMB Number: 1545-1590.

Regulation Project Number: REG-251698-96.

Abstract: This regulation relates to the treatment of corporate subsidiaries of S corporations and interprets the rules added to the Internal Revenue Code by section 1308 of the Small Business Job Protection Act of 1996. The collection of information required in the regulation is necessary for a taxpayer to obtain, retain, or terminate S corporation treatment.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 10,660.

Estimated Time per Respondent: 57 minutes.

Estimated Total Annual Reporting Burden Hours: 10,110.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 29, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-17400 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[T.D. 8418]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, T.D. 8418, Arbitrage Restrictions on Tax-exempt Bonds (§§ 1.148-1, 1.148-2, 1.148-3, 1.148-4, 1.148-5, 1.148-6, 1.148-7, 1.148-8, and 1.148-11).

DATES: Written comments should be received on or before December 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, at (202) 622-3634, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on tax-exempt Bonds.

OMB Number: 1545-1098.

Regulation Project Number: T.D. 8418.

Abstract: This regulation requires state and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Issuers are required to submit

a form with the rebate. The regulations provide for several elections, all of which must be in writing.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 3,100.

Estimated Time Per Respondent: 2 hours, 45 minutes.

Estimated Total Annual Burden Hours: 8,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 29, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-17401 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project (TD 9286)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning temporary regulations (TD 9286), Railroad Track Maintenance Credit.

DATES: Written comments should be received on or before December 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Railroad Track Maintenance Credit.

OMB Number: 1545-2031.

Regulation Project Number: TD 9286.

Abstract: This temporary regulation provides rules for claiming the railroad track maintenance credit under section 45G of the Internal Revenue Code for qualified track maintenance expenditures paid or incurred by a Class II or Class III railroad and other eligible taxpayers. The temporary regulation provides the time and manner for a taxpayer to submit certain information to claim this credit.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 550.

Estimated Time Per Respondent: 2.5 hours.

Estimated Total Annual Burden Hours: 1,375.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 29, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-17417 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE-111-80]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE-111-80 (TD 8019), Public Inspection of Exempt Organization Returns (§ 301.6104(b)-1).

DATES: Written comments should be received on or before December 18, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to R. Joseph Durbala, (202) 622-3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Public Inspection of Exempt Organization Returns.

OMB Number: 1545-0742.

Regulation Project Number: EE-111-80.

Abstract: Internal Revenue Code section 6104(b) authorizes the IRS to

make available to the public the returns required to be filed by exempt organizations. The information requested in section 301.6104(b)-1(b)(4) of this regulation is necessary in order for the IRS not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 22.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 29, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-17419 Filed 10-18-06; 8:45 am]

BILLING CODE 4830-01-P

Corrections

Federal Register

Vol. 71, No. 202

Thursday, October 19, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9274]

1545-BB16

Disclosure of Return Information by Certain Officers and Employees for Investigative Purposes

Correction

In rule document 06-6110, beginning on page 38985, in the issue of Tuesday, July 11, 2006, make the following corrections:

§ 301.6103(k)(6)-1 [Corrected]

1. On page 38988, in the first column, in § 301.6103(k)(6)-1(d), in *Example 1*, “taxpayer(s)” should read “taxpayer’s” wherever it occurs in the paragraph.

2. On the same page, in the same column, in the same section, in *Example 2*, in the sixth line, “taxpayer(s)” should read “taxpayer’s”.

3. On the same page, in the second column, in the same section, in *Example 3*, “taxpayer(s)” should read “taxpayer’s” wherever it occurs in the paragraph.

4. On the same page, in the same column, in the same section, in *Example 4*, in the eleventh line, “Corporation A(s)” should read “Corporation A’s”.

[FR Doc. C6-6110 Filed 10-18-06; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

Thursday,
October 19, 2006

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 229 and 238
Passenger Equipment Safety Standards;
Miscellaneous Amendments and
Attachment of Safety Appliances on
Passenger Equipment; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Parts 229 and 238**

[Docket No. FRA-2005-23080, Notice No. 2]

RIN 2130-AB67

Passenger Equipment Safety Standards; Miscellaneous Amendments and Attachment of Safety Appliances on Passenger Equipment**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).**ACTION:** Final rule.

SUMMARY: FRA is amending its existing regulations in an effort to address various mechanical issues relevant to the manufacture, efficient utilization, and safe operation of passenger equipment and trains that have arisen since FRA's original issuance of the Passenger Equipment Safety Standards. The miscellaneous amendments concentrate on the following five areas: Clarifying the terminology related to piston travel indicators; providing alternative design and additional inspection criteria for new passenger equipment not designed to allow inspection of the application and release of the brakes from outside the equipment; permitting some latitude in the use of passenger equipment with redundant air compressors when a limited number of the compressors become inoperative; recognizing current locomotive manufacturing techniques by permitting an alternative pneumatic pressure test for main reservoirs; and adding provisions to ensure the proper securement of unattended equipment. FRA is also clarifying the existing regulatory requirements related to the attachment of safety appliances and is mandating an identification and inspection protocol to address passenger equipment containing welded safety appliances or welded safety appliance brackets or supports. Finally, FRA is amending the regulations to permit railroads the ability to apply out-of-service credit to certain periodic maintenance requirements related to passenger equipment.

DATES: *Effective Date:* December 18, 2006. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 18, 2006.

ADDRESSES: *Petitions:* Any petitions for reconsideration related to Docket No. FRA-2005-23080, 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 20590-0001.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number 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: George Scerbo, Office of Safety Assurance and Compliance, Motive Power & Equipment Division, RRS-14, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202-493-6247), or Thomas J. Herrmann, Deputy Assistant Chief Counsel, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202-493-6036).

SUPPLEMENTARY INFORMATION:**I. Statutory Background**

In September of 1994, the Secretary of Transportation convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November of 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment regulations and

included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Public Law Number 103-440, 108 Stat. 4619, 4623-4624 (November 2, 1994). Section 215 of the Act, as now codified at 49 U.S.C. 20133, provides as follows:

(a) **MINIMUM STANDARDS.**—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—

- (1) the crashworthiness of the cars;
- (2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;
- (3) maintenance and inspection of the cars;
- (4) emergency response procedures and equipment; and
- (5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.

The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking document the basis for making such standards applicable to existing cars.

(b) **INITIAL AND FINAL REGULATIONS.**—(1) The Secretary shall prescribe initial regulations under subsection (a) within 3 years after the date of enactment of the Federal Railroad Safety Authorization Act of 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.

(2) The Secretary shall prescribe final regulations under subsection (a) within 5 years after such date of enactment.

(c) **PERSONNEL.**—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.

(d) **CONSULTATION.**—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. See 49 CFR 1.49(m).

II. Proceedings to Date

On June 17, 1996, FRA published an advanced notice of proposed rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger

equipment. See 61 FR 30672. The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various passenger safety topics. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Working Group, FRA published a Notice of Proposed Rulemaking (NPRM) on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment. See 62 FR 49728. In addition to requesting written comment on the NPRM, FRA also solicited oral comment at a public hearing held on November 21, 1997. FRA considered the comments received on the NPRM and prepared a final rule establishing safety standards for passenger equipment, which was published on May 12, 1999. See 64 FR 25540.

After publication of the final rule, interested parties filed petitions seeking FRA's reconsideration of some of the requirements contained in the final rule. These petitions generally related to the following subject areas: structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. On July 3, 2000, FRA issued a response to the petitions for reconsideration relating to the inspection, testing, and maintenance of passenger equipment, and the movement of defective passenger equipment, and other miscellaneous mechanical-related provisions contained in the final rule. See 65 FR 41284. On April 23, 2002 and June 25, 2002, FRA published two additional responses to the petitions for reconsideration addressing the remaining issues raised in the petitions. See 67 FR 19970, and 67 FR 42892.

Subsequent to the issuance of these responses, FRA and interested industry members began identifying various issues related to the new passenger equipment safety standards with the intent that FRA would address the issues through FRA's Railroad Safety Advisory Committee (RSAC). On May 20, 2003, FRA presented, and the RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions useful to advance the safety of rail passenger service. The RSAC established the Passenger Equipment Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Due to the variety of issues involved the Working Group established a number of smaller task forces, with specific expertise, to

develop recommendations on various subject-specific issues. One of these task forces, the Mechanical Issues Task Force (Task Force), was assigned the job of identifying and developing issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment.

The Task Force met several times between 2003 and late-2005 in order to develop detailed recommendations to the full Working Group. The Task Force recommendations became the recommendations of the Working Group and the full RSAC. The RSAC did not make any recommendations regarding the proposed provisions related to the attachment of safety appliances on passenger equipment and the proposed provision involving out-of-service credit. At the October 26–27, 2004 meeting of the full Working Group, FRA withdrew the task related to the consideration of handling the attachment of safety appliances on passenger equipment from the RSAC. FRA determined that consensus on this issue could not be reached in the RSAC process and determined that it would have to proceed with these issues on its own. Therefore, FRA developed the proposed provisions related to the attachment of safety appliances unilaterally based on its own expertise in the area and based on discussions and information developed by the Working Group and Task Force. FRA also did not seek consensus in the RSAC process for the proposed provision related to out-of-service credit. This issue was addressed on FRA's own accord in response to the American Public Transportation Association's (APTA) petition for rulemaking dated March 28, 2005. Thus, FRA did not seek RSAC consensus on these issues. FRA reviewed and adopted the recommendations of the full RSAC and issued a Notice of Proposed Rulemaking (NPRM) on December 8, 2005. See 70 FR 73070.

The comment period for the above noted NPRM closed on February 17, 2006. FRA received comments from two parties, the Brotherhood of Railway Carmen and APTA. The comments of these two parties were concentrated almost exclusively on the proposed provisions related to the attachment of safety appliances on passenger equipment. As the involved provisions were not developed through the RSAC process and the comments on those provisions could not be discussed with the members of the Working Group or Task Force and because FRA received

no significant comments on any of the RSAC developed provisions proposed in the NPRM, FRA determined that there was no need to hold any further RSAC meetings related to this proceeding.

Moreover, because this final rule retains all of the RSAC-recommended provisions proposed in the NPRM without change, there was no need to seek the full RSAC's approval of this final rule. Consequently, FRA proceeded to draft this final rule without further input from the RSAC.

III. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations 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)
- 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)

United Transportation Union (UTU)

*Indicates associate membership.

When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, the 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 RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played 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. If the working group or the RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

On May 20, 2003, FRA presented, and the RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions useful to advance the safety of rail passenger service. The Working Group was established to handle this task and develop recommendations for the full RSAC to consider. Members of

the Working Group, in addition to FRA, included the following:

AAR, including members from BNSF Railway Company (BNSF), CSX Transportation, Incorporated (CSX), and Union Pacific Railroad Company (UP); APTA, including members from Illinois Commuter Rail Corporation (METRA), Long Island Rail Road (LIRR), Metro-North Railroad (MNR), Southeastern Pennsylvania Transportation Authority (SEPTA), Southern California Regional Rail Authority (SCRRA), Saint Gobian Sully NA, LDK Engineering, and Herzog Transit Services, Incorporated; Amtrak; AAPRCO; AASHTO; BLET; BRS; HSGTA; IBEW; NARP; RSI; SMWIA; STA; TCIU/BRC; TWU; and UTU.

The NTSB met with the Working Group and provided staff advisors when possible. In addition, staff from the U.S. DOT Volpe National Transportation Systems Center (Volpe) attended many of the meetings and contributed to the technical discussions. Due to the variety of issues involved, the Working Group established a number of smaller task forces, with specific expertise, to develop recommendations on various subject-specific issues. Members of the task forces included various representatives from various organizations that were part of the larger Working Group. One of these task forces, the Mechanical Issues Task Force (Task Force), was assigned the job of identifying and developing issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment. Please refer to the preceding discussion in this document as well as the NPRM's preamble discussion for a complete overview of this proceeding both before and after the issuance of the NPRM. See Discussion in Paragraph II—Proceedings to Date; and 70 FR 73070 through 73071.

Throughout the preamble discussion of this final rule, FRA refers to comments, views, suggestions, or recommendations made by members of the Working Group or related Task Force. When using this terminology, FRA is referring to views, statements, discussions or positions identified or contained in either the minutes of the Working Group or Task Force meetings that were conducted during the development of the NPRM issued in this proceeding. These documents have been made part of the docket in this proceeding and are available for public inspection as discussed in the preceding ADDRESSES portion of this document. These points are discussed to show the origin of certain issues and the course

of discussions on those issues at the task force or working group level. We believe this helps illuminate factors FRA has weighed in making its regulatory decisions, and the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA acted in developing the NPRM and this final rule.

IV. Technical Background

A. Redundancy of Air Compressors

MU passenger locomotives are generally operated as married pairs, but in some cases they can be operated as single or triple units. In the case of the married pairs, each pair of MU locomotives share a single air compressor. When operated in triple units, the three MU locomotives generally share two air compressors, and single-unit MU locomotives are equipped with their own air compressor. The amount of air required to be produced by the air compressors is based on the size of the brake pipe and the brake cylinder reservoirs, the size of which is based on the calculated number of brake application-and-release cycles the train will encounter. In addition, the compressed air produced by the air compressors is shared within the consist either by utilizing a main reservoir equalizing pipe or, in single pipe systems, by utilizing the brake pipe which is then diverted to the brake cylinder supply reservoir and other air-operated devices by use of a governor arrangement. Therefore, a passenger train set consisting of numerous MU locomotives will have multiple air compressors providing the train consist with the necessary compressed air. FRA agrees with the determinations of the Task Force that a loss of compressed air from a limited number of air compressors in such a train will not adversely effect the operation of the train's brakes or other air-operated components on the train.

Representatives of railroads and air brake manufacturers provided information demonstrating that the safety of a train set is not compromised when a predetermined number of inoperative air compressors are allowed to continue to operate in service on a MU train set. On such train sets, the air compressors are applied by technical specification to a certain number of cars such as one per married pair, two per triplet, and so on. The technical specifications for these air compressors generally allow for a duty cycle (percentage of operating capacity) for

each air compressor that is something less than 50 percent. In fact, some technical specifications limit the air compressor duty cycle to 33 percent. This means that on MU train sets the available air compressors are required to operate at only 33 to 50 percent of their operational capacity. One of the major reasons for imposing these low duty cycles is to ensure that adequate air pressure is available if one or more of the other air compressors in the train set is not operating properly. Thus, these systems are currently designed to function properly even in the event that a limited number of air compressors become inoperative while the train is in service. Moreover, even in the unlikely event that an MU passenger train set would lose all of its air compressors, then the air brakes would apply and would remain applied until sufficient compressed air is restored to the system. Consequently, FRA does not see any adverse impact on the operational safety of these types of trains if they are permitted to operate for a relatively short period of time with a limited number of air compressors being inoperative or ineffective.

FRA did not receive any comments on the proposed provisions related to this issue. Thus, the final rule retains the proposed provisions without change and permits MU train sets with a limited number of inoperative or ineffective air compressors to continue to be used in passenger service until the next exterior calendar day mechanical inspection when found at such an inspection. The final rule requires a railroad to determine through data, analysis, or actual testing the number of inoperative or ineffective air compressors that could be in an MU train set without compromising the integrity or safety of the train set based on the size and type of train and the train's operating profile. The railroad is required to submit the maximum number of air compressors permitted to be inoperative or ineffective on its various trains to FRA before it can begin operation under the final rule provision and is required to retain and make available to FRA any data or analysis relied on to make those determinations. The final rule also requires a qualified maintenance person (QMP) to verify the safety and integrity of any train operating with inoperative or ineffective air compressors before the equipment continues in passenger service. In addition, the final rule retains the proposal provision requiring notification to the train crew of any inoperative or ineffective air compressors and requires that a record

be maintained of the defective condition. FRA believes these provision will ensure the safety of passenger operations while providing the railroads additional flexibility in handling defective or inoperative equipment.

B. Pneumatic Testing of Locomotive Main Reservoirs

The current regulations contained at 49 CFR 229.31(a) relating to main reservoir tests requires that a hydrostatic (water) test of a main reservoir be conducted before it is originally placed in service or before an existing main reservoir is placed back in service after being drilled as provided for in § 229.31(c). At the Working Group and Task Force meetings, the manufacturers of main reservoirs requested the ability to conduct a pneumatic (air) test of the reservoirs in lieu of the currently required hydrostatic test. The request was limited to providing relief only for those tests required before a main reservoir is originally placed in service and after an existing main reservoir is drilled.

The companies that manufacture reservoirs for the rail industry, whether the reservoir is utilized as a main reservoir or reservoir(s) utilized for other purposes, must have an American Society of Mechanical Engineers (ASME) certification. The reservoirs, both main and other, manufactured by these companies are designed and certified to meet the requirements of the ASME Boiler and Pressure Vessel Code. In addition, reservoirs utilized as main reservoirs on locomotives are also manufactured and certified to meet the requirements for such contained in part 229 of the Federal regulations. Currently, all passenger car reservoirs are pneumatically tested after fabrication and before the application of an interior protective coating. This process is utilized so that reservoirs may be repaired if the reservoir does not pass the initial test requirements. If the interior protective coating is applied prior to testing, any weld repairs cannot be performed, as the interior coating would be damaged.

The rationale for originally requiring that the main reservoirs be tested hydrostatically was based on the safety concerns should a main reservoir catastrophically fail during the testing. The likelihood of injury is minimized by having the reservoir filled with a liquid rather than air. However, since the original drafting of the locomotive regulations, manufacturers of reservoirs have implemented and developed both equipment and procedures to ensure that test personnel are adequately shielded when conducting the testing.

The manufacturers have been performing pneumatic testing on reservoir for years and FRA is not aware of any injury related to such testing in manufacturer-controlled facilities. Thus, the safety concerns originally attached to pneumatic testing have been minimized, if not eliminated, when conducted at properly equipped manufacturer facilities.

The ASME code currently utilized by all manufacturers of main reservoirs allows for the pneumatic testing of the reservoirs when the introduction of liquid cannot be tolerated. The introduction of water to perform hydrostatic testing on main reservoirs creates a problem because, if the liquid is not completely removed and the reservoir interior completely dried, the moisture results in poor adhesion or a lower coating of film than required. This condition has the potential of causing interior corrosion and premature failure of the reservoir. Thus, rather than creating this potential, FRA believes that it would be both safer and more efficient to permit the manufacturers of main reservoirs to utilize pneumatic testing to meet the requirements contained in 49 CFR 229.31. FRA received no comments objecting to the flexibility proposed in the NPRM or suggesting additional restrictions or requirements. Consequently, this final rule retains the proposed amendments to the regulation without change to permit pneumatic testing of newly manufactured main reservoirs and reservoirs that are newly drilled and tested at a manufacturer's facility.

It should be noted that the final rule retains the proposed restriction that limits the ability to conduct pneumatic testing of the main reservoirs at only those facilities with appropriate safeguards in place to ensure the safety of the personnel conducting the testing. After a reservoir is installed on a locomotive, FRA continues to believe that hydrostatic testing would be the only testing method that adequately ensures the safety and protection of the personnel that are performing the test or working near the installed reservoir. Regulatory language inserted at the end of paragraph (c) of § 229.31 makes clear that pneumatic testing of a reservoir currently in use and newly drilled may only be conducted by a manufacturer of main reservoirs in a safe environment. In other circumstances, the final rule makes clear that a hydrostatic test of the reservoir must be conducted.

