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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 14, 2006
9:00 a.m.-Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Rules and Regulations

Federal Register

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

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AD30

General Lending Maturity Limit and Other Financial Services

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its rules to implement amendments to the Federal Credit Union Act (FCU Act) made by the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act). The interim final rule revises the maturity limit in the general lending rule and permits Federal credit unions to provide certain, limited financial services to nonmembers within their fields of membership.

DATES: This interim final rule is effective October 27, 2006. Comments must be received by NCUA on or before December 26, 2006.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *NCUA Web Site:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

- *E-mail:* Address to regcomments@ncua.gov. Include “[Your name] Comments on Interim Final Rule—Part 701” in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke

Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

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

SUPPLEMENTARY INFORMATION:

A. General Lending Maturity Limit

The Financial Services Regulatory Relief Act of 2006, Public Law 109-351, amended the general lending maturity limit in section 107(5) of the FCU Act from 12 years to 15 years. 12 U.S.C. 1757(5). This interim final rule amends the provision in NCUA’s general lending regulation, 12 CFR 701.21(c)(4), which addresses the loan maturity limit. The Board is revising the lending rule to reflect the statutory change in the maturity limit. Residential real estate loans and mobile home loans are subject to separate maturity limits. 12 U.S.C. 1757(5)(A)(i), (ii); 12 CFR 701.21(f), (g).

NCUA recognizes the prompt corrective action rule has references to the 12-year loan term in the alternative risk-based net worth calculation. 12 CFR 702.107. NCUA staff will evaluate if this calculation will change as a result of the statutory amendments to the general maturity limit and address necessary changes in a future rulemaking.

B. Financial Services to Persons Within the Field of Membership

The Reg Relief Act also relieved a longstanding limitation on FCUs regarding financial services to nonmembers. In 1959, Congress established section 107(12) of the FCU Act, which authorized FCUs to cash checks and money orders for FCU members. Sec. 8, Public Law 86-354, 73 Stat. 631 (1959). The Garn-St. Germain Depository Institutions Act of 1982 further amended section 107(12) of the FCU Act to authorize FCUs to sell negotiable checks, money orders, and other similar money transfer instruments to FCU members. Sec. 518, Public Law 97-320, 96 Stat. 1530 (1982). At that time, Congress recognized the law did not permit an FCU to offer wire transfer services or other substitutions for money orders to its members, and the changes in FCU authority were limited to members. S. Rpt. 97-536, p. 68. Therefore, the NCUA Office of General Counsel (OGC) strictly

interpreted that FCUs could not cash checks, sell money orders or other negotiable instruments, or provide wire transfers to nonmembers, even if they were within an FCU’s field of membership, except in narrow circumstances where providing these services was incidental to providing an authorized service. *See*, OGC Legal Opinion 02-0250 (February 22, 2002).

Section 503 of the Reg Relief Act amended the FCU Act to permit FCUs to provide certain financial services to persons within their fields of membership. Congress intended to allow FCUs “to sell negotiable checks, money orders, and other similar transfer instruments, including international and domestic electronic fund transfers, to anyone eligible for membership, regardless of their membership status.” S. Rpt. 109-256, p. 5; H. Rpt. 109-356 Part 1, p. 63. To implement this authority, this interim final rule creates a new regulatory section to clarify NCUA’s position regarding financial services to persons within an FCU’s field of membership. Accordingly, the Board is issuing a new § 701.30 to implement section 503 of the Reg Relief Act.

When providing financial services to nonmembers, FCUs should be mindful that they will have to meet some of the same compliance obligations with these transactions as they currently have for similar member transactions. FCUs should ensure compliance with the Bank Secrecy Act, Public Law 91-508, the Customer Identification Program regulation, 31 CFR 103.121, NCUA security rules, 12 CFR part 748, and other anti-money laundering requirements when servicing persons who may not provide information that would be provided if they applied for membership. Additionally, pursuant to the Financial Right to Privacy Act, 15 U.S.C. 6801 *et seq.* and NCUA privacy rules, 12 CFR part 716, FCUs must safeguard the private financial information of and provide the required privacy notices to nonmembers who purchase or receive financial services.

C. Interim Final Rule

The NCUA Board is issuing this rulemaking as an interim final rule because there is a strong public interest in having advantageous and consumer-oriented rules that enhance credit union services for members and consumers.

Specifically, permitting FCUs to grant loans with the longer maturity will reduce the amount of periodic loan payments for members. The rule also allows FCUs to provide limited but necessary financial services to persons within their fields of membership who may not otherwise be able to obtain these services. Additionally, this interim final rule is consistent with statutory amendments in the Reg Relief Act. NCUA also finds these reasons are good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the Administrative Procedure Act (APA). Accordingly, the Board finds that, pursuant to 5 U.S.C. 553(b)(3), notice and public procedures are unnecessary and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule will be effective upon publication in the **Federal Register**. Although the rule is being issued as an interim final rule and is effective upon publication, the Board encourages interested parties to submit comments.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule only clarifies and improves the available services FCUs may provide to their members and persons within their fields of membership, without imposing any regulatory burden. The interim final amendments would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the interim final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The interim final rule would not have substantial direct effects on the

states, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

List of Subjects in 12 CFR Part 701

Check, Check cashing, Credit, Credit unions, Electronic fund transfer, Money order, Money transfer.

By the National Credit Union Administration Board on October 19, 2006.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351; 120 Stat. 1966.

§ 701.21 [Amended]

■ 2. Section 701.21 is amended by:

■ a. Removing “may not exceed 12 years” in the first sentence and adding in its place “may not exceed 15 years” in paragraph (c)(4).

■ b. Removing the phrase “12-year” and adding, in its place, the phrase “15-year” in paragraph (f).

■ 3. Section 701.30 is added to read as follows:

§ 701.30 Services for nonmembers within the field of membership.

Federal credit unions may provide the following services to persons within their fields of membership, regardless of membership status:

(a) Selling negotiable checks including travelers checks, money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and

(b) Cashing checks and money orders and receiving international and domestic electronic fund transfers for a fee.

[FR Doc. E6–17835 Filed 10–26–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133–AD23

Filing Requirements for Suspicious Activity Reports

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to describe in greater detail the requirements for reporting and filing a Suspicious Activity Report (SAR) and to address prompt notification of the board of directors of SAR filings, the confidentiality of reports, and liability protection. NCUA also is changing the heading for this part so it more accurately describes its scope. NCUA seeks to enhance credit union compliance with SAR reporting requirements by providing greater detail in its rule on the thresholds and procedures for filing a SAR.

DATES: This rule is effective November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Linda K. Dent, Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2006, the NCUA Board requested comments on a proposed rule to amend part 748 to more clearly describe the reportable activity covered by the Suspicious Activity Report (SAR) filing requirements, identify important

filing procedures, and highlight record retention requirements. The proposed rule addressed several other key aspects of the SAR process including the confidentiality of the reports, safe harbor information, and notification of the credit union's board of directors of its SAR reporting activity.

Discussion

NCUA periodically reviews a third of its existing regulations to update, clarify, and simplify these regulations where necessary and to eliminate redundant and unnecessary provisions. Interpretative Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. The proposed changes resulted from such a review and were intended to provide basic information addressing mandatory reporting requirements and other important provisions in a single location. The changes also were intended to establish a regulation consistent with the suspicious activity report (SAR) regulations of the other Federal Financial Institutions Examination Counsel (FFIEC) regulators and Treasury's regulation at 31 CFR 103.18. The proposed changes were not intended to eliminate the need for credit unions to review more specific information when considering potentially suspicious activity or completing a SAR. Resources such as § 103.18, the SAR form instructions, guidance provided in the FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual, NCUA's Web site, and the Financial Crimes Enforcement Network's (FinCEN) Web site, among others, continue to be useful tools in the SAR process.