C. Design of New Passenger Equipment

The manufacturers and railroad representatives on the Working Group and Task Force sought clarification of

the provision originally contained in 49 CFR 238.231(b). This section requires the brake systems on equipment ordered on or after September 8, 2000, or placed in service on or after September 9, 2002, to be designed so as not to require an inspector to go on, under, or between the equipment to observe the brake actuation or release. At the Task Force meetings and in the NPRM, FRA made clear that the requirement was intended to be a design standard and was not intended to prohibit or limit the conduct of brake or mechanical inspections required to be conducted in part 238. See 70 FR 73074. FRA realizes that in order to perform many of the brake and mechanical inspections required by the regulations an inspector will have to go on, under, or between the equipment. FRA has acknowledged this practice and railroads have effectively conducted these types of inspections in this manner for decades.

The plain language of existing § 238.231(b) requires new equipment to be designed to allow direct observation of the brake actuation and release without fouling the equipment. The preamble to the original final rule discusses alternative design approaches using some type of piston travel indicator or piston cylinder pressure indicator on equipment whose design makes it impossible to meet this requirement. See 64 FR 25612 (May 12, 1999). FRA's intent was that this piston travel indicator could be a device similar to the definition of "actuator" contained in § 238.5 or some sort of piston cylinder pressure indicator. The rule text and related preamble make clear that the actuation and release of the brake (or a direct indication of such) be able to be observed without an inspector going on, under, or between the equipment. FRA does not believe that truck pressure indicators (which provide no information on piston travel or piston cylinder pressure) meet this requirement. FRA recognized that the envisioned "indicators" discussed in the preamble to § 238.231(b) may be ahead of the technological curve for passenger equipment currently being delivered and that which may be delivered in the future. Thus, FRA noted its willingness to discuss additional inspection protocols in lieu of applying piston travel indicators on such equipment.

During the development of the NPRM, the Task Force discussed the issue in detail as a number of railroads were in the process of receiving new equipment, such as bi-level coaches and other low-slung equipment, the design of which does not allow observation of the brake actuation and release of the brake

without going on, under, or between the equipment. Several railroads and manufacturers noted that the type of piston travel indicators envisioned by FRA to meet the § 238.231(b) requirement were not currently available, and even if they could be developed in the future, they would likely be a maintenance problem and unreliable. Representatives of rail labor also questioned the viability and need for the type of piston travel indicators discussed in the preamble to the original final rule. These participants did not believe that any type of mechanical indicator should take the place of direct visual inspection of the brake system components. Consequently, the members of the Task Force believed that the best approach to the issue was to provide additional inspection protocols for new equipment that are designed in a manner that makes observation of the actuation and release of the brakes impossible from outside the plane of the equipment rather than mandating the use of untested and potentially unreliable piston travel indicators.

FRA and the Task Force believe that the brake system and mechanical components on bi-level and other low-slung passenger equipment can be adequately inspected through the daily brake and mechanical inspections currently required in the Federal regulations; provided, appropriate blue signal protections are established for the personnel required to perform such inspections. These daily inspections permit a visual inspection of a large percentage of the brake and mechanical components and over a period of a few days all portions of the brake system and mechanical components will be visually observed. However, because the necessary design of some new equipment makes the daily inspections of the equipment more difficult, does not permit visual observation of the brake actuation and release from outside the plane of the vehicle, and because no reliable mechanical device is currently available to provide a direct indication of such, FRA and the Task Force believed it was necessary to adopt additional inspection protocols for this type of equipment. Thus, the NPRM proposed an additional inspection regimen for newer equipment designed in such a manner.

The requirements proposed in the NPRM that were related to this type of equipment were similar to those contained in a FRA Safety Board letter dated October 19, 2004, granting that portion of the Massachusetts Bay Transportation Authority's (MBTA) waiver petition seeking relief from the

requirements of § 238.231(b) for 28 Kawasaki bi-level coaches. See Docket Number FRA-2004-18063. FRA did not receive any comments directly related to the proposed inspection protocols or the proposed approach to this issue. Thus, this final rule retains the proposed provisions with slight changes for purposes of clarity.

The inspection protocols retained in this final rule will be applicable to equipment placed in service on or after September 9, 2002, the design of which does not permit actual visual observation of the brake actuation and release. The final rule provisions will require such equipment to be equipped with either piston travel indicators or brake indicators as defined in § 238.5. The equipment is also required to receive a periodic brake inspection by a QMP at intervals not to exceed five in-service days and the inspection must be performed while the equipment is over an inspection pit or on a raised track. In addition, the railroad performing the additional inspection is required to maintain a record of the inspection consistent with the existing record requirements related to Class I brake tests. FRA believes that these additional inspection requirements will ensure the safety and proper operation of the brake system on equipment which does not permit actual visual observation of the brake actuation and release without fouling the vehicle.

FRA received one suggestion from APTA regarding the identification of cars that will be covered by the provisions added in these sections. APTA wanted to make clear that the railroad and car manufacturer would make an initial determination regarding the applicability of the requirements contained in this section and that FRA would oversee these determinations for accuracy. FRA agrees with this position as the railroad and car manufacturer are in the best position to make an initial determination. FRA will exercise its oversight when conducting sample car inspections as well as its regular inspection activity. FRA notes that the additional inspection requirements would be applicable to new cars constructed similar to the low-slung bi-level passenger coaches that were the subject of MBTA's waiver request discussed above.

D. Safety Appliances

Several issues regarding the attachment of safety appliances on passenger equipment have arisen over the last decade. These issues generally involve the method by which safety appliances on existing passenger equipment are required to be attached,

either directly to the car or locomotive body or by use of a bracket or support. It has come to FRA's attention, due to the investigation of these issues, that a significant number of existing passenger cars and locomotives contain some safety appliances that are attached to the equipment by some form of welding, typically the welding of a bracket or plate to which the safety appliance is then mechanically fastened. In the last two decades, manufacturers of certain passenger equipment have used welding on some of the safety appliance arrangements of newly built equipment. Some segments of the passenger industry believe welding of these arrangements is acceptable and have sought a review of FRA's historical prohibition on the welding of safety appliance arrangements. These parties believe that new and improved welding technology, the implementation of new tracking standards, proper quality control, and historical documentation support the limited use of welding on certain safety appliance arrangements.

Historically, FRA has required that safety appliances be mechanically fastened to the car structure. FRA has also historically required that any brackets or supports applied to a car structure solely for the purpose of securing a safety appliance must be mechanically fastened to the car body. See MP&E Technical Bulletin 98-14 (June 15, 1998). FRA's prohibition on the weldment of safety appliances and their supports is based on its longstanding administrative interpretation of the regulatory "manner of application" provisions contained in 49 CFR part 231 which require that safety appliances be "securely fastened" with a specified mechanical fastener. See *e.g.*, 49 CFR §§ 231.12(c)(4); 231.13(b)(4); 231.14(b)(4) and (f)(4)). FRA's historical prohibition on the welding of safety appliances is based on its belief that welds are not uniform, are subject to failure, and are very difficult to inspect to determine if the weld is broken or cracked. Mechanical fasteners, by contrast, are generally easier to inspect and tend to become noticeably loose prior to failure. FRA notes that many of its historical beliefs related to the welded attachment of safety appliance brackets and supports on passenger equipment are based on welding technologies that were in their infancy when first being utilized. In addition, many of FRA's concerns in this area are mitigated when appropriate welding standards covering quality control, initial manufacture, repair, and welder qualifications are established and implemented.

Generally, FRA's longstanding interpretation of the regulation prohibiting the welding of safety appliances has not been seriously questioned or opposed since its inception. Virtually all freight railcars manufactured for use in the United States and passenger cars manufactured in the United States have their safety appliances and their safety appliance brackets and supports mechanically fastened to the car body, unless a specific exception has been provided by FRA or the regulations. FRA acknowledges that it has permitted limited welding of certain safety appliances or their brackets and supports on locomotives and tanks cars. See MP&E Technical Bulletins 98-48 and 00-06 (June 15, 1998 and August 7, 2000, respectively). These exceptions were provided because there were no other alternative methods available for mechanically fastening these safety appliance arrangements.

Currently, freight railroad equipment complies with the existing regulations and FRA's interpretation of those provisions. Traditionally, FRA has not permitted welding of safety appliance arrangements on freight equipment. In addition, the AAR does not permit the welding of safety appliance arrangements. FRA continues to believe that, except in limited circumstances, the safety appliances on freight equipment should not be attached with welding under any condition. This is primarily due to the extreme differences in use and inspection between passenger and freight equipment. See 70 FR 73076. Thus, FRA does not intend to permit welded safety appliances or their attachment in that segment of the industry. Consequently, FRA is limiting any relief being provided in this final rule to safety appliance arrangements on passenger equipment.

Although FRA has remained consistent in its prohibition on the weldment of safety appliances and their supports, a significant amount of passenger equipment has been manufactured and used in revenue service for a number of years with safety appliances being attached to the car body using some form of welding. Currently, FRA is aware of approximately 3,000 passenger cars or locomotives that have safety appliances or safety appliance brackets or supports welded to the body of the equipment. Some units of this equipment were introduced into service within the last few years; others have been in service for more than a decade. Some of the 3,000 units noted above have been the subject of formal waiver requests pursuant to the provisions contained in

49 CFR Part 211. See Docket Numbers FRA-2000-8588 and FRA-2000-8044.

In an effort to fully develop the issues relating to the welding of safety appliances on existing passenger equipment, FRA conducted an informal safety inquiry and subsequently submitted the issue to RSAC in this proceeding. On June 17, 2003, an informal safety inquiry was held in Washington, DC, where all interested parties were permitted to express their concerns relating to FRA's longstanding interpretation prohibiting welded of safety appliance arrangements. Representatives from APTA, AAR, consultants, manufacturers, and union representatives gave presentations or provided comments expressing their points of interests or concerns. FRA also referred the issue to the RSAC process in this proceeding, which in turn assigned the issue to the mechanical Task Force, to aid in developing and determining if there is a practical application where welding may be suitable and to consider methods by which FRA could revise or clarify its position for future guidance and regulatory standards. Although the Task Force engaged in productive discussions and developed considerable information relating to the issue, the Task Force could not reach a consensus on any recommendation. Consequently, on October 27, 2004, FRA withdrew the task related to the consideration of handling the attachment of safety appliances on passenger equipment from the RSAC and decided to proceed with the development of a regulatory proposal unilaterally.

At the safety inquiry and the discussions within the Task Force, ATPA and its primary members all indicated that FRA needs to provide clarity and guidance to the industry relating to passenger car safety appliance arrangements, particularly in the area of attaching brackets and supports. FRA considered issues ranging from the initial manufacturing stage to the actual expected life cycle of a weld and the environment in which the equipment operates. FRA acknowledges that freight and passenger operations involve significantly different environments from a safety appliance standpoint, and likely justifies an allowance for welded safety appliance brackets and supports and in other instances where the design of a vehicle necessitates such use. In most cases, passenger equipment is inspected on a more regular basis, generally used in captive type service, and experiences far less coupling and uncoupling associated with switching moves inherent in freight operations. FRA also

recognizes that it would be extremely costly to the passenger industry to require existing equipment to be retrofitted with new safety appliances when the existing welded attachments have not shown a proclivity for failure at this time.

Based on the information and views provided at both the informal safety inquiry and through the RSAC, FRA proposed provisions in the NPRM to clarify FRA's existing interpretations of the safety appliance regulations and to provide the passenger rail industry some latitude for existing passenger equipment with welded safety appliance brackets or supports in lieu of retrofitting nearly one-third of the fleet. The NPRM proposed a detailed inspection and repair program for existing passenger equipment with welded safety appliances or welded safety appliance brackets or supports. The NPRM also sought comments and information from interested parties on a variety of questions and concerns relating to both the proposed provisions and the general use of welding as a means of attaching safety appliance brackets and supports. *See* 70 FR 73077. The NPRM indicated FRA's willingness to consider certain welded safety appliance brackets and supports to be part of a car's body if viable and enforceable specifications could be developed that would ensure the safe and reliable attachment of such brackets and supports.

FRA received comments from two parties regarding the proposed provisions and in response to the questions presented. BRC submitted comments requesting that FRA continue its prohibition on welding of safety appliances and require that safety appliances be mechanically fastened. BRC indicated that this approach would be consistent with FRA's historical application of the regulations. BRC stated that it was not convinced that welding was an effective manner of securement due to vibration and flex occurring on equipment while in transit. BRC provided several historical examples of instances when FRA took exception to certain welded safety appliances. FRA notes that the examples cited by BRC involved either instances of direct welding of the safety appliances to a car body, welding of safety appliances on freight equipment, or welding not conducted in accordance with any acceptable welding standard. BRC requested that if any change were made to the existing welding prohibition that they only be considered after the initiation and implementation of strict safety procedures covering the inspection, and repair of such welds as

well as the qualifications and training of the individuals responsible for inspecting and welding such appliances.

APTA's comments focused almost exclusively on the proposed provisions related to the welding of safety appliance brackets and supports. In response to questions asked in the NPRM, APTA provided detailed specifications for use by FRA for determining when a welded safety appliance bracket or support could be considered part of the car's body. These specifications included the strength, size, attachment, design criteria, and quality control procedures that any welded attachment would be required to meet. APTA comments fully discussed the implications and basis for its recommended specifications. APTA seeks to have these welding specifications applied to both new and existing equipment. APTA also sought to have the definition of what constitutes a defective weld clarified. APTA asserts that only a crack in a weld should be considered a defect and that anomalies in welds should not be considered. APTA contends that, if an anomaly is significant, it will eventually lead to a crack in the weld.

APTA again noted that it believes both FRA and BRC are operating under two serious misconceptions relating to welding. The first is that the failure mode of welds used to attach a safety appliance and their related brackets or supports is difficult to detect. APTA asserts that failure of these welds is rare and even if there is a failure it will start with a small crack that grows very slowly. In the unlikely event that a crack were to even develop, it would take months or years for failure of the weld to occur. These cracks would be easy to detect with the visual inspections performed on safety appliances by railroads on a daily basis. The second misconception is that weld will have a higher failure rate toward the end of the life cycle of a piece of equipment. APTA asserts that older welds do not fail at any higher rate than newer welds. The endurance limits designed into these welds are so high that the welds will not fatigue over time regardless of number of stress cycles that occur. Because of this, there is no data available to FRA that show a higher failure rate due to the age of the weld. APTA also stressed that it was not advocating welding a safety appliance directly to a car body except in the limited circumstances identified in the NPRM when the design of the equipment makes it impossible to mechanically fasten the safety appliance.

Based on consideration of these comments as well as previous information provided to FRA, the final rule is modifying some of the provisions proposed in the NPRM related to the attachment of safety appliances on passenger equipment. The final rule retains many of the provisions proposed in the NPRM but is being expanded to adopt APTA's recommendations for determining when a welded safety appliance bracket or support will be considered part of the car body and the definition of a defective weld. FRA believes that welding technologies have improved significantly over the last several decades. In addition, passenger operations provide a unique environment suitable to the use of welding as a means of attachment in certain situations. Moreover, FRA believes that APTA has provided a viable and enforceable specification for ensuring that welded safety appliance brackets and supports are securely, safely, and reliably attached to the equipment on which it is placed. Volpe reviewed the welding specifications at FRA's request and confirmed that safety appliance brackets or supports welded to the car body in accordance with the standards recommended by APTA would be at least as secure and reliable as a bracket or support attached with a mechanical fastener. FRA further believes that BRC's concerns are addressed by the final rule provisions because the final rule will only consider welded safety appliance brackets or supports to be part of the car body if stringent and verifiable standards are utilized when making the welded connection. In addition, the final rule will allow existing equipment with welded brackets or supports to continue in service only if it is inspected and repaired in accordance with the strict inspection and repair provisions contained in the rule. Consequently, FRA is including APTA's recommended specifications related to welded safety appliance brackets and supports in this final rule with slight modification for clarity and enforceability.

The final rule also retains the proposed provisions providing the industry with the ability to develop standards relating to the safety appliance arrangements on new cars of special construction. FRA did not receive any comments on the proposed provisions and is retaining them in this final rule without change. Throughout the Railroad Safety Appliance Standards, currently contained in 49 CFR part 231; specifically, § 231.12—Passenger-train cars with wide vestibules; § 231.13—Passenger-train

cars with open-end platforms; § 231.14—Passenger-train cars without end platforms; and § 231.23—Unidirectional passenger-train cars adaptable to van-type semi-trailer use, there may be inconsistencies and/or opportunities for clarification in the construction of newly built passenger equipment. Many times, it is necessary to reference two or more sections of 49 CFR part 231 to determine if a newly constructed passenger vehicle meets the minimum requirements of the Federal regulations. However, criteria for most of today's new types of passenger car construction are found within 49 CFR 231.18—Cars of special construction. This results from the fact that modern technology in construction of car-building often does not lend itself to ready application of the current 49 CFR 231 requirements. Rather, the designer must adapt several different requirements to meet as closely as possible construction of specific safety appliance arrangements in order to obtain compliance.

Most passenger cars today are constructed outside the United States, and this has exacerbated the problem of varying interpretations of regulations and resulting safety appliance arrangements. At times, different requirements are applied to cars of similar design where both could have been constructed in the same manner. Substantial resources are spent on a regular basis by all parties concerned in review sessions to determine if a car is in compliance prior to construction; and even when the cars are delivered, problems have arisen.

In an attempt to limit these problems, the final rule contains a method by which the industry may request approval of safety appliance arrangements on new equipment considered to be cars of special construction under 49 CFR part 231. The final rule will permit the industry to develop standards to address many of the new types of passenger equipment introduced into service. The final rule requires any such standards, and supporting documentation to be submitted to FRA for agency approval pursuant to the special approval process already contained in the regulation. The final rule makes clear that any approved standard will be enforceable against any person who violates or causes the violation of the approved standards and that the penalty schedule contained in Appendix A to 49 CFR part 231 will be used as guidance in assessing any applicable civil penalty. The goal of the regulation is to develop consistent safety appliance standards for each new type of passenger car not currently

identified in the Federal regulations that ensures the construction of suitable safety appliance arrangements in compliance with 49 CFR part 231. FRA believes the final rule will reduce or eliminate reliance upon criteria for cars of special construction, will improve communication of safety appliance requirements to the industry, and will facilitate regulatory compliance where clarification or guidance is necessary.

Portions of the final rule relating to new passenger equipment are already progressing. By letter dated September 2, 2005, FRA requested APTA to determine if it is feasible to form a group to specifically develop potential safety appliance standards for newly manufactured passenger equipment and provide guidance where existing Federal regulations are not specific to the design of a passenger car or locomotive. On October 11, 2005, APTA informed FRA that it is willing to undertake this effort and began conducting meetings in early 2006. FRA believes this approach provides an excellent avenue to take advantage of the knowledge and expertise possessed by rail operators and equipment manufacturers when considering safety appliance arrangements on new passenger equipment of unique design. Under the provisions retained in this final rule, the standards and guidance developed by this group will need to be submitted to and approved by FRA pursuant to the special approval provisions contained at § 238.21.

E. Securement of Unattended Equipment

The NPRM proposed various provisions related to the securement of unattended equipment. FRA did not receive any comments on the proposed provisions other than APTA's concurrence that the proposal appropriately captures existing practices of passenger railroads. Thus, this final rule retains the proposed provisions without change. FRA believes that the rational for addressing these issues on freight operations is equally applicable to passenger operations. The preamble to the final rule related to 49 CFR part 232 contains an in-depth discussion of the need to address these issues. See 66 FR 4156–4158 (January 17, 2001). The approach proposed in the NPRM and retained in this final rule is also consistent with the guidance contained in FRA Safety Advisory 97–1. See 62 FR 49046 (September 15, 1997). Further, FRA is aware of several incidents on passenger and commuter operation involving the running away or inadvertent movement of unattended equipment.