Summary of Comments

The NCUA Board (Board) received twenty-four comment letters regarding the proposed rule: Thirteen from natural person credit unions, two from corporate credit unions, eight from credit union trade associations, and one from an individual. The comments almost exclusively concern the proposal to require prompt notice to the credit union's board or its designated committee of any SAR filed. Twenty of the twenty-four commenters addressed this requirement.

Approximately a third of the commenters believed the requirement unnecessary for a variety of reasons, among these its being a regulatory burden and not statutorily required. NCUA believes notifying a credit union's board, or its designated committee, of the credit union's SAR activity is important to ensure a board receives sufficient information to

properly discharge its responsibilities. For example, awareness of suspicious activity can identify vulnerabilities and strengths in a credit union's operations and inform its board with respect to decisions regarding funding priorities and requirements for systems and training.

Several commenters wanted a description of the type of information to include in the notice. The Board determined the final rule should not require a particular format for notice to a board of directors to allow credit unions and their boards the flexibility necessary to tailor the format to their particular needs and circumstances. The FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual lists several formats but credit unions are not limited to these.

A majority of commenters on this section also felt the Board should define the term prompt. Commenters provided several suggestions ranging from annual notification, to specific time frames from the date reportable activity occurs, to allowing the credit union to decide which SARs to report and when. The Board recognizes the need for some flexibility in interpreting "prompt" given differences among credit unions regarding the nature and frequency of SAR activity. The Board believes prompt means a board of directors should receive notice of the credit union's SAR activity at least monthly, for example at the monthly board meeting, if there is activity to report unless the seriousness of an activity merits immediate reporting.

NCUA also received various comments seeking additional guidance for identifying suspicious activity, direction for specific products and services, instruction on fact-specific scenarios, and recommendations of useful reference materials. While the rule provides general statements of the filing requirements and other key provisions for the SAR process, it cannot cover every possible activity or situation without becoming unwieldy and ineffective. Consequently, the rule references NCUA's and FinCEN's Web sites where information such as Frequently Asked Questions, the SAR form and accompanying instructions, the FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual, and other materials are housed. NCUA's effort to provide credit unions with useful guidance is ongoing.

One commenter asked the Board to include language in the rule permitting SAR processing within shared branch networks. The commenter stated shared branches currently prepare the report and send it to the member's credit union

for processing. The Board appreciates the issue the commenter has raised but believes more information and input are necessary before any regulatory changes are in order.

There are a few changes in the final rule from the proposed rule. The final rule includes technical corrections for consistency for references to the FFIEC Bank Secrecy Act/Money-Laundering Examination Manual. The final rule revises the first sentence under § 748.1(c) to clarify that reporting is also required where the credit union has reason to suspect a crime or suspicious transaction has occurred. The Board added a sentence to the end of § 748.1(c)(2)(ii) providing information on the location of useful SAR guidance. The phrase "but must notify all directors who are not suspects" was revised in Section 748.1(c)(4)(ii) to read "but must notify all directors, or a committee designated by the board of directors to receive such notice, who are not suspects." The change expands a credit union's notification options in this circumstance by also allowing the board to designate a committee for this purpose. Lastly, the Board added a sentence to § 748.1(c)(5) to clarify a credit union's obligation to make the filed report and supporting documentation available to appropriate law enforcement and its regulatory supervisory authority when requested.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under \$10 million in assets). This proposed rule modifies the language of a preexisting requirement for federally-insured credit unions to file reports of suspected crimes and suspicious activity. The proposed rule, therefore, will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget assigned 3133-0094 as the control number for NCUA's Form 2362. NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

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

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

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

List of Subjects in 12 CFR Part 748

Credit unions, Suspicious Activity Report.

By the National Credit Union Administration Board on October 19, 2006.

Mary Rupp,

Secretary of the Board.

■ For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR part 748 as set forth below:

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

■ 1. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a) and 1786(q); 31 U.S.C. 5311.

■ 2. The heading of part 748 is revised to read as set forth above.

■ 3. Section 748.1(c) is revised to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Suspicious Activity Report.* A credit union must file a report if it knows, suspects, or has reason to suspect that any crime or any suspicious transaction related to money laundering activity or a violation of the Bank

Secrecy Act has occurred. For the purposes of this paragraph (c) *credit union* means a federally-insured credit union and *official* means any member of the board of directors or a volunteer committee.

(1) *Reportable activity.* *Transaction* for purposes of this paragraph means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, share certificate, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected. A credit union must report any known or suspected crime or any suspicious transaction related to money laundering or other illegal activity, for example, terrorism financing, loan fraud, or embezzlement, or a violation of the Bank Secrecy Act by sending a completed suspicious activity report (SAR) to the Financial Crimes Enforcement Network (FinCEN) in the following circumstances:

(i) *Insider abuse involving any amount.* Whenever the credit union detects any known or suspected Federal criminal violations, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, and the credit union has a substantial basis for identifying one of the credit union's officials, employees, or agents as having committed or aided in the commission of the criminal violation, regardless of the amount involved in the violation;

(ii) *Transactions aggregating \$5,000 or more where a suspect can be identified.* Whenever the credit union detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, and involving or aggregating \$5,000 or more in funds or other assets, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, and the credit union has a substantial basis for identifying a possible suspect or group of suspects. If it is determined before filing this report that the identified suspect or group of suspects has used an alias, then information regarding the

true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported;

(iii) *Transactions aggregating \$25,000 or more regardless of potential suspects.* Whenever the credit union detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, involving or aggregating \$25,000 or more in funds or other assets, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, even though the credit union has no substantial basis for identifying a possible suspect or group of suspects; or

(iv) *Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.* Any transaction conducted or attempted by, at or through the credit union and involving or aggregating \$5,000 or more in funds or other assets, if the credit union knows, suspects, or has reason to suspect:

(A) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law;

(B) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(C) The transaction has no business or apparent lawful purpose or is not the sort of transaction in which the particular member would normally be expected to engage, and the credit union knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(v) *Exceptions.* A credit union is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities and the credit union files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(2) *Filing Procedures.* (i) *Timing.* A credit union must file a SAR with

FinCEN no later than 30 calendar days from the date the suspicious activity is initially detected, unless there is no identified suspect on the date of detection. If no suspect is identified on the date of detection, a credit union may use an additional 30 calendar days to identify a suspect before filing a SAR. In no case may a credit union take more than 60 days from the date it initially detects a reportable transaction to file a SAR. In situations involving violations requiring immediate attention, such as ongoing money laundering schemes, a credit union must immediately notify, by telephone, an appropriate law enforcement authority and its supervisory authority, in addition to filing a SAR.

(ii) *Content.* A credit union must complete, fully and accurately, SAR form TDF 90–22.47, Suspicious Activity Report (also known as NCUA Form 2362) in accordance with the form's instructions and 31 CFR Part 103.18. A copy of the SAR form may be obtained from the credit union resources section of NCUA's Web site, <http://www.ncua.gov>, or the regulatory section of FinCEN's Web site, <http://www.fincen.gov>. These sites include other useful guidance on SARs, for example, forms and filing instructions, Frequently Asked Questions, and the FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual.

(iii) *Compliance.* Failure to file a SAR as required by the form's instructions and 31 CFR Part 103.18 may subject the credit union, its officials, employees, and agents to the assessment of civil money penalties or other administrative actions.

(3) *Retention of Records.* A credit union must maintain a copy of any SAR that it files and the original or business record equivalent of all supporting documentation to the report for a period of five years from the date of the report. Supporting documentation must be identified and maintained by the credit union as such. Supporting documentation is considered a part of the filed report even though it should not be actually filed with the submitted report. A credit union must make all supporting documentation available to appropriate law enforcement authorities and its regulatory supervisory authority upon request.

(4) *Notification to board of directors.*

(i) *Generally.* The management of the credit union must promptly notify its board of directors, or a committee designated by the board of directors to receive such notice, of any SAR filed.