As passenger train consists are much shorter and do not possess the tonnage associated with freight trains, the final rule modifies the provisions contained in 49 CFR part 232 to make them more readily applicable to passenger operations. The requirements contained in this final rule are consistent with and based directly on current passenger industry practice. Thus, in FRA's view, they will have no economic or operational impact on passenger operations but will ensure that these best practices currently adopted by the industry are followed and complied with by making them part of the Federal regulations.

The final rule requires that unattended equipment be secured by applying a sufficient number of hand or parking brakes to hold the equipment and will require railroads to develop and implement a process or procedure to verify that the applied hand or parking brakes will hold the equipment. The final rule also prohibits a practice known as "bottling the air" in a standing cut of cars. The practice of "bottling the air" occurs when a train crew sets out cars from a train with the air brakes applied and the angle cocks on both ends of the train closed, thus trapping the existing compressed air and conserving the brake pipe pressure in the cut of cars they intend to leave behind. This practice has the potential of causing, first, an unintentional release of the brakes on these cars and, ultimately, a runaway. A full discussion of the hazards related to this practice is contained in the preamble to the final rule related to freight power brakes. See 66 FR 4156–57. Virtually all railroads currently prohibit this practice in their operating rules.

The final rule also mandates a minimum number of hand or parking brakes that must be applied on an unattended locomotive consist or train. Due to the relatively short length and low tonnage associated with passenger trains, FRA does not believe that the more stringent provisions contained in § 232.103(n)(3) are necessary in a passenger train context. Thus, the final rule only requires that at least one hand or parking brake be applied in these circumstances; however, the number of applied hand or parking brakes will vary depending on the process or procedures developed and implemented by each covered railroad. In addition, the final rule requires railroads to develop and implement procedures for securing locomotives not equipped with a hand or parking brake and instructions for securing any locomotive left unattended. As noted previously, FRA is not aware of any railroad which does

not already have the required procedures or processes in place. Thus, FRA believes that these requirements will impose no burden on passenger operations covered by 49 CFR part 238.

In addition to addressing specific issues relating to securing unattended equipment, the final rule also incorporates and adopts the industry's best practices related to the inspection and testing of hand and parking brakes. The final rule requires that the hand or parking on other than MU locomotives be inspected no less frequently than every 368 days and that a record (either stencil, blue card, or electronic) be maintained and provided to FRA upon request. The final rule also requires the application and release of the hand or parking brake at each periodic mechanical inspection of passenger cars and unpowered vehicles under § 238.307 and requires a complete inspection of these components every 368 days, with a record being maintained of this annual inspection. The inspection and testing intervals as well as the stenciling and record keeping requirements retained in the final rule are consistent with the current practices in the industry and will impose no additional burden on the industry.

V. Section-by-Section Analysis

Amendments to 49 CFR Part 229

Section 229.5 Definitions

The final rule is retaining the proposed technical clarification to the definition of "MU locomotive" contained in this section. FRA did not receive any comments on this proposed modification. Thus, FRA is retaining the modification in this final rule without change. Section 229.5 contains a number of definitions that define different types of locomotives covered by the various provisions contained in part 229. These include the general definition of "locomotive" as well as various types of locomotives including: "control cab locomotive," "DMU locomotive," and "MU locomotive." Representatives of various railroads and equipment manufacturers have expressed concern over these definitions, contending that they were confusing and contained some overlap making it difficult to determine which category a particular locomotive fell within.

The definition of "MU locomotive" was recently reissued in its full length when the final rule on Locomotive Event Recorders was published on June 30, 2005. See 70 FR 37939. Subparagraph (2) of the current definition identifies an MU locomotive

as "a multiple unit operated electric locomotive * * * (2) without propelling motors but with one or more control stands." This portion of the MU locomotive definition is identical to the definition of "control cab locomotive." In an effort to add clarity and to definitively distinguish a MU locomotive from a control cab locomotive, the final rule adds some limiting language to the definition of what constitutes a MU locomotive. Historically, FRA has only considered a locomotive without propelling motors to be a MU locomotive if it has the ability to pick-up primary power from a third rail or a pantograph. Consequently, the final rule adds this language to the existing definition of MU locomotive to make it consistent with FRA's historical enforcement and interpretation of the regulation.

Section 229.31 Main Reservoir Tests

The final rule retains the proposed amendments to paragraphs (a) and (c) of this section to provide the manufacturers of main reservoirs the option to test main reservoirs pneumatically rather than hydrostatically as currently mandated. Other than APTA's comments supporting the provisions, FRA received no comments on the proposed amendments. The modifications will permit a main reservoir to receive a pneumatic test before it is originally placed in service or before an existing main reservoir is placed back in service after being drilled. As discussed in detail in Section B of the Technical Background portion of this document, the ASME code currently utilized by all manufacturers of main reservoirs allows for the pneumatic testing of the reservoirs when the introduction of liquid cannot be tolerated. The introduction of water to perform hydrostatic testing on main reservoirs creates a problem because if the liquid is not completely removed and the reservoir interior completely dried, the moisture results in poor adhesion or a lower coating of film than required. This condition has the potential of causing interior corrosion and premature failure of the reservoir.

The rationale for originally requiring that the main reservoirs be tested hydrostatically was based on the safety concerns should a main reservoir catastrophically fail during the testing. The likelihood of injury is minimized by having the reservoir filled with a liquid rather than air. However, since the original drafting of the locomotive regulations, manufacturers of reservoirs have implemented and developed both

that test personnel are adequately shielded when conducting the testing. The manufacturers have been performing pneumatic testing on reservoirs for years and FRA is not aware of any injury related to such testing in manufacturer-controlled facilities. Thus, the safety concerns originally attached to pneumatic testing have been minimized, if not eliminated, when conducted at properly equipped manufacturer facilities.

In addition to the safety benefits related to pneumatic testing, FRA recognizes that all passenger car main reservoirs are pneumatically tested after fabrication and before the application of an interior protective coating. This process is utilized so that reservoirs may be repaired if the reservoir does not pass the initial test requirements. If the interior protective coating were to be applied prior to testing, any weld repairs could not be performed, as the interior coating would be damaged. Thus, in recognition of current industry practice and in an effort to provide compliance options that are beneficial from a safety perspective, the final rule will to permit the manufacturers of main reservoirs to utilize pneumatic testing to meet the requirements contained in paragraphs (a) and (c) of this section. FRA believes that this flexibility increases both the safety and efficiency of testing newly manufactured main reservoirs and reservoirs that are newly drilled and tested at a manufacturer's facility.

It should be noted that the final rule limits the ability to conduct pneumatic testing of the main reservoirs to only those facilities with appropriate safeguards in place to ensure the safety of the personnel conducting the testing. After a reservoir is installed on a locomotive, FRA believes that hydrostatic testing would be the only testing method that adequately ensures the safety and protection of the personnel that are performing the test or working near the installed reservoir. In order to make this intent clear, paragraph (c) contains language that plainly states that pneumatic testing of a reservoir currently in use and newly drilled may only be conducted by a manufacturer of main reservoirs in a suitably safe environment. In other circumstances, a hydrostatic test of the reservoir must be conducted.

Section 229.47 Emergency Brake Valve

Section 229.137 Sanitation, General Requirements

The final rule is retaining the proposed technical clarification to paragraph (b) of § 229.47 and paragraph

(b)(1)(iv) of § 229.137. FRA did not receive any comments on these proposed clarifications and is retaining them in this final rule without change. FRA is making these clarifications in order to ensure that these sections are consistent with the new definition of “DMU locomotive.” The recently published final rule on Locomotive Event Recorders added the definition of “DMU locomotive” to 49 CFR part 229. See 70 FR 37920 (June 30, 2005). This definition was added to part 229 in order to specifically identify diesel-powered multiple unit locomotives. These types of locomotives are just starting to be used by a small number of passenger railroads and FRA wants to be sure that they are adequately addressed by the safety standards contained in part 229. As these types of locomotives are fairly unique, they do not fit cleanly within the regulations as they pertain to traditional locomotives and MU locomotives. In some instances they are treated as traditional locomotives and in others they are treated as MU locomotives. In an effort to clarify the applicability of various provisions contained in part 229, FRA is amending §§ 229.47 and 229.137 to specifically state that DMU locomotives are covered by these provisions. These clarifications are consistent with FRA’s historical application of the regulations to DMU locomotives.

Amendments to 49 CFR Part 238

Section 238.5 Definitions

The final rule retains the proposed clarifying amendments to the definitions section contained in part 238 by revising the definition of “actuator” currently contained in regulation and by adding a new definition for “piston travel indicator.” FRA did not receive any comments in response to the proposed amendments and is retaining them in this final rule without change. The term “actuator” used by FRA in the Passenger Equipment Safety Standards final rule is a term that many members of the passenger industry associate and use to identify a specific self-contained brake system component that typically consists of a cylinder, piston, and piston rod. FRA was not intending to identify this brake system component when it included the term in § 238.313(g)(3) of the original regulation. FRA also notes that the term actuator is used in the definition of “piston travel” in this section to refer to the brake system component described above.

In order to prevent and limit any confusion on the part of the regulated community, the final rule modifies the definition of “actuator” to describe the

brake system component to which the term has traditionally been attached and which is what the term refers to in the definition of “piston travel.” In addition, the final rule is adding a new term to part 238 to describe the device originally defined as an “actuator.” Therefore, the final rule adds the term “piston travel indicator” to describe a device directly activated by the movement of the brake cylinder piston, the disc actuator, or the tread brake unit cylinder piston that provides an indication of piston travel. The final rule also replaces the term “actuator” in § 238.313(g)(3) with the term “piston travel indicator.”

Section 238.17 Movement of Passenger Equipment With Other Than Power Brake Defects

The final rule retains the proposed conforming change in paragraph (b) of this section to acknowledge the flexibility being provided § 238.303(e)(17) of this final rule relating to inoperative or ineffective air compressors on MU passenger equipment. As discussed in detail above in the Technical Background portion of the preamble and in the section-by-section discussion related to § 238.303 below, the final rule permits certain MU passenger equipment with inoperative or ineffective air compressors to continue to be used in passenger service until the next exterior calendar day mechanical inspection.

Section 238.21 Special approval procedures

The final rule retains the proposed conforming changes to paragraphs (a) and (c) of this section to recognize the requirements relating to safety appliances on both existing and new passenger equipment contained in §§ 238.229 and 238.230 of this final rule. These conforming changes recognize the provisions of those sections that require a railroad to obtain FRA approval of welded safety appliance attachment or of an industry-wide standard relating to safety appliance arrangements on new passenger equipment of unique design.

Section 238.229 Safety appliances—general

In this section, FRA is incorporating and clarifying its long-standing administrative interpretations regarding the attachment of safety appliances and safety appliance brackets and supports. FRA is also requiring an inspection program for permitting existing passenger equipment to remain in service in lieu of requiring retro-fitting of the equipment to eliminate welded

safety appliance brackets or supports. FRA adopted these provisions unilaterally and did not seek a recommendation or concurrence from RSAC. These issues are discussed above in the Technical Background section of the preamble to the final rule and in the preamble to the NPRM. See 70 FR 73075–78. As FRA sees no benefit in reproducing the entire discussion here, interested parties should refer to those discussions when considering the provisions contained in this section of the final rule.

Based on consideration of the information provided by the RSAC Working Group when developing the NPRM as well as the comments submitted in response to the NPRM, the final rule is modifying some of the provisions proposed in the NPRM related to the attachment of safety appliances on passenger equipment. The final rule retains many of the provisions proposed in the NPRM but is being expanded to adopt APTA’s recommendations for determining when a welded safety appliance bracket or support will be considered part of the car body. FRA believes that welding technologies have improved significantly over the last several decades. In addition, passenger operations provide a unique environment suitable to the use of welding as a means of attachment in certain situations. Moreover, FRA believes that APTA has provided a viable and enforceable specification for ensuring that welded safety appliance brackets and supports are securely, safely, and reliably attached to the equipment on which it is placed. Volpe reviewed APTA’s welding specifications, at FRA’s request, and confirmed that safety appliance brackets or supports welded to the car body in accordance with the standards recommended by APTA would be at least as secure and reliable as a bracket or support attached with a mechanical fastener. FRA further believes that BRC’s concerns are addressed by the final rule provisions because the final rule will only consider welded safety appliance brackets or supports to be part of the car body if stringent and verifiable standards are utilized when making the welded connection. In addition, the final rule will allow existing equipment with welded brackets or supports to continue in service only if it is inspected and repaired in accordance with the strict inspection and repair provisions contained in the rule. Consequently, FRA is including APTA’s recommended specifications related to welded safety

appliance brackets and supports in this final rule with slight modification for clarity and enforceability.

Paragraphs (a) and (b) of this section contain FRA's long-standing administrative interpretations prohibiting the use of welding as a means of attaching or repairing either a safety appliance or a safety appliance bracket or support. Paragraph (a) makes clear that all passenger equipment continues to be subject to the statutory provisions contained in 49 U.S.C. chapter 203 as well as the regulatory provisions contained in 49 CFR part 231. Paragraph (b) incorporates FRA's long-standing administrative interpretations regarding the welding of safety appliances and their supports. This paragraph makes clear that safety appliances and their brackets or supports are to be mechanically fastened to the car body and specifically states that welding as a method of attachment is generally prohibited. This paragraph also explains that FRA permits the welding of a brace or stiffener used in connection with mechanically fastened safety appliance and provides a definition of what constitutes a "brace" or "stiffener" in these arrangements.

Paragraph (c) contains specific exceptions to FRA's general prohibition related to welded safety appliances and welded safety appliance brackets and supports for passenger equipment placed in service prior to January 1, 2007. The final rule reorganizes this paragraph from that proposed in the NPRM in order to provide clarity and to prevent any misunderstanding. This paragraph only addresses welded safety appliances on existing passenger equipment (*i.e.*, equipment placed in service prior to January 1, 2007). Provisions related to welded safety appliances on new passenger equipment (*i.e.*, equipment placed in service on or after January 1, 2007) are contained in § 238.230 of this final rule. FRA believes that the segregation of these two types of vehicles provides a better understanding of the provisions related to each and allows them to be handled differently.

Paragraph (c)(1) retains the proposed exception for passenger equipment placed in service prior to January 1, 2007, equipped with a safety appliance that is mechanically fastened to a bracket or support that is welded to the vehicle. Rather than require the retrofitting of existing equipment that currently contain safety appliance brackets or supports that are attached to the equipment by welding, FRA will permit the equipment to remain in service provided that the equipment is

identified, inspected, and handled for repair in accordance with the provisions contained in paragraphs (e) through (k) of this section. FRA believes the identification and inspection plan required in this final rule will ensure the safe operation of equipment currently in service.

The final rule also expands this paragraph to provide an exception for welded safety appliance brackets or supports that are determined to meet the requirements for being considered part of the car body contained in § 238.230(b)(1) of this final rule. This paragraph exempts the safety appliance brackets and supports from any further periodic inspections if it is determined during the initial inspection that they are part of the car body, do not contain a defect, and are identified to FRA in writing. FRA wishes to make clear that all existing equipment with welded safety appliance brackets or supports must be given an initial inspection pursuant to paragraphs (g) through (i) of this section and must be handled for remedial action pursuant to paragraph (j) of this section. Thus, safety appliance brackets and supports determined to be part of the car body and meeting the other restrictions contained in this paragraph are only excepted from the future 6-year periodic inspections provided for in paragraph (g)(1) of this section.

Paragraph (c)(2) of this final rule is modified from that proposed in the NPRM to apply only to existing passenger equipment with safety appliances directly welded to the equipment. As noted above, FRA believes that this makes the rule easier to understand. Provisions related to new passenger equipment with safety appliances directly welded to the equipment are contained in § 238.230(b)(2) of this final rule. This paragraph acknowledges the fact that in some instances, due to the design of a vehicle, safety appliances are required to be directly attached to a piece of equipment by welding. Other than this clarifying change, the provision is identical to that proposed in the NPRM. This paragraph requires railroads to identify each piece of existing passenger equipment outfitted with a safety appliance welded directly to the vehicle and requires that any such safety appliances be inspected and handled in accordance with the inspection and repair provisions contained in paragraphs (g) through (k). FRA notes that only the specifically identified safety appliances will be required to be so inspected and handled.

Paragraph (d) contains standards to clarify when a weld on a safety

appliance and a safety appliance bracket or support is to be considered defective. This paragraph has been slightly modified from that proposed in the NPRM. In its comments, APTA recommended that a weld only be considered defective if it contained a crack. APTA asserted that including any anomaly affecting the strength of the weld would result in subjective application of the rule and would require inspectors to be specially trained to identify such anomalies. Moreover, APTA asserts that any failure of a weld would begin with a small crack that would grow very slowly. In the unlikely event that a crack were to even develop, it would take months or years for failure of the weld to occur and such cracks would be easy to detect with the visual inspections performed on safety appliances by railroads on a daily basis. FRA agrees with APTA's assertions. Thus, the final rule amends the proposed provision by limiting the definition of a weld defect to being a crack or fracture of any discernible length or width. FRA believes this approach is consistent with existing welding technology, ensures consistent application of the regulation, and will avoid excessive training of inspectors by limiting their inspection criteria. This paragraph also requires that any repairs made to a defective weld must be made in accordance with the inspection plans and remedial action provisions contained in paragraph (g) and (j) of this section.

Paragraphs (e) and (f) retain the proposed provisions relating to a railroad's identification of all existing passenger equipment that contains a welded safety appliance bracket or support. FRA did not receive any comment directly related to these provisions in response to the NPRM and is retaining them without change in this final rule. Paragraph (e) requires the listing to be submitted to FRA by no later than December 31, 2006, and permits railroads to update the list if they identify equipment after that date. These paragraphs permit railroads to exclude certain safety appliances from the inspection provisions provided the railroad fully explains the basis for any such exclusion. FRA envisions such exclusions to be limited to situations where inspection of the weld is impossible or in situations where the size and quality of a weld are such to make inspection unnecessary (*i.e.*, where the bracket or support is a structural member of the car). Paragraph (f) makes clear that FRA reserves the right to disapprove any exclusion proffered by a railroad by providing

written notification to the railroad of any such decision.

Paragraphs (g) through (j) contain the inspection and repair criteria for any equipment identified with a welded safety appliance or welded safety appliance bracket or support. These paragraphs contain provisions concerning when visual inspections of the involved safety appliances would be required to be performed and address the qualifications of the individuals required to perform the inspections as well as the procedures to be utilized when performing the inspections. FRA considered various methods for inspecting the welds on the involved equipment including various types of non-destructive testing on smaller numbers of the involved welds.

However, FRA continues to believe that periodic visual inspections of all the identified welds is the most effective and cost-efficient method of ensuring the proper condition of the attachments.