(ii) *Suspect is a director or committee member.* If a credit union files a SAR and the suspect is a director or member

of a committee designated by the board of directors to receive notice of SAR filings, the credit union may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but must notify the remaining directors, or designated committee members, who are not suspects.

(5) *Confidentiality of reports.* SARs are confidential. Any credit union, including its officials, employees, and agents, subpoenaed or otherwise requested to disclose a SAR or the information in a SAR must decline to produce the SAR or to provide any information that would disclose that a SAR was prepared or filed, citing this part, applicable law, for example, 31 U.S.C. 5318(g), or both, and notify NCUA of the request. A credit union must make the filed report and all supporting documentation available to appropriate law enforcement authorities and its regulatory supervisory authority upon request.

(6) *Safe Harbor.* Any credit union, including its officials, employees, and agents, that makes a report of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, are protected from liability for any disclosure in the report, or for failure to disclose the existence of the report, or both, to the full extent provided by 31 U.S.C. 5318(g)(3). This protection applies if the report is filed pursuant to this part or is filed on a voluntary basis.

[FR Doc. E6–17838 Filed 10–26–06; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1732

RIN 2550–AA34

Record Retention

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final regulation that sets forth record retention requirements with respect to the record management programs of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation consistent with the safety and soundness responsibilities of

OFHEO under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

DATES: The effective date of this regulation is October 27, 2006.

FOR FURTHER INFORMATION CONTACT: Tina Dion, Associate General Counsel, telephone (202) 414–3838 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, titled the “Federal Housing Enterprises Financial Safety and Soundness Act of 1992” (Act) (12 U.S.C. 4501 *et seq.*), established OFHEO as an independent office within the Department of Housing and Urban Development. OFHEO is statutorily mandated to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) are capitalized adequately and operate in a safe and sound manner and in compliance with applicable laws, rules, and regulations.

The Act provides that the Director of OFHEO (the Director) is authorized to make such determinations, take such actions, and perform such functions as the Director determines are necessary regarding his supervisory authorities, which include examinations of the Enterprises.¹ Under the Act, the Director is authorized to conduct on-site examinations of the Enterprises each year, and any other examinations that the Director determines are necessary to ensure their safety and soundness.²

B. Record Retention and Safe and Sound Operations

OFHEO recognizes that the effectiveness of the examination process is dependent upon the prompt production of complete and accurate records. OFHEO, through the supervisory process, must have access to the records of an Enterprise that are necessary to determine the financial condition of the Enterprise or the details or the purpose of any transaction that

¹ 12 U.S.C. 4513(b)(2).

² 12 U.S.C. 4517(a) and (b).

may have a material effect on the financial condition of the Enterprise.³

Retention of such records not only facilitates the examination process, but also allows an Enterprise to manage more effectively its business and detect improper behavior that might cause financial damage to the corporation. Additionally, such records serve as documentation for an Enterprise in any controversy over its business activities or transactions.

The importance of sound record retention policies and procedures by regulated institutions also has been recognized by Congress and other federal regulators. Adequate record retention by the institutions has been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, and has been identified as a requisite component of an institution's operation and management on a safety and soundness basis.⁴

In addition to facilitating the oversight and enforcement of federal banking laws, adequate record retention has been recognized by Congress as being essential to the oversight and enforcement of the federal securities laws. For example, as mandated by section 802 of the Sarbanes-Oxley Act,⁵ the U.S. Securities and Exchange Commission adopted rules requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.⁶

Record Retention Regulation

On June 1, 2006, OFHEO published for comment a proposed regulation, at 71 FR 31121, which sets forth proposed safety and soundness requirements with respect to the Enterprises' record retention programs. The 60-day comment period ended on July 31, 2006. All comments received have been made available to the public in the OFHEO Public Reading Room and have been posted on the OFHEO Web site at <http://www.OFHEO.gov>.

II. Comments Received

Comments were received from Freddie Mac and Fannie Mae. Both

Enterprises commented in support of the general approach under the proposed regulation. Each Enterprise also provided comments, many of which were technical in nature, on specific provisions of the proposal. All comments were taken into consideration. A discussion of the comments as they related to the proposed sections of the regulation follows.

A. § 1732.1 Purpose and Scope

Proposed § 1732.1 states that the purpose of the regulation is to set forth minimum requirements in connection with the record retention program of each Enterprise, and that the requirements are intended to ensure that complete and accurate records of an Enterprise are readily accessible by OFHEO for examination and other supervisory purposes.

Both Enterprises made technical comments regarding § 1732.1 with respect to the requirement to provide OFHEO with ready access to records. The Enterprises noted the dynamic nature of records management and the evolving nature of information technology. Freddie Mac commented that the methods of accessing hard copies of documents in off-site storage, electronic documents resident on a Local Area Network, and information in legacy databases, active databases, e-mail, and voicemail are quite different. Freddie Mac also noted that the level of management controls and ready access to records is not the same for records created and maintained years ago as that of records created and maintained today. Moreover, Freddie Mac commented that many of the records are subject to specific legal rights of the Enterprise or of individuals that cannot be disregarded. For these reasons, both Enterprises requested clarification that access to their records under the regulation is intended to mean "reasonable" access.

OFHEO understands that all records are not equally accessible. For purposes of clarification, OFHEO has added language to § 1732.1, as well as §§ 1732.6(a)(2)(iii) and 1732.7(d), which clarifies that the sections' accessibility requirements are intended to be by reasonable means, consistent with the nature and availability of the records and existing information technology.

B. § 1732.2 Definitions

Active Record

As proposed, the term "active record" would be defined under § 1732.2(b) to mean a document that is necessary to conduct the current business of an office

or business unit of an Enterprise and, therefore, is readily available for consultation and reference.

The Enterprises made technical comments on this definition, as well as the definitions for the terms "inactive record" and "vital records," requesting that the terms be amended by substituting the word "record" or "records" for "document" or "documents," as appropriate. Each Enterprise stated that such amendments would more fully incorporate what is intended by the proposal, *i.e.*, its definition of "record," and would be consistent with best practices.⁷

OFHEO agrees with the recommended technical changes and has revised the definitions in § 1732.2(b), (h), and (m) accordingly in the final regulation.

Employee

As proposed, the definition of the term "employee" would be defined in § 1732.2(e) to mean any officer or employee of an Enterprise, any conservator appointed by OFHEO, or any agent or independent contractor acting on behalf of an Enterprise. Both Enterprises commented that including independent contractors and agents in the definition was significant because such individuals would be subject to several provisions of the proposed regulations, *i.e.*, the training requirements under § 1732.6(b); the record hold notifications under § 1732.7(b); the reporting requirements of potential investigations under § 1732.7(b)(3), and the definition of "record" under § 1732.2(j)(3).

Fannie Mae stated that extending the regulation's general reach in this way would create obligations with regard to parties and documents beyond an Enterprise's control, would generate considerable burden and expense for the Enterprise without yielding commensurate gains with respect to improved operations or supervision, and would increase litigation risk by exposing the Enterprise to potential liability for the actions (or non-actions) of third parties or individuals outside the Enterprise's control.

Both Enterprises requested that OFHEO not include agents and independent contractors within the general definition of the term "employee." Rather, they recommended that, to the extent that any section of the regulation is intended to apply to agents

³ 12 U.S.C. 4632(c).

⁴ See, *e.g.*, 12 U.S.C. 1829b, and the *Guidelines and Interagency Standards for Safety and Soundness* at 12 CFR part 30, Appendix A, II, B.

⁵ Pub. L. 107-204, 116 Stat. 745 (2002).

⁶ 17 CFR part 210. See Release Nos. 33-8180; 34-47241; IC-2591; FR-66; File No. S7-46-02.