Paragraph (h) identifies a number of different types of individuals that could be utilized by a railroad to perform the required visual inspections of welded safety appliances and welded safety appliance brackets and supports. FRA believes that these inspectors must be properly trained and qualified to identify defective weld conditions. Rather than limit a railroad's ability to utilize a number of its available personnel, FRA has attempted to list a number of different types of persons that would have the ability to conduct the required visual inspections based on railroad provided training or due to being certified under an accepted existing industry, national or international welding standard. This paragraph has been slightly modified from that proposed in the NPRM in order to remain consistent with this approach. The final rule recognizes that there are a number of existing national and international welding standards under which a person may be certified and that these standards may be modified on a regular basis. Thus, rather than attempting to incorporate these existing standards into the regulation, the final rule identifies many of the currently existing standards and makes clear that a more revised version of the identified standard is acceptable provided it is equivalent to the standard it updates. The final rule also acknowledges that there may be other nationally or internationally recognized welding standards that would be equivalent to those specifically identified and makes clear that certification under these other unspecified standards would be acceptable provided they are equivalent

to one of the specifically identified welding certification standards.

FRA expects that most railroads will utilize a qualified maintenance person (QMP) to conduct the inspections, as they are the individuals recognized to conduct most of the other brake and mechanical inspections required under part 238. FRA notes that a QMP would be required to receive at least four hours of training specific to weld defect identification and weld inspection procedures to be deemed qualified to perform the required periodic inspections. FRA did not receive any comments suggesting that more training of QMP's would be necessary and is retaining the four hour training requirement in this final rule.

Paragraph (j) contains remedial actions that are required to be utilized in situations where a welded safety appliance or safety appliance bracket or support is found defective either during the periodic visual inspections or while otherwise in service. FRA did not receive any comments specifically related to the provisions contained in this section in response to the NPRM and is retaining them without change in this final rule. This paragraph makes clear that unless the defect is known to be the result of crash damage, the railroad must conduct a failure and engineering analysis to determine the cause of the defective condition. The remedial action provisions permit a defective welded safety appliance or safety appliance bracket or support to be reattached to a vehicle by either mechanical fastening or welding if the defective condition is due to crash damage or improper construction. Any welded repair would be required to be conducted in accordance with APTA's Standard for Passenger Rail Vehicle Structural Repair, SS-C&S-020-03 (September 2003).

In conformance with Office of Management and Budget (OMB) Revised Circular A-119 (February 10, 1998), FRA is using a voluntary national standard in this paragraph of the final rule. FRA's use of a standard established by APTA is a means of establishing technical requirements without increasing the volume of the Code of Federal Regulations. See 1 CFR part 51. In this final rule, FRA has incorporated the most current version of the APTA standard, however FRA understands that over time, APTA may revisit this standard and may update it. In such instances, FRA may approve the use of a more recent standard via the special approval procedures contained in § 238.21. FRA also intends to regularly update the rule, most likely through the use of technical amendments, and

would incorporate APTA's revised standards at that time. Federal law requires that a publication incorporated by reference be identified by its title, date, edition, author, publisher, and identification number, this final rule incorporates the most current APTA standard only. See 1 CFR 51.9(b)(2).

In instances where the defective condition is due to inadequate design, such as unanticipated stresses or loads during service, the final rule requires that the safety appliance be mechanically attached, if possible, and requires railroads to develop a plan for submission to FRA detailing a schedule for mechanically fastening the safety appliances of safety appliance brackets or supports on all cars in that series of cars. The final rule retains these strict provisions because where inadequate design causes failure of the safety appliances it is an indication that there is likely a systemic problem for all cars similarly constructed.

Paragraph (k) retains the proposed requirement related to maintaining records of both the inspections and any repairs made to welded safety appliances or welded safety appliance brackets or supports. FRA did not receive any comments related to these provisions in response to the NPRM and is retaining them in this final rule without change. These records will not only aid FRA's enforcement of the final rule provisions but will also provide invaluable information regarding the longevity and integrity of welded appliances and brackets or supports. The records required in this paragraph may be maintained in any format (written, electronic, *etc.*), but must be made available to FRA upon request.

Section 238.230 Safety Appliances—New Equipment

This section contains requirements related to safety appliances on passenger equipment placed into service after January 1, 2007. This section reiterates FRA's long-standing prohibition on welding of safety appliance brackets or supports. Paragraph (b) incorporates FRA's long-standing administrative interpretations regarding the welding of safety appliances and their supports. This paragraph makes clear that safety appliances and their brackets or supports are to be mechanically fastened to the car body and specifically states that welding as a method of attachment is generally prohibited except as specifically provided in this section. Paragraphs (b)(1) through (b)(3) contain the specific exceptions to FRA general prohibition on welded safety

appliances and their brackets or supports.

Paragraph (b)(1) contains the criteria for determining when a safety appliance bracket or support will be considered part of the car body and thus, obviating the need to mechanically fasten the bracket or support to the body of the piece of equipment. As discussed above, FRA carefully considered suggestions that would allow limited use of welding to attach safety appliances brackets and supports on new passenger equipment. FRA believes that welding technologies have improved significantly over the last several decades. In addition, passenger operations provide a unique environment suitable to the use of welding as a means of attachment in certain situations. Moreover, FRA believes that APTA has provided a viable and enforceable specification for ensuring that welded safety appliance brackets and supports are securely, safely, and reliably attached to the equipment on which it is placed. Volpe reviewed APTA's welding specifications, at FRA's request, and confirmed that safety appliance brackets or supports welded to the car body in accordance with the standards recommended by APTA would be at least as secure and reliable as a bracket or support attached with a mechanical fastener. FRA further believes that BRC's concerns are addressed by the final rule provisions because the final rule will only consider welded safety appliance brackets or supports to be part of the car body if the stringent and verifiable standards contained in this paragraph are followed when making the welded connection. Consequently, FRA is including APTA's recommended specifications related to welded safety appliance brackets and supports in this paragraph with slight modification for clarity and enforceability.

Paragraph (b)(1) contains specific criteria that must be met in order for a safety appliance bracket or support to be considered part of the car body. These include such things as: The surface to which the bracket or support is welded; the surface area of the weld; the type and size of the weld; the welding process that must be utilized; and the qualifications of the individual performing the weld. This paragraph also requires that any such bracket or support be inspected by a qualified person prior to being placed in service. This inspection may be conducted by either the manufacturer or the railroad; provided, a record of the inspection is maintained and made available to FRA upon request.

In an effort to remain realistic and practical, paragraphs (b)(2) and (b)(3) of

this section acknowledge that there may be instances where the design of a vehicle makes it impracticable to mechanically attach a safety appliance or a safety appliance bracket or support and necessitates the need to weld the safety appliance or the bracket or support. These paragraphs are identical to those proposed in the NPRM but have been reorganized for clarity. FRA did not receive any comments on these specific provisions and is retaining them in this final rule. FRA intends to make clear that the flexibility to utilize welding in these applications will be narrowly construed and will only be permitted in instances where a clear nexus between the equipment design and the need to weld a safety appliance or a safety appliance bracket or support exists.

These paragraphs require a railroad to identify any such equipment prior to placing it in service and requires the railroad to clearly describe the necessity to weld the safety appliance or the bracket or support. In the case of a welded safety appliance bracket or support not considered to be part of the car body, the railroad must receive FRA's approval prior to placing the equipment in service and must describe the industry standard followed when making such an attachment. In the case of a safety appliance welded directly to the vehicle, the railroads must provide a detailed rationale explaining how the design of the vehicle or placement of the safety appliance requires the direct welding of the appliance to the equipment prior to placing the equipment in service. Paragraph (b)(2) and (b)(3) make clear that any new equipment containing a welded safety or a welded safety appliance bracket or support not considered part of the car body are required to be inspected and handled in accordance with the provisions contained in § 238.229(g) through (k).

Paragraph (c) is a new paragraph being added to this final rule to make clear that a welded safety appliance or a welded safety appliance bracket or support will be considered defective if any portion of the weld is considered defective pursuant to § 238.229(d) of this part. FRA intends to make clear that any welded safety appliance bracket or support, even if considered part of the car body, is covered by this provision. This paragraph also makes clear that defective welds on safety appliances and safety appliance brackets and supports will be assessed under the penalty schedule contained in 49 CFR part 231, Appendix A. This paragraph further requires that any repair conducted to a welded safety appliance

bracket or support considered part of the car body is to be conducted in accordance with APTA Standard SS-C&S-020-03 that is incorporated by reference in § 238.229.

Paragraph (d) retains the proposed requirements that would permit the submission of industry-wide safety appliance arrangement standards to FRA for its approval. FRA did not receive any specific comments on these provisions in response to the NPRM and is retaining them in this final rule without change. As discussed in detail in the Section D of the Technical Background portion of the preamble, the Railroad Safety Appliance Standards currently contained in 49 CFR part 231 address a very limited number of different types of passenger equipment. The criteria for most of today's new types of passenger car construction are found within 49 CFR 231.18—Cars of special construction. This results from the fact that modern technology in construction of car-building often does not lend itself to ready application of the existing 49 CFR part 231 requirements. Rather, the designer must adapt several different requirements to meet as closely as possible construction of specific safety appliance arrangements in order to obtain compliance. Most passenger cars today are constructed outside the United States, and this has exacerbated the problem of varying interpretations of regulations and resulting safety appliance arrangements. At times, different requirements are applied to cars of similar design where both could have been constructed in the same manner. Substantial resources are spent on a regular basis by all parties concerned in review sessions to determine if a car is in compliance prior to construction; and even when the cars are delivered, problems have arisen.

In attempt to limit these problems, paragraph (d) provides a process by which the industry may request approval of safety appliance arrangements on new equipment considered to be cars of special construction under 49 CFR part 231. This paragraph will permit the industry to develop standards to address many of the new types of passenger equipment introduced into service. The final rule will require these standards, and supporting documentation to be submitted to FRA for FRA approval pursuant to the special approval process already contained in § 238.21 of this regulation. This paragraph makes clear that any approved standard will be enforceable against any person who violates or causes the violation of the approved standard and that the penalty

schedule contained in Appendix A to 49 CFR part 231 will be used in assessing any applicable civil penalty.

The goal of this final rule is to develop consistent safety appliance standards for each new type of passenger car not currently identified in the Federal regulations that ensure the construction of suitable safety appliance arrangements in compliance with 49 CFR part 231. FRA believes the final rule will reduce or eliminate reliance upon criteria for cars of special construction, will improve communication of safety appliance requirements to the industry, and will facilitate regulatory compliance where clarification or guidance is necessary.

Section 238.231 Brake system

Paragraph (b) retains the proposed provision relating to the design of passenger equipment placed in service for the first time on or after September 9, 2002. The final rule slightly amends the language of this provision for purposes of clarity and consistency. The final rule also retains the proposed additional inspection criteria for such equipment if it is not designed to permit visual observation of the brake actuation and release from outside the plane of the equipment. A full discussion of the development of these provisions is provided in Section C of the Technical Background portion of this document and need not be reiterated here. The plain language of paragraph (b), as issued in the 1999 Passenger Equipment Safety Standards final rule, required new equipment to be designed to allow direct observation of the brake actuation and release without fouling the equipment. The preamble to that final rule discusses alternative design approaches using some type of piston travel indicator or piston cylinder pressure indicator on equipment whose design makes it impossible to meet this requirement. See 64 FR 25612 (May 12, 1999).

Subsequent to the issuance of the 1999 final rule, FRA recognized that the envisioned "indicators" discussed in the preamble of the final rule were ahead of the technological curve for passenger equipment currently being delivered and that which may be delivered in the future. Thus, FRA noted its willingness to the RSAC and the Task Force to consider alternatives to requiring piston travel indicators on such equipment. FRA and the members of the Task Force believed that the best approach to the issue was to provide additional inspection protocols for new equipment designed in a manner that makes observation of the actuation and release of the brakes impossible from

outside the plane of the equipment in lieu of mandating the use of untested and potentially unreliable piston travel indicators. Because the necessary design of some new equipment makes the daily inspections of the equipment more difficult, does not permit visual observation of the brake actuation and release from outside the plane of the vehicle and because no reliable mechanical device is currently available to provide a direct indication of such, the NPRM proposed additional inspection protocols for this type of equipment. FRA did not receive any comments directly related to the proposed inspection protocols or the proposed approach to this issue. However, FRA is amending the proposed language to accurately capture the intent of the provision. Thus, this final rule language clearly identifies the design requirement that is to be met when practicable and details equipment and inspection requirements for equipment not meeting the general design requirement. The clarifying changes made in this final rule are consistent with the intent of the provision as originally proposed.

The inspection regimen referenced in paragraph (b) will be applicable to equipment placed in service on or after September 9, 2002, the design of which does not permit actual visual observation of the brake actuation and release. The requirements related to this type of equipment are similar to those contained in a FRA Safety Board letter dated October 19, 2004, granting that portion of the Massachusetts Bay Transportation Authority's (MBTA) waiver petition seeking relief from the requirements of § 238.231(b) for 28 Kawasaki bi-level coaches. See Docket Number FRA-2004-18063. The final rule requires such equipment to be equipped with either piston travel indicators or brake indicators as defined in § 238.5. The equipment will also be required to receive a periodic brake inspection by a QMP at intervals not to exceed five in-service days and the inspection will have to be performed while the equipment is over an inspection pit or on a raised track. In addition, the railroad performing the inspection will be required to maintain a record of the inspection consistent with the existing record requirements related to Class I brake tests. The specific inspection criteria are discussed in more detail in the section-by-section analysis related to § 238.313. FRA believes that these additional inspection requirements will ensure the safety and proper operation of the brake system on equipment which does not permit actual

visual observation of the brake actuation and release without fouling the vehicle.

FRA received one suggestion from APTA regarding the identification of cars that will be covered by this paragraph and the additional inspection requirements contained in § 238.313(j). APTA wanted FRA to make clear that the railroad and car manufacturer would make an initial determination regarding the applicability of the requirements contained in this paragraph and that FRA would oversee these determinations for accuracy. FRA agrees with this position as the railroad and car manufacturer are in the best position to make an initial determination. FRA will exercise its oversight when conducting sample car inspections as well as its regular inspection activity. FRA notes that the additional inspection requirements would be applicable to new cars constructed similar to the low-slung bi-level passenger coaches that were the subject of MBTA's waiver request discussed above.

Paragraph (h) of the final rule retains the proposed provisions related to the inspection of locomotive hand or parking brakes as well as proposed provisions addressing the securement of unattended equipment. Other than APTA's brief statement in support of the provisions, FRA did not receive any comments on these proposed provisions and is retaining them in this final rule without change. The final rule modifies existing paragraph (h)(3) to require that the hand or parking brake on other than MU locomotives be inspected no less frequently than every 368 days and that a record (either stencil, blue card, or electronic) be maintained and provided to FRA upon request. Similar provisions were previously contained in § 232.10, prior to part 232's revision in January of 2001. However, FRA inadvertently failed to include hand brake inspection provisions in its original issuance of the Passenger Equipment Safety Standards. The inspection and testing intervals as well as the stenciling and record keeping requirements contained in paragraph (b)(3) are consistent with the current industry practices and will impose no additional burden on the industry.

The final rule also retains the proposed addition of a new paragraph (h)(4) that contains specific requirements related to the securement of unattended equipment. A detailed discussion regarding the development of these provisions is contained in Section E of the Technical Background portion of the preamble. FRA believes that the rationale for addressing these issues on freight operations is equally applicable to passenger operations. The preamble

to the final rule related to 49 CFR part 232 contains an in-depth discussion of the need to address these issues. See 66 FR 4156–58 (January 17, 2001). The approach contained in this final rule is also consistent with the guidance contained in FRA Safety Advisory 97–1. See 62 FR 49046 (September 15, 1997). The requirements contained in this paragraph are consistent with and based directly on current passenger industry practice. Thus, in FRA's view, the provisions will have no economic or operational impact on passenger operations but will ensure that these best practices currently adopted by the industry are followed and complied with by making them part of the Federal regulations.

Paragraph (h)(4) requires that unattended equipment be secured by applying a sufficient number of hand or parking brakes to hold the equipment and will require railroads to develop and implement a process or procedure to verify that the applied hand or parking brakes will hold the equipment. The final rule also prohibits a practice known as "bottling the air" in a standing cut of cars. A full discussion of the hazards related to this practice is contained in the preamble of the final rule related to freight power brakes. See 66 FR 4156–57. Virtually all railroads prohibit this practice in their operating rules, thus FRA does not believe any burden is being imposed on the railroads by including it in this rule.

Paragraph (h)(4) also establishes the minimum number of hand or parking brakes that must be applied on an unattended locomotive consist or train. Due to the relatively short length and low tonnage associated with passenger trains, FRA does not believe that the more stringent provisions contained in § 232.103(n)(3) are necessary in a passenger train context. Thus, this paragraph requires that at least one hand or parking brake be fully applied on an unattended passenger locomotive consist or passenger train; however, the number of applied hand or parking brakes will vary depending on the process or procedures developed and implemented by each covered railroad.

Members of the Task Force sought clarification as to the meaning of the term "fully applied" as it relates to certain passenger equipment equipped with parking brakes. With the introduction of the spring applied parking brake, the parking brake can be "conditioned to apply" but may not be fully applied. Many spring applied parking brake arrangements usually incorporate an anti-compounding feature so the service brake application and parking brake application are not

simultaneously applied. This arrangement is utilized to limit the thermal input that may occur if the forces from the service brake application and parking brake application are applied simultaneously. When the train is left unattended, the operator would "condition" the parking brake for application through a cab switch push button or by simply deactivating the cab through normal shutdown procedures. The brake equipment is either placed in an emergency brake condition or the brake pipe is vented to zero pressure at a service reduction rate. This brake equipment operation would result in brake cylinder pressure being applied to the brake units. The brake cylinder pressure provides sufficient force to create an equivalent force to that of the parking brake. If the equipment is not left on a source of compressed air, the brake cylinder pressure may be slowly depleted. When the brake cylinder pressure is gradually reduced, the parking brake gradually applies so that below a prescribed brake cylinder pressure, the parking brake is fully applied. In light of the preceding discussion, FRA intends to make clear that a spring applied parking brake will be considered "fully applied" under paragraph (h)(4) if all steps have been taken to permit its full application (*i.e.*, "conditioned to apply").

In addition, paragraph (h)(4) requires railroads to develop and implement procedures for securing locomotives not equipped with a hand or parking brake and develop, implement, and adopt instructions for securing any locomotive left unattended. As noted previously, FRA is not aware of any railroad which does not already have these procedures or processes in place. Thus, FRA believes that these requirements will not impose any burden on passenger operations covered by 49 CFR part 238.

Section 238.303 Exterior calendar day mechanical inspection of passenger equipment

Paragraph (e)(17) contains provisions requiring that air compressors, on passenger equipment so equipped, be in effective and operative condition. The provisions also provide flexibility to permit certain equipment found with ineffective or inoperative air compressors at its exterior calendar day mechanical inspection to continue in service until its next such inspection if various conditions are met by the railroad. Other than APTA's brief statement supporting these provisions, FRA did not receive any comments in response to the NPRM proposing the provisions. Thus, this final rule retains the proposed provisions without

change. A full discussion regarding the development of these proposed provisions is contained in Section A of the Technical Background portion of the preamble.

MU passenger locomotives are generally operated as married pairs but in some cases they can be operated as single or triple units. In the case of the married pairs, each pair of MU locomotives share a single air compressor. When operated in triple units, the three MU locomotives generally share two air compressors and single-unit MU locomotives are equipped with their own air compressor. The amount of air required to be produced by the air compressors is based on the size of the brake pipe and the brake cylinder reservoirs, the size of which are based on the calculated number of brake application and release cycles the train will encounter. In addition, the compressed air produced by the air compressors is shared within the consist by utilizing a main reservoir equalizing pipe or, in single pipe systems, through the brake pipe which is then diverted to the brake cylinder supply reservoir and other air operated devices by use of a governor arrangement. Therefore, a passenger train set consisting of numerous MU locomotives will have multiple air compressors providing the train consist with the necessary compressed air. FRA agrees with the determinations of the Task Force and the full RSAC that a loss of compressed air from a limited number of air compressors in such a train will not adversely effect the operation of the train's brakes or other air-operated components on the train.

Paragraph (e)(17) permits MU train sets with a limited number of inoperative or ineffective air compressors to continue to be used in passenger service until the next exterior calendar day mechanical inspection when found at such an inspection. This paragraph requires a railroad to determine through data, analysis, or actual testing the maximum number of inoperative or ineffective air compressors that could be in an MU train set without compromising the integrity or safety of the train set based on the size and type of train and the train's operating profile. The railroad is required to submit the maximum number of air compressors permitted to be inoperative or ineffective on its various trains to FRA before it can begin operation under the provision and will be required to retain and make available to FRA any data or analysis relied on to make those determinations.

Paragraph (e)(17) also requires a qualified maintenance person (QMP) to

verify the safety and integrity of any train operating with inoperative or ineffective air compressors before the equipment continues in passenger service. In addition, the final rule requires notification to the train crew of any inoperative or ineffective air compressors and requires that a record be maintained of the defective condition. FRA notes that this paragraph provides FRA with the authority to revoke a railroad's ability to utilize the flexibility contained in this paragraph if the railroad fails to comply with the maximum limits established for continued operation of inoperative air compressors or the maximum limits are not supported by credible and accurate data. FRA believes that the provisions contained in this paragraph will ensure the safety of passenger operations while providing the railroads additional flexibility in handling defective or inoperative equipment.

Section 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains

Paragraphs (c)(13) and (d) retain the proposed requirements related to the periodic inspection of hand or parking brakes on passenger cars and other unpowered vehicles. FRA did not receive any comments related to these provisions in response to the NPRM and is retaining them in this final rule without change. As noted previously, FRA inadvertently failed to include any hand brake inspection provisions in its original issuance of the Passenger Equipment Safety Standards. Thus, FRA raised the issue with the RSAC and the Task Force and they recommended inclusion of various provisions regarding the inspection of hand and parking brakes on passenger equipment.

Paragraph (c)(13) requires that the hand or parking brake on passenger cars and unpowered vehicles used in passenger trains be applied and released at each periodic mechanical inspection. No record of this inspection would need to be prepared or retained. Based on information provided at the Task Force and Working Group meetings, all passenger operations currently conduct this type of inspection of the hand and parking brakes at each periodic mechanical inspection. Paragraph (d) requires a complete inspection of the hand or parking brake as well as their parts and connections on passenger cars and unpowered vehicles no less frequently than every 368 days. Paragraph (d) also requires that a record (either stencil, blue card, or electronic) be maintained and provided to FRA upon request. The inspection and

testing intervals as well as the stenciling and recordkeeping requirements contained in this paragraph are consistent with the current practices in the industry and will impose no additional burden on the industry.

Section 238.313 Class I brake tests

Paragraph (g)(3) contains a conforming change to make this paragraph consistent with the definition changes being made in § 238.5 relating to the terms "actuator" and "piston travel indicator." As noted previously, the final rule modifies the definition of "actuator" to describe the brake system component to which the term has traditionally been attached and which is what the term refers to in the definition of "piston travel." In addition, the final rule adds a new term to part 238 to describe the device originally defined as an "actuator." Therefore, the final rule adds the term "piston travel indicator" to describe a device directly activated by the movement of the brake cylinder piston, the disc actuator, or the tread brake unit cylinder piston that provides an indication of piston travel. Consequently, a conforming change is being made in paragraph (g)(3) by replacing the term "actuator" with the term "piston travel indicator" in order to add clarity to the regulatory provision.

Paragraph (j) retains the proposed requirements related to the periodic inspection of passenger equipment placed in service for the first time on or after September 9, 2002, the design of which does not permit actual visual observation of the brake actuation and release as required in § 238.231(b). FRA did not receive any comments objecting to these provisions and is retaining them in this final rule without change. A detailed discussion related to the development and need for these provisions is contained in Section C of the Technical Background portion of the preamble and in the section-by-section analysis related to paragraph (b) of § 238.231. As previously noted, the periodic inspection requirements contained in this paragraph are similar to those contained in a FRA Safety Board letter dated October 19, 2004, granting that portion of the Massachusetts Bay Transportation Authority's (MBTA) waiver petition seeking relief from the requirements of § 238.231(b) for 28 Kawasaki bi-level coaches. See DOT Docket Number FRA-2004-18063.

Paragraph (j) makes clear that the periodic inspection provisions for the identified types of equipment are in addition to all of the other inspection provisions contained in paragraphs (a)

through (i) of this section and must be performed by a QMP. The provisions require equipment not meeting the design requirements contained in § 238.231(b)(1) to receive a periodic brake inspection at intervals not to exceed five in-service days and the inspection must be performed while the equipment is over an inspection pit or on a raised track. Any day or portion of a day that a piece of passenger equipment is actually used in passenger service constitute an "in-service day." FRA continues to believe that five in-service days is appropriate and will permit the required inspection to be performed during weekends or on other days when the equipment is not being used. Thus, the operational and economic impact of this additional inspection requirement is significantly minimized. The periodic inspection must include all of the items and components identified in paragraphs (g)(1) through (g)(15) of this section. In addition, the railroad performing the periodic inspection will be required to maintain a record of the inspection consistent with the existing record requirements related to Class I brake tests. FRA believes that these additional inspection requirements will ensure the safety and proper operation of the brake system on equipment which does not permit actual visual observation of the brake actuation and release without fouling the vehicle.

Section 238.321 Out-of-service credit

As discussed previously, FRA did not seek consensus in the RSAC process for the proposed provision related to out-of-service credit contained in the NPRM. The issue was addressed on FRA's own motion in this proceeding in response to APTA's petition for rulemaking dated March 28, 2005. Other than APTA's support of the provision, FRA did not receive any comments related to this provision in response to the NPRM. Thus, this final rule retains the provision without change.

The provision contained in this section is modeled directly on the "out-of-use credit" provision contained in the Locomotive Safety Standards at 49 CFR 229.33. The locomotive out-of-use credit has been effectively and safely utilized by the railroad industry for decades. As passenger equipment is generally captive service equipment, is generally less mechanically complex than locomotives, and because the provisions for which the credit will be utilized are time-based, FRA believes it is appropriate to permit passenger and commuter operations to receive credit for extended periods of time when equipment is not being used. The

provision will permit railroads to extend the dates for conducting periodic mechanical inspections and periodic brake maintenance required by §§ 238.307 and 238.309 for equipment that is out of service for periods of at least 30 days. The final rule will require railroads to maintain records of any out-of-service days on the records related to the periodic attention. FRA does not see a safety concern with permitting this flexibility. In fact, the regulation already provides assurances that the brake systems on all passenger cars and unpowered vehicles are in proper condition after being out of service for 30 days or more by requiring that a single car test pursuant to § 238.311 is performed on the vehicle before being placed back in service. See 49 CFR 238.311(e)(1).

VI. Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final 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 two regulatory evaluations addressing the economic impact of this 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 conducted two separate regulatory evaluations addressing the economic impact of this final rule. One regulatory evaluation addresses the economic impact of the provisions related to the safety appliance arrangements on passenger equipment. The other analysis addresses the economic impact of all of the other provisions contained in this final rule.

As FRA developed the requirements related to safety appliance arrangements on passenger equipment unilaterally, FRA believes it is appropriate to provide a separate regulatory analysis regarding the economic impact of those provisions. As the analyses indicate, this final rule provides an overall economic savings to the industry due to the flexibility provided for in many of the provisions and because many of the requirements incorporate existing industry practice or provide an alternative means of compliance to what is presently mandated.

The following table presents the estimated twenty-year monetary impacts associated with the provisions contained in this final rule. The table contains the estimated costs and benefits associated with this final rule and provides the total 20-year value as well as the 20-year net present value (NPV) for each indicated item. The dollar amounts presented in this table have been rounded to the nearest thousand. For exact estimates, interested parties should consult the Regulatory Impact Analysis (RIA) that has been made part of the docket in this proceeding.

Description	20-year total (\$)	20-year NPV (\$)
Costs:		
Periodic Brake Inspection of Low-Slung Equipment	4,350,000	1,957,000
Periodic Inspection of Welded Safety Appliances	1,888,000	1,178,000
Air Compressor Records	250,000	132,000
Total Costs	5,488,000	3,268,000
Benefits:		
Pneumatic Testing of Main Reservoirs	5,940,000	3,147,000
Avoided Cost of Piston Travel Indicators	1,790,000	890,000
Air Compressor—Equipment Utilization	17,000,000	9,005,000
Avoided Cost of Safety Appliance Retrofit	9,000,000	8,370,000
Out-of-Service Credit—Equipment Utilization	1,020,000	542,000
Total Benefits	35,510,000	21,953,000

The economic benefits to the industry related to this final rule outweigh the economic costs by a ratio in excess of 6 to 1. FRA did not quantify the safety benefits for most of the provisions contained in this final rule as many of the provisions are based on improved manufacturing techniques, equipment reliability, or are the result of additional regulatory flexibility. However, with regard to the final rule provision related to the attachment of safety appliances on passenger equipment, FRA did consider the potential safety benefits related to the provisions. In addition to the potential avoided cost of retrofitting equipment containing welded safety appliances or welded safety appliance

brackets or supports estimated at \$9 million, FRA also believes there are potential safety benefits to be derived from the reduced risk of weld failure resulting from the inspection protocols for welded safety appliance attachments. The RIA notes two accidents that were the result of failed welded safety appliances and although FRA's database did not contain these accidents, there is no reason to believe that safety appliances in passenger operations are immune from failure. The lack of an accident record may be due to low risks involved in passenger operations, but also weld failure accidents are not generally reported in FRA systems that are geared more for

accidents that stop rail operations. FRA believes that reducing the risk of weld failures will benefit passenger operations. FRA notes that if just 2 or 3 critical accidents are avoided over the 20-year period covered by the RIA, the final rule would be cost-justified by the safety benefits alone.

FRA further notes that it did not estimate a cost for the requirements related to the securement of unattended equipment and the inspection of hand or parking brakes. The final rule provisions related to these issues are merely an incorporation of current industry practice. FRA is not aware of any passenger or commuter railroad that does not already conduct the final rule

inspections, maintain the records, or have the procedures in place.

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 final 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. 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-2005-23080.

“Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a railroad business “line-haul operation” that has fewer than 1,500 employees and a “switching and terminal” establishment with fewer than 500 employees. SBA’s “size standards” may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority FRA has published a final statement of agency policy that formally establishes “small entities” as being railroads that meet the line-haulage revenue requirements of a Class III railroad. See 68 FR 24891 (May 9, 2003). Currently, the revenue requirements are \$20 million or less in annual operating revenue. The \$20 million limit is based on the Surface Transportation Board’s threshold of a Class III railroad carrier, which is adjusted by applying the railroad

revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad, shipper, or contractor is a small entity. FRA uses this alternative definition of “small entity” for this rulemaking.

The AISE developed in connection with this final rule concludes that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this final 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.

Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with 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:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost (\$)
216.14—Special notice for repairs—passenger equipment.	22 railroads	9 forms	5 minutes	1 hour	\$40
229.47—Emergency Brake Valve—Marking Brake Pipe Valve as such.	22 railroads	30 markings	1 minute	1 hour	34
—DMU, MU, Control Cab Locomotives—Marking Emergency Brake Valve as such.	22 railroads	5 markings	1 minute .....	.08 hour	3
238.7—Waivers	22 railroads	5 waivers	2 hours	10 hours	400
238.15—Movement of passenger equipment with power brake defects, and.	22 railroads	1,000 cards/tags ..	3 minutes	50 hours	2,500
—Movement of passenger equipment that becomes defective en route.	22 railroads	288 cards/tags	3 minutes	14 hours	700
—Conditional requirement—Notifications.	22 railroads	144 notices	3 minutes	7 hours	350
238.17—Limitations on movement of passenger equipment containing defects found at calendar day inspection and on movement of passenger equipment that develops defects en route.	22 railroads	200 cards/tags	3 minutes	10 hours	340
—Special requisites for movement of passenger equipment with safety appliance defects.	22 railroads	76 tags	3 minutes	4 hours	136
—Crew member notifications	22 railroads	38 notifications	30 seconds .....	.32 hour	11
238.21—Petitions for special approval of alternative standards.	22 railroads	1 petition	16 hours	16 hours	640
—Petitions for special approval of alternative compliance.	22 railroads	1 petition	120 hours	120 hours	4,800
—Petitions for special approval of pre-revenue service acceptance testing plan.	22 railroads	2 petitions	40 hours	80 hours	3,200
—Comments on petitions	Public/RR Industry	4 comments	1 hour	4 hours	280
238.103—Fire Safety					
—Procuring new passenger equipment.	5 equipment manuf	4 equip. designs ...	300 hours	1,200 hours	120,800
—Subsequent orders	5 equipment manuf	4 equip. designs ...	45 hours	180 hours	21,600

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost (\$)
—Existing equipment—fire safety analysis.	5 manuf./22 railroads.	5 analyses	30 hours	150 hours	18,000
—Transferring passenger cars/locomotives.	22 railroads/AAR ...	1 analysis	20 hours	20 hours	2,400
238.107—Inspection/testing/maintenance plans—Review by railroads.	22 railroads	7 reviews	60 hours	420 hours	16,800
238.109—Employee/contractor training	22 railroads	2 notifications	15 minutes	1 hour	40
—Training employees: Mechanical Insp.	7,500 employees ..	2,500 indiv/100 trainers.	1.33 hours	3,458 hours	117,572
—Recordkeeping	22 railroads	2,500 records	3 minutes	125 hours	5,000
238.111—Pre-revenue service acceptance testing plan: Passenger equipment that has previously been used in service in the U.S.	9 equipment manuf	2 plans	16 hours	32 hours	1,760
Passenger equipment that has not been previously used in service in the U.S. Subsequent Order	9 equipment manuf	2 plans	60 hours	120 hours	9,600
238.229—Safety Appliances (New Rqmnts).	22 railroads	22 lists	1 hour	22 hours	880
—Welded safety appliances considered defective: lists					
—Lists Identifying Equip. w/Welded Saf. App.	22 railroads	22 lists	60 minutes	22 hours	880
—Defective Welded Saf. Appliance—Tags.	22 railroads	4 tags	3 minutes .....	.20 hr	7
—Notification to Crewmembers about Non-Compliant Equipment.	22 railroads	2 notifications	1 minute .....	.0333 hr	1
—Inspection plans	22 railroads	22 plans	16 hours	352 hours	19,360
—Inspection Personnel—Training ..	22 railroads	44 employees	4 hours	176 hours	7,040
238.230—Safety Appliances—New Equipment (New Requirement)					
—Inspection Record of Welded Equipment by Qualified Employee.	22 railroads	100 records	6 minutes	10 hours	340
—Welded safety appliances: Documentation for equipment impractically designed to mechanically fasten safety appliances support.	22 railroads	15 documents	4 hours	60 hours	2,400
238.231—Brake System (New Requirement)					
—Inspection and repair of hand/parking brake: Records.	22 railroads	2,500 forms	21 minutes	875 hours	29,750
—Procedures Verifying Hold of Hand/Parking Brakes.	22 railroads	22 procedures	2 hours	44 hours	3,080
238.237—Automated monitoring					
—Documentation for alerter/deadman control timing.	22 railroads	3 documents	2 hours	6 hours	240
—Defective alerter/deadman control: Tagging.	22 railroads	25 tags	3 minutes	1 hour	50
238.303—Exterior calendar day mechanical inspection of passenger equipment: Notice of previous inspection.	22 railroads	25 notices	1 minute	1 hour	50
—Dynamic brakes not in operating mode: Tag.	22 railroads	50 tags/cards	3 minutes	3 hours	150
—Conventional locomotives equipped with inoperative dynamic brakes: Tagging (New Requirements).	22 railroads	50 tags/cards	3 minutes	3 hours	150
—MU passenger equipment found with inoperative/ineffective air compressors at exterior calendar day inspection: Documents.	22 railroads	4 documents	2 hours	8 hours	560
—Written notice to train crew about inoperative/ineffective air compressors.	22 railroads	100 messages or notices.	3 minutes	5 hours	170
—Records of inoperative air compressors.	22 railroads	100 records	2 minutes	3 hours	102
—Record of exterior calendar day mechanical inspection (Old Requirement).	22 railroads	2,376,920 records	10 minutes + 1 minute.	435,769 hours	15,053,836

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost (\$)
238.305—Interior calendar day mechanical inspection of passenger cars —Tagging of defective end/side doors.	22 railroads	540 tags	1 minute	9 hours	306
—Records of interior calendar day inspection.	22 railroads	1,968,980 records	5 minutes + 1 minute.	196,898 hours	6,891,428
238.307—Periodic mechanical inspection of passenger cars and unpowered vehicles —Alternative inspection intervals: Notice.	22 railroads	2 notifications	5 hours	10 hours	400
—Notice of seats/seat attachments broken or loose.	22 railroads	200 notices	2 minutes	7 hours	280
—Records of each periodic mechanical inspection.	22 railroads	19,284 records	200 hrs. + 2 minutes.	3,857,443 hours	131,156,920
—Detailed documentation of reliability assessments as basis for alternative inspection interval.	22 railroads	3 documents	100 hours	300 hours	12,000
238.311—Single car test —Tagging to indicate need for single car test.	22 railroads	25 tags	3 minutes	1 hour	34
238.313—Class I Brake Test —Record for additional inspection for passenger equipment that does not comply with §238.231(b)(1) (New Requirement).	22 railroads	15,600 records	30 minutes	7,800 hours	265,200
238.315—Class IA brake test —Notice to train crew that test has been performed.	22 railroads	18,250 verbal notices.	5 seconds	25 hours	850
—Communicating signal: tested and two-way radio system.	22 railroads	365,000 tests	15 seconds	1,521 hours	60,840
238.317—Class II brake test —Communicating signal: tested and two-way radio system.	22 railroads	365,000 tests	15 seconds	1,521 hours	60,840
238.321—Out-of-service credit (New Requirement) —Passenger Car: Out-of-use notation.	22 railroads	1,250 notations	2 minutes	42 hours	1,428
238.445—Automated Monitoring —Performance monitoring: alerters/alarms.	1 railroad	10,000 alerts	10 seconds	28 hours	0
—Monitoring system: Self-test feature: Notifications.	1 railroad	21,900 notifications	20 seconds	122 hours	0
238.503—Inspection, testing, and maintenance requirements					
238.505—Program approval procedures —Submission of program	1 railroad	1 program	1,200 hours	1,200 hours	84,000
—Comments on programs	Rail Industry	3 comments	3 hours	9 hours	360

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan at 202-493-6292 or via e-mail at the following address: robert.brogan@dot.gov.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, 725 17th St., NW., Washington, DC 20590; Attention: FRA OMB Desk Officer. OMB is required to make a decision concerning

the collection of information requirements contained in this final 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.

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 the final rule. The OMB

control number, when assigned, will be announced by separate notice in the **Federal Register**.

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 final rule has 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. 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. This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that the RSAC, which endorsed and recommended the majority of this rule, has as permanent members two organizations representing State and local interests: AASHTO and the Association of State Rail Safety Managers (ASRSM). Both of these State organizations concurred with the RSAC recommendation endorsing this rule. 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 of any other representatives of State government. Consequently, FRA concludes that this final rule has no federalism implications, other than the preemption of state laws covering the subject matter of this final rule, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order.

Elements of the final rule dealing with safety appliances affect an area of safety that has been pervasively regulated at the Federal level for over a century. Accordingly, the final rule amendments in that area will involve no impacts on Federal relationships.

Environmental Impact

FRA has evaluated this final rule 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 final rule 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. See 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

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 final rule is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform 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 \$120,700,000 or more (adjusted annually for inflation) 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 final rule will not result in the expenditure, in the aggregate, of \$120,700,000 or more in any one year, and thus preparation of such a statement is not required.

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 final rule in accordance with Executive Order 13211. FRA has determined that this final rule 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.

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 229

Locomotives, Main reservoirs, Penalties, Railroads, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Incorporation by reference, Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety appliances.

Adoption of the Amendments

■ For the reasons discussed in the preamble, FRA is amending parts 229 and 238 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 229—[AMENDED]

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49(c), (m).

■ 2. Section 229.5 is amended by revising the definition of “MU locomotive” to read as follows:

§ 229.5 Definitions.

* * * * *

MU locomotive means a multiple unit operated electric locomotive—

(1) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(2) Without propelling motors but with one or more control stands and a means of picking-up primary power such as a pantograph or third rail.

* * * * *

■ 3. Section 229.31 is amended by revising paragraphs (a) and (c) to read as follows:

§ 229.31 Main reservoir tests.

(a) Before it is placed in service, each main reservoir other than an aluminum reservoir shall be subjected to a pneumatic or hydrostatic pressure of at least 25 percent more than the maximum working pressure fixed by the chief mechanical officer. The test date, place, and pressure shall be recorded on Form FRA F 6180–49A, block eighteen.

Except as provided in paragraph (c) of this section, at intervals that do not exceed 736 calendar days, each main reservoir other than an aluminum reservoir shall be subjected to a hydrostatic pressure of at least 25 percent more than the maximum working pressure fixed by the chief mechanical officer. The test date, place, and pressure shall be recorded on Form FRA F 6180–49A, and the person performing the test and that person's supervisor shall sign the form.

(b) * * *

(c) Each welded main reservoir originally constructed to withstand at least five times the maximum working pressure fixed by the chief mechanical officer may be drilled over its entire surface with telltale holes that are three-sixteenths of an inch in diameter. The holes shall be spaced not more than 12 inches apart, measured both longitudinally and circumferentially, and drilled from the outer surface to an extreme depth determined by the formula—

$$D = (.6PR/S - 0.6P)$$

Where:

D = extreme depth of telltale holes in inches but in no case less than one-sixteenth inch;

P = certified working pressure in pounds per square inch;

S = one-fifth of the minimum specified tensile strength of the material in pounds per square inch; and

R = inside radius of the reservoir in inches.

One row of holes shall be drilled lengthwise of the reservoir on a line intersecting the drain opening. A reservoir so drilled does not have to meet the requirements of paragraphs (a) and (b) of this section, except the requirement for a pneumatic or hydrostatic test before it is placed in use. Whenever any such telltale hole shall have penetrated the interior of any reservoir, the reservoir shall be permanently withdrawn from service. A reservoir now in use may be drilled in lieu of the tests provided for by paragraphs (a) and (b) of this section, but shall receive a hydrostatic test before it is returned to use or may receive a pneumatic test if conducted by the manufacturer in an appropriately safe environment.

* * * * *

■ 4. Section 229.47 is amended by revising paragraph (b) to read as follows:

§ 229.47 Emergency brake valve.

* * * * *

(b) DMU, MU, and control cab locomotives operated in road service shall be equipped with an emergency brake valve that is accessible to another

crew member in the passenger compartment or vestibule. The words “Emergency Brake Valve” shall be legibly stenciled or marked near each valve or shall be shown on an adjacent badge plate.

* * * * *

■ 5. Section 229.137 is amended by revising paragraph (b)(1)(vi) to read as follows:

§ 229.137 Sanitation, general requirements.

* * * * *

(b) * * *

(1) * * *

(vi) Except as provided in § 229.14 of this part, DMU, MU, and control cab locomotives designed for passenger occupancy and used in intercity push-pull service that are not equipped with sanitation facilities, where employees have ready access to railroad-provided sanitation in other passenger cars on the train at frequent intervals during the course of their work shift.

* * * * *

PART 238—[AMENDED]

■ 6. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 7. Section 238.5 is amended by revising the definition of “actuator” and adding a definition of “piston travel indicator” to read as follows:

§ 238.5 Definitions.

* * * * *

Actuator means a self-contained brake system component that generates the force to apply the brake shoe or brake pad to the wheel or disc. An actuator typically consists of a cylinder, piston, and piston rod.

* * * * *

Piston Travel Indicator means a device directly activated by the movement of the brake cylinder piston, the disc brake actuator, or the tread brake unit cylinder piston that provides an indication of the piston travel.

* * * * *

■ 8. Section 238.17 is amended by revising paragraph (b) introductory text to read as follows:

§ 238.17 Movement of passenger equipment with other than power brake defects.

* * * * *

(b) *Limitations on movement of passenger equipment containing defects found at time of calendar day*

inspection. Except as provided in §§ 238.303(e)(15) and (e)(17), 238.305(c) and (d), and 238.307(c)(1), passenger equipment containing a condition not in conformity with this part at the time of its calendar day mechanical inspection may be moved from that location for repair if all of the following conditions are satisfied:

* * * *

■ 9. Section 238.21 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 238.21 Special approval procedures.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under §§ 238.103, 238.223, 238.229, 238.309, 238.311, 238.405, or 238.427; for approval of alternative compliance under §§ 238.201, 238.229, or 238.230; and for special approval of pre-revenue service acceptance testing plans as required by § 238.111. (Requests for approval of programs for the inspection, testing, and maintenance of Tier II passenger equipment are governed by § 238.505.)

* * * *

(c) * * *

(2) The elements prescribed in §§ 238.201(b), 238.229(j)(2), and 238.230(d); and

* * * *

■ 10. Section 238.229 is revised to read as follows:

§ 238.229 Safety appliances—general.

(a) Except as provided in this part, all passenger equipment continues to be subject to the safety appliance requirements contained in Federal statute at 49 U.S.C. chapter 203 and in Federal regulations at part 231 of this chapter.

(b) Except as provided in this part, FRA interprets the provisions in part 231 of this chapter that expressly mandate that the manner of application of a safety appliance be a bolt, rivet, or screw to mean that the safety appliance and any related bracket or support used to attach that safety appliance to the equipment shall be so affixed to the equipment. Specifically, FRA prohibits the use of welding as a method of attachment of any such safety appliance or related bracket or support. A “safety appliance bracket or support” means a component or part attached to the equipment for the sole purpose of securing or attaching of the safety appliance. FRA does allow the welded attachment of a brace or stiffener used in connection with a mechanically fastened safety appliance. In order to be considered a “brace” or “stiffener,” the

component or part shall not be necessary for the attachment of the safety appliance to the equipment and is used solely to provide extra strength or steadiness to the safety appliance.

(c) *Welded Safety Appliances.* (1) Passenger equipment placed in service prior to January 1, 2007, that is equipped with a safety appliance, required by the “manner of application” provisions in part 231 of this chapter to be attached by a mechanical fastener (*i.e.*, bolts, rivets, or screws), and the safety appliance is mechanically fastened to a bracket or support that is attached to the equipment by welding may continue to be used in service provided all of the requirements in paragraphs (e) through (k) of this section are met. The welded safety appliance bracket or support only needs to receive the initial visual inspection required under paragraph (g)(1) of this section if all of the following conditions are met:

(i) The welded safety appliance bracket or support meets all of the conditions contained in § 238.230(b)(1) for being considered part of the car body;

(ii) The weld on the safety appliance bracket or support does not contain any defect as defined in paragraph (d) of this section; and

(iii) The railroad submits a written list to FRA identifying each piece of passenger equipment equipped with a welded safety appliance bracket or support as described in paragraph (c)(1)(i) and (c)(1)(ii) of this section and provides a description of the specific safety appliance bracket or support.

(2) Passenger equipment placed in service prior to January 1, 2007, that is equipped with a safety appliance that is directly attached to the equipment by welding (*i.e.*, no mechanical fastening of any kind) shall be considered defective and immediately handled for repair pursuant to the requirements contained in § 238.17(e) unless the railroad meets the following:

(i) The railroad submits a written list to FRA that identifies each piece of passenger equipment equipped with a welded safety appliance as described in paragraph (c)(2) of this section and provides a description of the specific safety appliance; and

(ii) The involved safety appliance(s) on such equipment are inspected and handled pursuant to the requirements contained in paragraphs (g) through (k) of this section.

(d) *Defective welded safety appliance or welded safety appliance bracket or support.* Passenger equipment with a welded safety appliance or a welded safety appliance bracket or support will be considered defective and shall be

handled in accordance with § 238.17(e) if any part or portion of the weld contains a defect. Any repairs made to such equipment shall be in accordance with the inspection plan required in paragraph (g) of this section and the remedial actions identified in paragraph (j) of this section. A defect for the purposes of this section means a crack or fracture of any visibly discernible length or width. When appropriate, civil penalties for improperly using or hauling a piece of equipment with a defective welded safety appliance or safety appliance bracket or support addressed in this section will be assessed as an improperly applied safety appliance pursuant to the penalty schedule contained in Appendix A to part 231 of this chapter under the appropriate defect code contained therein.

(e) *Identification of equipment.* The railroad shall submit a written list to FRA that identifies each piece of passenger equipment equipped with a welded safety appliance bracket or support by January 1, 2007. Passenger equipment placed in service prior to January 1, 2007, but not discovered until after January 1, 2007, shall be immediately added to the railroad’s written list and shall be immediately inspected in accordance with paragraph (g) through (k) of this section. The written list submitted by the railroad shall contain the following:

- (1) The equipment number;
- (2) The equipment type;
- (3) The safety appliance bracket(s) or support(s) affected;
- (4) Any equipment and any specific safety appliance bracket(s) or supports(s) on the equipment that will not be subject to the inspection plan required in paragraph (g) of this section;
- (5) A detailed explanation for any such exclusion recommended in paragraph (e)(4) of this section;

(f) FRA’s Associate Administrator for Safety reserves the right to disapprove any exclusion recommended by the railroad in paragraphs (c)(2)(i) and (d)(4) of this section and will provide written notification to the railroad of any such determination.

(g) *Inspection Plans.* The railroad shall adopt and comply with and submit to FRA upon request a written safety appliance inspection plan. At a minimum, the plan shall include the following:

(1) Except as provided in paragraph (c)(1) of this section, an initial visual inspection (within 1 year of date of publication) and periodic re-inspections (at intervals not to exceed 6 years) of each welded safety appliance bracket or support identified in paragraph (e) of

this section. If significant disassembly of a car is necessary to visually inspect the involved safety appliance bracket or support, the initial visual inspection may be conducted at the equipment's first periodic brake equipment maintenance interval pursuant to § 238.309 occurring after January 1, 2007.

(2) Identify the personnel that will conduct the initial and periodic inspections and any training those individuals are required to receive in accordance with the criteria contained in paragraph (h) of this section.

(3) Identify the specific procedures and criteria for conducting the initial and periodic safety appliance inspections in accordance with the requirements and criteria contained in paragraph (i) of this section.

(4) Identify when and what type of potential repairs or potential remedial action will be required for any defective welded safety appliance bracket or support discovered during the initial or periodic safety appliance inspection in accordance with paragraph (j) of this section.

(5) Identify the records that will be maintained that are related to the initial and periodic safety appliance inspections in accordance with the requirements contained in paragraph (k) of this section.

(h) *Inspection Personnel.* The initial and periodic safety appliance inspections shall be performed by individuals properly trained and qualified to identify defective weld conditions. At a minimum, these personnel include the following:

(1) A qualified maintenance person (QMP) with at least 4 hours of training specific to the identification of weld defects and the railroad's weld inspection procedures;

(2) A current certified welding inspector (CWI) pursuant to American Welding Society Standard—AWS QC-1, Standard for AWS Certification of Welding Inspectors (1996) or its current revised equivalent;

(3) A person possessing a current Canadian Welding Bureau (CWB) certification pursuant to the Canadian Standards Association Standard W59 (2003) or its current revised equivalent;

(4) A person possessing a current level II or level III visual inspector certification from the American Society for Non-destructive Testing pursuant to Recommended Practice SNT-TC-1A—Personnel Qualification and Certification in Nondestructive Testing (2001) or its current revised equivalent; or

(5) A person possessing a current certification under any other nationally

or internationally recognized welding qualification standard that is equivalent to those identified in paragraphs (h)(2) through (h)(4) of this section.

(i) *Inspection Procedures.* The initial and periodic safety appliance inspections shall be conducted in accordance with the procedures and criteria established in the railroad's inspection plan. At a minimum, these procedures and criteria shall include:

(1) A complete visual inspection of the entire welded surface of any safety appliance bracket or support identified in paragraph (e) of this section.

(2) The visual inspection shall occur after the complete removal of any dirt, grease, rust, or any other foreign matter from the welded portion of the involved safety appliance bracket or support. Removal of paint is not required.

(3) The railroad shall disassemble any equipment necessary to permit full visual inspection of the involved weld.

(4) Any materials necessary to conduct a complete inspection must be made available to the inspection personnel throughout the inspection process. These include but are not limited to such items as mirrors, magnifying glasses, or other location specific inspection aids. Remote viewing aids possessing equivalent sensitivity are permissible for restricted areas.

(5) Any weld found with a defect as defined in paragraph (d) of this section during the initial or periodic safety appliance inspection shall be inspected by either a certified weld inspector identified in paragraphs (h)(2) through (h)(5) of this section or a welding or materials engineer possessing a professional engineer's license for a final determination. No car with a defect in the weld of a safety appliance or its attachment may continue in use until a final determination as to the existence of a defect is made by the personnel identified in this paragraph.

(6) A weld finally determined to contain a defect shall be handled for repair in accordance with § 238.17(e) and repaired in accordance with the remedial action criteria contained in paragraph (j) of this section.

(j) *Remedial Action.* Unless a defect in a weld is known to have been caused by crash damage, the railroad shall conduct a failure and engineering analysis of any weld identified in paragraph (e) of this section determined to have a break or crack either during the initial or periodic safety appliance inspection or while otherwise in service to determine if the break or crack is the result of crash damage, improper construction, or inadequate design. Based on the results of the analysis, the repair of the

involved safety appliance bracket or support shall be handled as follows:

(1) A defect in a weld due to crash damage (*i.e.*, impact of the safety appliance by an outside force during service or an accident) or improper construction (*i.e.*, the weld did not conform to the engineered design) shall be reattached by either mechanically fastening the safety appliance or the safety appliance bracket or support to the equipment or welding the safety appliance bracket or support to the equipment in a manner that is at least as strong as the original design or at least twice the strength of a bolted mechanical attachment, whichever is greater. If welding is used to repair the damaged appliance, bracket, or support the following requirements shall be met:

(i) The repair shall be conducted in accordance with the welding procedures contained in APTA Standard SS-C&S-020-03—Standard for Passenger Rail Vehicle Structural Repair (September 2003); or an alternative procedure approved by FRA pursuant to § 238.21. The Director of the Federal Register approves incorporation by reference of the APTA Standard SS-C&S-020-03 (September 2003), "Standard for Passenger Rail Vehicle Structural Repair," in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from the American Public Transportation Association, 1666 K Street, Washington, DC 20006. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Ave., NW., Suite 7000, Washington, DC 20590 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;

(ii) A qualified individual under paragraph (h) of this section shall inspect the weld to ensure it is free of any cracks or fractures prior to the equipment being placed in-service;

(iii) The welded safety appliance bracket or support shall receive a periodic safety appliance inspection pursuant to the requirements contained in paragraphs (g) through (i) of this section; and

(iv) A record of the welded repair pursuant to the requirements of paragraph (k) of this section shall be maintained by the railroad.

(2) A defect in the weld that is due to inadequate design (*i.e.*, unanticipated stresses or loads during service) shall be

handled in accordance with the following:

(i) The railroad must immediately notify FRA's Associate Administrator for Safety in writing of its discovery of a defective weld that is due to inadequate design;

(ii) The involved safety appliance or the safety appliance bracket or support shall be reattached to the equipment by mechanically fastening the safety appliance or the safety appliance bracket or support to the equipment unless such mechanical fastening is impractical due to the design of the equipment;

(iii) The railroad shall develop and comply with a written plan submitted to and approved by FRA's Associate Administrator for Safety detailing a schedule for all passenger equipment in that series of cars with a similar welded safety appliance bracket or support to have the involved safety appliance or the safety appliance bracket or support mechanically fastened to the equipment; and

(iv) If a railroad determines that the design of the equipment makes it impractical to mechanically fasten the safety appliance or the safety appliance bracket or support to the equipment, then the railroad shall submit a request to FRA for special approval of alternative compliance pursuant to § 238.21. Such a request shall explain the necessity for any relief sought and shall contain appropriate data and analysis supporting its determination that any alternative method of attachment provides at least an equivalent level of safety.

(k) *Records.* Railroads shall maintain written or electronic records of the inspection and repair of the welded safety appliance brackets or supports on any equipment identified in paragraph (e) of this section. The records shall be made available to FRA upon request. At a minimum, these records shall include all of the following:

(1) Training or certification records for any person performing any of the inspections or repairs required in this section.

(2) The date, time, location, and identification of the person performing the initial and periodic safety appliance inspections for each piece of equipment identified in paragraph (e) of this section. This includes the identification of the person making any final determination as to the existence of a defect under paragraph (i)(5) of this section.

(3) A record of all passenger equipment found with a safety appliance weldment that is defective either during the initial or periodic

safety appliance inspection or while the equipment is in-service. This record shall also identify the cause of the crack or fracture.

(4) The date, time, location, identification of the person making the repair, and the nature of the repair to any welded safety appliance bracket or support identified in paragraph (e) of this section.

■ 11. Section 238.230 is added to read as follows:

§ 238.230 Safety appliances—new equipment.

(a) *Applicability.* This section applies to passenger equipment placed in service on or after January 1, 2007.

(b) *Welded Safety Appliances.* Except as provided in this section, all passenger equipment placed into service on or after January 1, 2007, that is equipped with a safety appliance, required by the "manner of application" provisions in part 231 of this chapter to be attached by a mechanical fastener (*i.e.*, bolts, rivets, or screws), shall have the safety appliance and any bracket or support necessary to attach the safety appliance to the piece of equipment mechanically fastened to the piece of equipment.

(1) *Safety appliance brackets or supports considered part of the car body.* Safety appliance brackets or supports will be considered part of the car body and will not be required to be mechanically fastened to the piece of passenger equipment if all of the following are met:

(i) The bracket or support is welded to a surface of the equipment's body that is at a minimum 3/16-inch sheet steel or structurally reinforced to provide the equivalent strength and rigidity of 3/16-inch sheet steel;

(ii) The area of the weld is sufficient to ensure a minimum weld strength, based on yield, of three times the strength of the number of SAE grade 2, 1/2 inch diameter bolts that would be required for each attachment;

(iii) Except for any access required for attachment of the safety appliance, the weld is continuous around the perimeter of the surface of the bracket or support;

(iv) The attachment is made with fillet welds at least 3/16-inch in size;

(v) The weld is designed for infinite fatigue life in the application that it will be placed;

(vi) The weld is performed in accordance with the welding process and the quality control procedures contained in the current American Welding Society (AWS) Standard, the Canadian Welding Bureau (CWB) Standard, or an equivalent nationally or

internationally recognized welding standard;

(vii) The weld is performed by an individual possessing the qualifications to be certified under the current AWS Standard, CWB Standard, or any equivalent nationally or internationally recognized welding qualification standard;

(viii) The weld is inspected by an individual qualified to determine that all of the conditions identified in paragraph (b)(1)(i) through (b)(1)(vii) of this section are met prior to the equipment being placed in service; and

(ix) A written or electronic record of the inspection required in paragraph (b)(1)(viii) of this section shall be retained by the railroad operating the equipment and shall be provided to FRA upon request. At a minimum, this record shall include the date, time, location, identification of the person performing the inspection, and the qualifications of the person performing the inspection.

(2) *Directly welded safety appliances.* Passenger equipment that is equipped with a safety appliance that is directly attached to the equipment by welding (*i.e.*, no mechanical fastening of any kind) may be placed in service only if the railroad meets the following:

(i) The railroad submits a written list to FRA that identifies each piece of new passenger equipment equipped with a welded safety appliance as described in paragraph (b)(2) of this section and provides a description of the specific safety appliance;

(ii) The railroad provides a detailed basis as to why the design of the vehicle or placement of the safety appliance requires that the safety appliance be directly welded to the equipment; and

(iii) The involved safety appliance(s) on such equipment are inspected and handled pursuant to the requirements contained in § 238.229(g) through (k).

(3) *Other welded safety appliances and safety appliance brackets and supports.* Except for safety appliance brackets and supports identified in paragraph (b)(1) of this section, safety appliance brackets and supports on passenger equipment shall not be welded to the car body unless the design of the equipment makes it impractical to mechanically fasten the safety appliance and it is impossible to meet the conditions for considering the bracket or support part of the car body contained in paragraph (b)(1) of this section. Prior to placing a piece of passenger equipment in service with a welded safety appliance bracket or support as described in this paragraph, the railroad shall submit documentation to FRA, for FRA's review and approval,

containing all of the following information:

(i) Identification of the equipment by number, type, series, operating railroad, and other pertinent data;

(ii) Identification of the safety appliance bracket(s) or support(s) not mechanically fastened to the equipment and not considered part of the car body under paragraph (b)(1) of this section;

(iii) A detailed analysis describing the necessity to attach the safety appliance bracket or support to the equipment by a means other than mechanical fastening;

(iv) A detailed analysis describing the inability to make the bracket or support part of the car body as provided for in paragraph (b)(1) of this section; and

(v) A copy and description of the consensus or other appropriate industry standard used to ensure the effectiveness and strength of the attachment;

(c) *Inspection and repair.* Passenger equipment with a welded safety appliance or a welded safety appliance bracket or support will be considered defective and shall be handled in accordance with § 238.17(e) if any part or portion of the weld is defective as defined in § 238.229(d). When appropriate, civil penalties for improperly using or hauling a piece of equipment with a defective welded safety appliance or safety appliance bracket or support addressed in this section will be assessed pursuant to the penalty schedule contained in Appendix A to part 231 of this chapter under the appropriate defect code contained therein.

(1) Any safety appliance bracket or support approved by FRA pursuant to paragraph (b)(3) of this section shall be inspected and handled in accordance with the requirements contained in § 238.229(g) through (k).

(2) Any repair to a safety appliance bracket or support considered to be part of the car body under paragraph (b)(1) of this section shall be conducted in accordance with APTA Standard SS-C&S-020-03—Standard for Passenger Rail Vehicle Structural Repair (September 2003), or an alternative procedure approved by FRA pursuant to § 238.21, and shall ensure that the repair meets the requirements contained in paragraphs (b)(1)(i) through (b)(1)(vii) of this section. The Director of the Federal Register approves incorporation by reference of the APTA Standard SS-C&S-020-03 (September 2003), “Standard for Passenger Rail Vehicle Structural Repair,” in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from the

American Public Transportation Association, 1666 K Street, Washington, DC 20006. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Ave., NW., Suite 7000, Washington, DC 20590 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.

(d) *Passenger Cars of Special Construction.* A railroad or a railroad’s recognized representative may submit a request for special approval of alternative compliance pursuant to § 238.21 relating to the safety appliance arrangements on any passenger car considered a car of special construction under § 231.18 of this chapter. Any such petition shall be in the form of an industry-wide standard and at a minimum shall:

(1) Identify the type(s) of car to which the standard would be applicable;

(2) As nearly as possible, based upon the design of the equipment, ensure that the standard provides for the same complement of handholds, sill steps, ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type already identified in part 231 of this chapter;

(3) Comply with all statutory requirements relating to safety appliances contained at 49 U.S.C. 20301 and 20302;

(4) Specifically address the number, dimension, location, and manner of application of each safety appliance contained in the standard;

(5) Provide specific analysis regarding why and how the standard was developed and specifically discuss the need or benefit of the safety appliance arrangement contained in the standard;

(6) Include drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances; and

(7) Demonstrate the ergonomic suitability of the proposed arrangements in normal use.

(e) Any industry standard approved pursuant to § 238.21 will be enforced against any person who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under part 231 of this chapter by using the applicable defect code

contained in Appendix A to part 231 of this chapter.

■ 12. Section 238.231 is amended by revising paragraph (b) and paragraph (h)(3) and by adding paragraph (h)(4) to read as follows:

§ 238.231 Brake system.

* * * * *

(b) Where practicable, the design of passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall not require an inspector to place himself or herself on, under, or between components of the equipment to observe brake actuation or release. Passenger equipment not designed in this manner shall be equipped and handled in accordance with one of the following:

(1) Equipped with piston travel indicators as defined in § 238.5 or devices of similar design and inspected pursuant to the requirements contained in § 238.313 (j); or

(2) Equipped with brake indicators as defined in § 238.5, designed so that the pressure sensor is placed in a location so that nothing may interfere with the air flow to brake cylinder and inspected pursuant to the requirements contained in § 238.313 (j).

* * * * *

(h) * * *
(3) Except for MU locomotives, on locomotives so equipped, the hand or parking brake as well as its parts and connections shall be inspected, and necessary repairs made, as often as service requires but no less frequently than every 368 days. The date of the last inspection shall be either entered on Form FRA F 6180-49A, suitably stenciled or tagged on the equipment, or maintained electronically provided FRA has access to the record upon request.

(4) A train’s air brake shall not be depended upon to hold unattended equipment (including a locomotive, a car, or a train whether or not locomotive is attached). For purposes of this section, “unattended equipment” means equipment left standing and unmanned in such a manner that the brake system of the equipment cannot be readily controlled by a qualified person. Unattended equipment shall be secured in accordance with the following requirements:

(i) A sufficient number of hand or parking brakes shall be applied to hold the equipment. Railroads shall develop and implement a process or procedure to verify that the applied hand or parking brakes will sufficiently hold the equipment with the air brakes released;

(ii) Except for equipment connected to a source of compressed air (e.g.,

locomotive or ground air source), prior to leaving equipment unattended, the brake pipe shall be reduced to zero at a rate that is no less than a service rate reduction;

(iii) At a minimum, the hand or parking brake shall be fully applied on at least one locomotive or vehicle in an unattended locomotive consist or train;

(iv) A railroad shall develop, adopt, and comply with procedures for securing any unattended locomotive required to have a hand or parking brake applied when the locomotive is not equipped with an operative hand or parking brake;

(v) A railroad shall adopt and comply with instructions to address throttle position, status of the reverser lever, position of the generator field switch, status of the independent brakes, position of the isolation switch, and position of the automatic brake valve, or the functional equivalent of these items, on all unattended locomotives. The procedures and instruction shall take into account weather conditions as they relate to throttle position and reverser handle; and

(vi) Any hand or parking brakes applied to hold unattended equipment shall not be released until it is known that the air brake system is properly charged.

* * * * *

■ 13. Section 238.303 is amended by adding a new paragraph (e)(17) to read as follows:

§ 238.303 Exterior calendar day mechanical inspection of passenger equipment.

* * * * *

(e) * * *

(17) Each air compressor, on passenger equipment so equipped, shall be in effective and operative condition. MU passenger equipment found with an inoperative or ineffective air compressor at the time of its exterior calendar day mechanical inspection may remain in passenger service until the equipment's next exterior calendar day mechanical inspection where it must be repaired or removed from passenger service; provided, all of the following requirements are met:

(i) The equipment has an inherent redundancy of air compressors, due to either the make-up of the train consist or the design of the equipment;

(ii) The railroad demonstrates through verifiable data, analysis, or actual testing that the safety and integrity of a train is not compromised in any manner by the inoperative or ineffective air compressor. The data, analysis, or test shall establish the maximum number of air compressors that may be inoperative

based on size of the train consist, the type of passenger equipment in the train, and the number of service and emergency brake applications typically expected in the run profile for the involved train;

(iii) The involved train does not exceed the maximum number of inoperative or ineffective air compressors established in accordance with paragraph (e)(17)(ii) of this section;

(iv) A qualified maintenance person determines and verifies that the inoperative or ineffective air compressor does not compromise the safety or integrity of the train and that it is safe to move the equipment in passenger service;

(v) The train crew is informed in writing of the number of units in the train consist with inoperative or ineffective air compressors at the location where the train crew first takes charge of the train;

(vi) A record is maintained of the inoperative or ineffective air compressor pursuant to the requirements contained in § 238.17(c)(4); and

(vii) Prior to operating equipment under the provisions contained in this paragraph, the railroad shall provide in writing to FRA's Associate Administrator for Safety the maximum number of inoperative or ineffective air compressors identified in accordance with paragraph (e)(17)(ii) of this section.

(viii) The data, analysis, or testing developed and conducted under paragraph (e)(17)(ii) of this section shall be made available to FRA upon request. FRA's Associate Administrator for Safety may revoke a railroad's ability to utilize the flexibility provided in this paragraph if the railroad fails to comply with the maximum limits established under paragraph (e)(17)(ii) or if such maximum limits are not supported by credible data or do not provide adequate safety assurances.

■ 14. Section 238.307 is amended by adding paragraph (c)(13) and by revising paragraph (d) to read as follows:

§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

* * * * *

(c) * * *

(13) The hand or parking brake shall be applied and released to determine that it functions as intended.

(d) At intervals not to exceed 368 days, the periodic mechanical inspection shall specifically include the following:

(1) Inspection of the manual door releases to determine that all manual door releases operate as intended; and

(2) Inspection of the hand or parking brake as well as its parts and connections to determine that they are in proper condition and operate as intended. The date of the last inspection shall be either entered on Form FRA F 6180-49A, suitably stenciled or tagged on the equipment, or maintained electronically provided FRA has access to the record upon request.

* * * * *

■ 15. Section 238.313 is amended by revising the first sentence of paragraph (g)(3) and by adding a new paragraph (j) to read as follows:

§ 238.313 Class I brake test.

* * * * *

(g) * * *

(3) Piston travel is within prescribed limits, either by direct observation, observation of a piston travel indicator, or in the case of tread or disc brakes by determining that the brake shoe or pad provides pressure to the wheel. * * *

* * * * *

(j) In addition to complying with all the Class I brake test requirements performed by a qualified maintenance person as contained in paragraphs (a) through (i) of this section, railroads operating passenger equipment that is not designed to permit the visual observation of the brake actuation and release without the inspector going on, under, or between the equipment in accordance with § 238.231(b) shall perform an additional inspection. At a minimum, the additional inspection requirement for such equipment shall include all of the following:

(1) An additional inspection by a qualified maintenance person of all items and components contained in paragraphs (g)(1) through (g)(15) of this section;

(2) The additional inspection shall be conducted at an interval not to exceed five (5) in-service days and shall be conducted while the equipment is over an inspection pit or on a raised inspection track; and

(3) A record of the additional inspection shall be maintained pursuant to the requirements contained in paragraph (h) of this section. This record can be combined with the Class I brake test record.

* * * * *

■ 16. Section 238.321 is added to read as follows:

§ 238.321 Out-of-service credit.

When a passenger car is out of service for 30 or more consecutive days or is out of service when it is due for any test or inspection required by § 238.307 or § 238.309 an out of use notation

showing the number of out of service days shall be made in the records required under § 238.307(e) and § 238.309(f). If the passenger car is out of service for one or more periods of at least 30 consecutive days, the interval prescribed for any test or inspection required by § 238.307 and § 238.309 may be extended by the number of days in each period the passenger car is out of service since the last test or inspection in question. A movement made in accordance with § 229.9 of this chapter or § 238.17 is not considered

service for the purposes of determining the out-of-service credit.
 ■ 17. Appendix A to part 238 is amended by the following:
 ■ a. Adding a new entry for §§ 238.229 and 238.230;
 ■ b. Revising the entry for § 238.231(h)(3);
 ■ c. Adding a new entry for § 238.231(h)(4);
 ■ d. Adding a new entry for § 238.303(e)(17);
 ■ e. Adding a new entry for § 238.307(c)(13);

■ f. Removing the entries for § 238.307(d), (d)(3), (d)(4) and (d)(5);
 ■ g. Revising the entries for § 238.307(d)(2) and (d)(3);
 ■ h. Adding new entries for § 238.313(j) and (j)(3); and
 ■ i. Adding a new entry for § 238.321 to read as follows:

Appendix A to Part 238—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
238.229 Safety appliances—general:		
(e) Failure to properly identify equipment (per car)	2,500	5,000
(g) Failure to adopt or comply with inspection plan	2,500	5,000
(h) Failure to use qualified person (per car)	2,500	5,000
(i) Failure to properly conduct initial or periodic inspection (per car)	2,500	5,000
(j) Failure to take proper remedial action (per car)	2,500	5,000
(k) Failure to maintain records (per car)	2,000	4,000
238.230 Safety appliances—new equipment:		
(b)(2) Failure to identify welded appliance (per car)	2,500	5,000
(b)(3) Failure to receive approval for use (per car)	2,500	5,000
(c)(2) Failure to make proper repair (per car)	2,500	5,000
238.231 Brake system		
(h)(3) Hand or parking brake inspection or record (per car)	2,500	5,000
(h)(4) Hand or parking brake not applied to hold unattended equipment or prematurely released	5,000	7,500
238.303 Exterior mechanical inspection of passenger equipment:		
(e)(17) Air compressor inoperative	2,500	5,000
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles:		
(c)(13) Hand or parking brake test not performed	2,500	5,000
(d)(1) Manual door release not operate as intended	2,500	5,000
(d)(2) Hand or parking brake inspection not performed	2,500	5,000
238.313 Class I brake test:		
(j) Failure to perform additional Class I brake test	5,000	7,500
(j)(3) Failure to maintain record	2,000	4,000
238.321 Out-of-service credit	1,000	2,000

* * * * *

Issued in Washington, DC, on September 29, 2006.

Joseph H. Boardman,
Federal Railroad Administrator.

[FR Doc. 06-8611 Filed 10-18-06; 8:45 am]

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**Thursday,
October 19, 2006**

Part III

Department of Housing and Urban Development

24 CFR Part 1000

**Extension of Minimum Funding Under
the Indian Housing Block Grant Program;
Interim Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 1000**

[Docket No. FR-5093-I-01]

RIN 2577-AC69

Extension of Minimum Funding Under the Indian Housing Block Grant Program**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Interim rule.

SUMMARY: This interim rule provides authority for Indian tribes to receive a minimum grant amount under the need component of the Indian Housing Block Grant (IHBG) Formula for Fiscal Year (FY) 2007. The minimum funding provision currently in effect in HUD's regulations limited authority for receipt of a minimum grant amount to FY2006. HUD and Indian tribes, through negotiated rulemaking procedures, developed and published a proposed rule to address ways to improve and clarify the IHBG Formula regulations, including the minimum funding provisions. The reinstatement of the authority for minimum grant amounts in FY2007 will avoid hardship to the affected tribes until the revised minimum funding provisions contained in the negotiated rule are issued as a final rule and become effective.

DATES: *Effective Date:* November 20, 2006.*Comment Due Date:* December 18, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through The Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD

Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410-0001; telephone (202) 401-7914 (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 at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) streamlined the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

The regulations governing the IHBG Program are found in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. The part 1000 regulations were established as part of a March 12, 1998, final rule implementing NAHASDA. In accordance with section 106 of NAHASDA, HUD developed the March 12, 1998, final rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570).

Under the IHBG Program, HUD makes assistance available to tribes for Indian housing activities. The amount of assistance made available to each Indian tribe is determined using a formula (IHBG Formula) that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the IHBG Formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301-1000.340). The IHBG Formula consists of two components: (1) Need and (2) formula current assisted stock (FCAS). Generally, the amount of

funding for a tribe is the sum of the need component and the FCAS component, subject to a minimum funding amount authorized by § 1000.328.

The minimum funding provision at § 1000.328 provides that in the first year of NAHASDA participation, an Indian tribe whose allocation is less than \$50,000 under the need component of the formula shall have its need component of the grant adjusted to \$50,000. In subsequent fiscal years, an Indian tribe whose allocation is less than \$25,000 under the need component of the formula shall have its need component of the grant adjusted to \$25,000. As originally adopted by the negotiated rulemaking committee and reflected in the March 12, 1998, final rule, § 1000.328 provided that minimum funding under the need component would not extend beyond Fiscal Year 2002.

Section 1000.328 also specifies that the need for the minimum funding provisions will be reviewed in accordance with § 1000.306. Section 1000.306 provides that the IHBG Formula be reviewed within five years after promulgation to determine whether any changes are needed. The negotiated rulemaking committee intended that the IHBG Formula would be reviewed before expiration of the minimum funding provision.

In accordance with § 1000.306, HUD established a negotiated rulemaking committee for the purposes of reviewing and developing changes to the regulations governing the IHBG Formula, including the minimum funding provisions. However, the work of the committee continued beyond FY2002 and the expiration of the minimum funding provisions. Accordingly, on June 24, 2003 (68 FR 37660), HUD published an interim rule extending the minimum funding under the need component through FY2003 in order to avoid hardship to the affected Indian tribes. The interim rule provided for a 60-day public comment period. HUD received no comments in response to the interim rule. Due to the ongoing work of the negotiated rulemaking committee, the minimum funding provisions were again extended through FY2006 (see the interim rules published on June 17, 2004 (69 FR 34020) and January 27, 2005 (70 FR 4000)).

On February 25, 2005 (70 FR 9490), HUD published the proposed rule that was developed by the negotiated rulemaking committee. However, because the final rule implementing these regulatory changes has not yet been published and made effective, HUD has determined that an additional extension is required for the minimum

funding provision of § 1000.328. If action is not taken now to extend the minimum funding provision, Indian tribes, especially small Indian tribes, would be affected by the lapse of the minimum funding provision.

II. This Interim Rule

The interim rule authorizes for FY2007 the provision in § 1000.328 with respect to the minimum funding amount under the need component of the IHBG for tribes returning for their second or subsequent year's grant. The provision with respect to the \$50,000 an Indian tribe receives in its first year of funding under the IHBG Program is not revised by this interim rule. That provision, unlike the minimum funding amount for returning Indian tribes, has no expiration date. Accordingly, this rule applies only to the minimum grant amount that returning Indian tribes may receive.

The reinstatement of the authority for minimum grant amounts in FY2007 will avoid unnecessary hardship to the many Indian tribes until the revised minimum funding provisions contained in the negotiated proposed rule are issued as a final rule and become effective. Once effective, the minimum funding provisions established by the negotiated final rule will supersede the current regulations. In the interim, affected tribes will not suffer a financial loss because of the expiration of the minimum funding provision in the current regulation.

III. Justification for Interim Rulemaking

Generally, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."

HUD finds that good cause exists to publish this interim rule for effect without first soliciting public comment. The rule will allow a minimum amount of funding to continue to Indian tribes without a significant lapse in time during which the tribes would be foreclosed from receiving funds entirely or would receive a significant reduction in funds. The funding meets a critical need of many tribes, which would go unmet during the time that it otherwise would take to publish a rule for effect. Further, as noted above in this

preamble, this interim rule follows publication of other HUD interim rules, which similarly extended the IHBG minimum funding provisions. The rules were non-controversial and welcomed by Indian tribes. Although the previous interim rules invited public comments, HUD did not receive any public comments opposed to the extension of the minimum funding provisions. HUD, however, solicits public comment on this rule.

IV. Findings and Certifications

Executive Order 13132

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This interim rule does not impose any Federal mandate on any State, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for the June 24, 2003, interim rule, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding remains applicable to this interim rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This interim rule does not impose any new or modify existing regulatory requirements. Rather, the rule is exclusively concerned with extending the minimum funding provisions under the need component of the IHBG Formula. To the extent the interim rule has any impact on small entities, it will be to the benefit of small Indian tribes that are the primary beneficiaries of the minimum funding provisions. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the IHBG Program is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public Housing, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR part 1000 to read as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

■ 2. Revise § 1000.328 to read as follows:

§ 1000.328 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than \$50,000 under the need component of the formula shall have its need component of the grant

adjusted to \$50,000. The Indian tribe's IHP shall contain a certification of the need for the \$50,000 funding. In subsequent years, but not to extend beyond Federal Fiscal Year 2007, an Indian tribe whose allocation is less

than \$25,000 under the need component of the formula shall have its need component of the grant adjusted to \$25,000. The need for this section will be reviewed in accordance with § 1000.306.

Dated: September 20, 2006.
Orlando J. Cabrera,
Assistant Secretary for Public and Indian Housing.
[FR Doc. E6-17518 Filed 10-18-06; 8:45 am]
BILLING CODE 4210-67-P

736.....61435
 740.....61435, 61692
 742.....61692
 744.....61435, 61692
 748.....61692
 752.....61435
 764.....61435
 772.....61435
 922.....58767, 59039, 59050,
 59338

16 CFR

Proposed Rules:
 310.....58716

17 CFR

270.....58257
Proposed Rules:
 4.....60454
 240.....60636

18 CFR

388.....58273
Proposed Rules:
 35.....58767
 37.....58767
 40.....57892
 388.....58325

19 CFR

12.....61399
 163.....61399

20 CFR

404.....60819, 61403
 408.....61403
 416.....61403
Proposed Rules:
 618.....61618

21 CFR

189.....59653
 201.....58739
 520.....59374
 606.....58739
 610.....58739
 700.....59653
 1300.....60426, 60609
 1309.....60609
 1310.....60609, 60823
 1314.....60609
Proposed Rules:
 20.....57892
 25.....57892
 201.....57892
 202.....57892
 207.....57892
 225.....57892
 226.....57892
 500.....57892
 510.....57892
 511.....57892
 515.....57892
 516.....57892
 558.....57892
 589.....57892
 1312.....58569, 61436

22 CFR

51.....58496
 126.....58496

Proposed Rules:

22.....60928
 51.....60928

24 CFR

1000.....61866
Proposed Rules:
 15.....58994

25 CFR

Proposed Rules:
 292.....58769

26 CFR

1.....57888, 59669, 61648,
 61662
 31.....58276
 300.....58740
 301.....60827, 60835, 61833
 602.....59696
Proposed Rules:
 1.....61441, 61692, 61693
 300.....59696

28 CFR

16.....58277

29 CFR

1915.....60843
 4022.....60428
 4044.....60428
Proposed Rules:
 1915.....60932

30 CFR

Proposed Rules:
 701.....59592
 773.....59592
 774.....59592
 778.....59592
 843.....59592
 847.....59592
 931.....61680
Proposed Rules:
 935.....61695

31 CFR

224.....60847
 256.....60848
 594.....58742
 595.....58742
 597.....58742

32 CFR

283.....59009
 284.....59374
 706.....58278, 61685

Proposed Rules:

143.....60092
 144.....59411

33 CFR

100.....58279, 58281, 60064
 117.....58283, 58285, 58286,
 58744, 59381, 61409, 61410

Proposed Rules:

110.....58230
 117.....58332, 58334, 58776,
 61698

165.....57893, 60094

34 CFR

Proposed Rules:
 462.....61580

36 CFR

Proposed Rules:
 Ch. I.....59697
 242.....60095

37 CFR

350.....59010
 351.....59010
 370.....59010

40 CFR

49.....60852
 50.....60853, 61144
 51.....58498, 60612
 52.....58498, 59383, 59674,
 61686
 53.....61236
 58.....61236
 59.....58745
 63.....58499
 80.....58498
 81.....60429, 61686
 82.....58504
 180.....58514, 58518, 61410
 281.....58521
 302.....58525
 355.....58525

Proposed Rules:

52.....57894, 57905, 59413,
 59414, 59697, 60098, 60934,
 60937
 63.....59302, 61701
 81.....57894, 57905, 59414,
 60937
 174.....59697
 281.....58571
 721.....59066

41 CFR

Proposed Rules:
 102-35.....61445

42 CFR

409.....58286
 410.....58286
 412.....58286
 413.....58286
 414.....58286
 424.....58286
 433.....60663
 485.....58286
 489.....58286
 505.....58286

Proposed Rules:

423.....61445

44 CFR

62.....60435
 65.....59385, 60854
 67.....59398, 60864, 60866,
 60869, 60870, 60871, 60884,
 60917, 60919

Proposed Rules:

67.....60952, 60961, 60963,
 60980, 60983, 60985, 60985,
 60986, 60988

45 CFR

1310.....58533

46 CFR

1.....60066
 67.....61413
 68.....61413

47 CFR

2.....60067, 60075
 73.....61425
 80.....60067, 60075

Proposed Rules:

73.....61455, 61456
 80.....60102

48 CFR

205.....58536
 207.....58537
 212.....58537
 216.....58537
 225.....58536, 58537, 58539
 234.....58537
 236.....58540
 252.....58541
 1819.....61687
 1852.....61687
 5125.....60076
 5152.....60076

Proposed Rules:

30.....58336, 58338
 52.....58336, 58338
 204.....61012
 235.....61012
 252.....61012

49 CFR

213.....59677
 229.....61836
 238.....61836
 541.....59400

Proposed Rules:

211.....59698
 217.....60372
 218.....60372
 591.....58572
 592.....58572
 593.....58572
 594.....58572
 604.....60460
 624.....60681

50 CFR

17.....58176, 60238
 20.....58234
 300.....58058
 600.....58058
 622.....59019, 60076
 635.....58058, 58287
 648.....59020
 660.....57889, 58289, 59405
 679.....57890, 58753, 59406,
 59407, 60077, 60078, 60670,
 61426

Proposed Rules:

17.....58340, 58363, 58574,
 58954, 59700, 59711, 61546
 100.....60095
 635.....58778
 648.....61012
 660.....61012

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 19, 2006**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Chronic Wasting Disease Herd Certification Program; Captive deer and elk; interstate movement requirements; published 7-21-06

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Indiana; withdrawn; published 10-19-06

INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions: New Mexico; published 10-19-06

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations: Small business innovation research and small business technology transfer contractor recertification of program compliance; published 10-19-06

TREASURY DEPARTMENT Internal Revenue Service

Income taxes: Foreign tax expenditures; partner's distributive share; published 10-19-06
Income attributable to domestic production activities; deduction; published 10-19-06

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Prunes (dried) produced in California; comments due by

10-23-06; published 9-22-06 [FR 06-07867]

Science and Technology Laboratory Service:

Fees and charges increase; comments due by 10-23-06; published 9-22-06 [FR 06-07821]

AGRICULTURE DEPARTMENT**Federal Crop Insurance Corporation**

Crop insurance regulations:

Common crop insurance regulations, basic provisions; and various crop insurance provisions; comments due by 10-26-06; published 9-26-06 [FR 06-08216]

Common crop insurance regulations; basic provisions, and various crop insurance provisions; amendments; comments due by 10-26-06; published 7-14-06 [FR 06-05962]

AGRICULTURE DEPARTMENT**Forest Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Nonrural determinations; comments due by 10-27-06; published 8-14-06 [FR 06-06902]

COMMERCE DEPARTMENT

Grants, other financial assistance, and nonprocurement agreements:

OMB guidance on nonprocurement debarment and suspension; implementation; comments due by 10-23-06; published 9-22-06 [FR 06-08022]

COMMERCE DEPARTMENT Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

Georgia
Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Atka mackerel; comments due by 10-27-06; published 10-12-06 [FR 06-08637]

Northeastern United States fisheries—

Net mesh size measurement method; comments due by 10-26-06; published 9-26-06 [FR 06-08187]

West Coast States and Western Pacific fisheries—

Groundfish; comments due by 10-25-06; published 10-10-06 [FR E6-16676]

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act and Federal Hazardous Substances Act:

Adult all terrain vehicle requirements and three-wheeled all terrain vehicle ban

Correction; comments due by 10-24-06; published 9-7-06 [FR E6-14757]

DEFENSE DEPARTMENT

Civilian health and medical program of the uniformed services (CHAMPUS):

TRICARE program—
Reserve and Guard family member benefits; comments due by 10-23-06; published 8-22-06 [FR E6-13720]

Federal Acquisition Regulation (FAR):

Approved authentication products and services; purchase requirement; comments due by 10-23-06; published 8-23-06 [FR 06-07088]

Internet Protocol Version 6 requirement; comments due by 10-23-06; published 8-24-06 [FR 06-07126]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Hazardous waste combustors; comments due by 10-23-06; published 9-6-06 [FR 06-07251]

Air programs:

Federally administered emission trading programs; source requirements modification; comments due by 10-23-

06; published 8-22-06 [FR 06-06819]

Stratospheric ozone protection—

Fire suppression and explosion protection; ozone-depleting substances; list of substitutes; comments due by 10-27-06; published 9-27-06 [FR E6-15842]

Fire suppression and explosion protection; ozone-depleting substances; list of substitutes; comments due by 10-27-06; published 9-27-06 [FR E6-15831]

Significant New Alternatives Policy Program; motor vehicle air conditioning; list of substitutes; comments due by 10-23-06; published 9-21-06 [FR 06-07967]

Air quality implementation plans; approval and promulgation; various States:

Iowa; comments due by 10-23-06; published 9-22-06 [FR 06-07954]

Wisconsin; comments due by 10-23-06; published 9-22-06 [FR 06-08113]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities: Azoxystrobin; comments due by 10-23-06; published 8-23-06 [FR E6-13656]

Dimethenamid; comments due by 10-23-06; published 8-23-06 [FR E6-13660]

Fenpyroximate; comments due by 10-23-06; published 8-23-06 [FR E6-13761]

Kresoxim-methyl; comments due by 10-24-06; published 8-25-06 [FR E6-14165]

Triflumizole; comments due by 10-23-06; published 8-23-06 [FR E6-13659]

Superfund program:

National oil and hazardous substances contingency plan priorities list; comments due by 10-23-06; published 9-22-06 [FR 06-07965]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services: Missoula Inter-carrier Compensation Reform

- Plan; comments due by 10-25-06; published 9-13-06 [FR E6-15196]
- Radio services; special: Private land mobile services—
Upper 700 MHz guard band licenses; operational, technical, and spectrum requirements; comments due by 10-23-06; published 9-21-06 [FR 06-07912]
- Television broadcasting: Telecommunications Act of 1996; implementation—
Broadcast ownership rules; 2006 quadrennial regulatory review; comments due by 10-23-06; published 9-28-06 [FR 06-08168]
- FEDERAL DEPOSIT INSURANCE CORPORATION**
Assessments:
Risk differentiation frameworks and base assessment schedule; supplemental notice of initial regulatory flexibility analysis; comments due by 10-26-06; published 10-16-06 [FR 06-08728]
- GENERAL SERVICES ADMINISTRATION**
Federal Acquisition Regulation (FAR):
Approved authentication products and services; purchase requirement; comments due by 10-23-06; published 8-23-06 [FR 06-07088]
Internet Protocol Version 6 requirement; comments due by 10-23-06; published 8-24-06 [FR 06-07126]
- HOMELAND SECURITY DEPARTMENT**
Customs and Border Protection Bureau
North American Free Trade Agreement (NAFTA):
Merchandise processing fee exemption and technical corrections; comments due by 10-23-06; published 8-23-06 [FR E6-13947]
- INTERIOR DEPARTMENT**
Land Management Bureau
Minerals management:
Commercial Oil Shale Leasing Program; comments due by 10-25-06; published 9-26-06 [FR 06-08198]
- INTERIOR DEPARTMENT**
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Nonrural determinations; comments due by 10-27-06; published 8-14-06 [FR 06-06902]
- Endangered and threatened species:
Critical habitat designations—
Catesbaea melanocarpa; comments due by 10-23-06; published 8-22-06 [FR 06-07029]
Shivwits milk-vetch and Holmgren milk-vetch; comments due by 10-26-06; published 9-26-06 [FR 06-08191]
- Findings on petitions, etc.—
Island night lizard; comments due by 10-23-06; published 8-22-06 [FR E6-13877]
- Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest; regulations revision; comments due by 10-27-06; published 9-27-06 [FR E6-15839]
- Migratory birds; revised list; comments due by 10-23-06; published 8-24-06 [FR 06-07001]
- LABOR DEPARTMENT**
Employment and Training Administration
Trade Adjustment Assistance Program:
Trade adjustment assistance for workers; Workforce Investment Act regulations amended; comments due by 10-24-06; published 8-25-06 [FR 06-07067]
- LABOR DEPARTMENT**
Mine Safety and Health Administration
Mine Improvement and New Emergency Response Act; implementation:
Assessment of civil penalties; criteria and procedures; comments due by 10-23-06; published 9-8-06 [FR 06-07512]
- NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**
Federal Acquisition Regulation (FAR):
Approved authentication products and services; purchase requirement; comments due by 10-23-06; published 8-23-06 [FR 06-07088]
Internet Protocol Version 6 requirement; comments due by 10-23-06; published 8-24-06 [FR 06-07126]
- NUCLEAR REGULATORY COMMISSION**
Special nuclear material; domestic licensing:
Items relied on for safety; facility change process; comments due by 10-27-06; published 9-27-06 [FR 06-08271]
- SECURITIES AND EXCHANGE COMMISSION**
Securities, etc.:
Executive and director compensation, etc.; disclosure requirements; comments due by 10-23-06; published 9-8-06 [FR 06-06968]
- Securities:
Transfer agent forms; electronic filing; comments due by 10-26-06; published 9-11-06 [FR 06-07269]
- Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC. et al.; comments due by 10-27-06; published 10-6-06 [FR E6-16565]
NYSE Arca, Inc.; comments due by 10-24-06; published 10-3-06 [FR E6-16247]
- SMALL BUSINESS ADMINISTRATION**
Surety Bond Guarantee Program:
Preferred Surety Bond surety qualification, increased guarantee for veterans, etc.; comments due by 10-26-06; published 9-26-06 [FR 06-08205]
- TRANSPORTATION DEPARTMENT**
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 10-26-06; published 9-26-06 [FR 06-08222]
Boeing; comments due by 10-23-06; published 9-26-06 [FR 06-08232]
Bombardier; comments due by 10-23-06; published 8-23-06 [FR E6-13831]
EADS SOCATA; comments due by 10-27-06; published 9-27-06 [FR 06-08277]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-26-06; published 9-26-06 [FR 06-07126]
- published 9-26-06 [FR 06-08223]
Fokker; comments due by 10-23-06; published 8-22-06 [FR E6-13731]
PZL-Bielsko; comments due by 10-27-06; published 9-27-06 [FR E6-15905]
- Airworthiness standards:
Normal and transport category rotorcraft—
Performance and handling qualities requirements; comments due by 10-23-06; published 7-25-06 [FR E6-11726]
Special conditions—
Airbus Model A380-800 airplanes; comments due by 10-23-06; published 9-7-06 [FR E6-14827]
- Class D and E airspace; comments due by 10-23-06; published 8-18-06 [FR 06-06910]
- VOR Federal airways; comments due by 10-23-06; published 9-6-06 [FR E6-14744]
- TRANSPORTATION DEPARTMENT**
Federal Railroad Administration
Railroad safety:
Passenger equipment safety standards—
Emergency systems; comments due by 10-23-06; published 8-24-06 [FR 06-07099]
- VETERANS AFFAIRS DEPARTMENT**
Vocational rehabilitation and education:
Vocational Rehabilitation and Employment Program—
Initial evaluations; comments due by 10-27-06; published 8-28-06 [FR E6-14079]
-
- LIST OF PUBLIC LAWS**
- This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.
- The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual

pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 138/P.L. 109-354

To revise the boundaries of John H. Chafee Coastal Barrier Resources System Jekyll Island Unit GA-06P. (Oct. 16, 2006; 120 Stat. 2017)

H.R. 479/P.L. 109-355

To replace a Coastal Barrier Resources System map relating to Coastal Barrier Resources System Grayton Beach Unit FL-95P in Walton County, Florida. (Oct. 16, 2006; 120 Stat. 2018)

H.R. 3508/P.L. 109-356

2005 District of Columbia Omnibus Authorization Act (Oct. 16, 2006; 120 Stat. 2019)

H.R. 4902/P.L. 109-357

Byron Nelson Congressional Gold Medal Act (Oct. 16, 2006; 120 Stat. 2044)

H.R. 5094/P.L. 109-358

Lake Mattamuskeet Lodge Preservation Act (Oct. 16, 2006; 120 Stat. 2047)

H.R. 5160/P.L. 109-359

Long Island Sound Stewardship Act of 2006 (Oct. 16, 2006; 120 Stat. 2049)

H.R. 5381/P.L. 109-360

National Fish Hatchery System Volunteer Act of 2006 (Oct. 16, 2006; 120 Stat. 2058)

S. 2562/P.L. 109-361

Veterans' Compensation Cost-of-Living Adjustment Act of 2006 (Oct. 16, 2006; 120 Stat. 2062)

H.R. 233/P.L. 109-362

Northern California Coastal Wild Heritage Wilderness Act (Oct. 17, 2006; 120 Stat. 2064)

H.R. 4957/P.L. 109-363

To direct the Secretary of the Interior to convey the Tylersville division of the Lamar National Fish Hatchery and Fish Technology Center to the State of Pennsylvania, and for other purposes. (Oct. 17, 2006; 120 Stat. 2074)

H.R. 5122/P.L. 109-364

John Warner National Defense Authorization Act for the Financial Year 2007 (Oct. 17, 2006; 120 Stat. 2083)

H.R. 6197/P.L. 109-365

Older Americans Act Amendments of 2006 (Oct. 17, 2006; 120 Stat. 2522)

S. 3930/P.L. 109-366

Military Commissions Act of 2006 (Oct. 17, 2006; 120 Stat. 2600)

Last List October 18, 2006

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