⁷ In their comments on best practices in the field of records management, both Enterprises referred to the guidelines and standards of the following organizations: The Sedona Conference (2005), the American National Standards Institute/Association of Records Managers and Administrators, and the International Organization for Standardization.

or independent contractors, OFHEO amend the section to include specific language making it apply to agents or independent contractors, tailored to what would be appropriate under the circumstances.

In response to the comments, OFHEO has deleted the phrase “or any agent or independent contractor acting on behalf of an Enterprise” from § 1732.2(e), and has added specific language for coverage of agents or independent contractors as appropriate in other sections of the final regulation, as noted below.

Inactive Record

As proposed, the term “inactive record” would be defined in § 1732.2(h) to mean a document that is seldom used but must be retained by an Enterprise for legislative, fiscal, legal, archival, historical, or vital records purposes.

In its technical comment, Fannie Mae requested that the words “legislative” and “archival” be deleted from the definition. Fannie Mae stated that the words do not appear to add anything substantive to the other qualifying terms, and that the proposal provides no elaboration as to what these words are intended to capture that is not otherwise covered. Fannie Mae noted that, as an industry practice, records generally are defined for record retention purposes as having operational, vital record, legal or regulatory, fiscal, and historical value.

OFHEO concurs with Fannie Mae’s technical comment and has revised the definition of “inactive record” accordingly in the final regulation. Also, as noted above, the word “record” has been substituted for the word “document.”

Record

As proposed, the definition of the term “record” in § 1732.2(j) would mean: Any document whether generated internally or received from outside sources by an Enterprise or employee in connection with Enterprise business, regardless of the following: (1) Form or format, including hard copy documents (e.g., files, logs, and reports) and electronic documents (e.g., e-mail, databases, spreadsheets, PowerPoint presentations, electronic reporting systems, electronic tapes and back-up tapes, optical discs, CD-ROMS, and DVDs), and voicemail records; (2) where the document is stored or located, including network servers, desktop or laptop computers and handheld computers, other wireless devices with text messaging capabilities, and on-site or off-site at a storage facility; (3) whether the document is maintained or used on Enterprise-owned equipment, or personal or home computer systems

of an employee; or (4) whether the document is active or inactive.

Fannie Mae recommended that the proposed regulation use the definition of the term “record” provided in Internal Organization for Standards, ISO 15849–1 § 3.15. That standard provides that a record “is information created, received, and maintained as evidence and information by an organization or person, in the pursuance of legal obligations or in the transaction of business.” Freddie Mac, also referencing industry standards, requested that the word “information” be used in the definition, rather than “document.” Freddie Mac requested another technical change that would modify the definition by inserting the term “maintained” between the word “employee” and the phrase “in connection with.” Both Enterprises explained that the recommended revisions better reflect the corporate practices and supervisory concerns.

OFHEO agrees with the technical changes recommended by Freddie Mac and has revised the definition of the term “record” in § 1732.2(j) to read “any information whether generated internally or received from outside sources or employee maintained in connection with Enterprise business * * *” Conforming changes have also been made to subsections (2), (3), and (4) accordingly.

OFHEO does not agree to make use of the entire ISO definition for the definition of the term “records,” as recommended by Fannie Mae, because other elements of the ISO definition are encompassed in § 1732.2 under the definition of the terms “active record” and “vital records.” In addition, the language of the definition in § 1732.2(j), namely “whether generated internally or received from outside sources” is necessary to ensure that records are appropriately retained even if they have not been generated or created by the Enterprise.

Record Retention Schedule

As proposed, the definition of the term “record retention schedule” would be defined in § 1732.2(k) to mean “a form that details the categories of records an Enterprise is required to store and their corresponding record retention periods. The record retention schedule includes reproductions, as well as all media, including microfilm and machine-readable computer records, for each record category.”

Fannie Mae commented that the inclusion of the term “reproductions” in the definition would be inconsistent with the standard industry approach, which does not require retention of

copies because of the burden and expense of such retention. OFHEO understands that retention of all reproductions or copies of records would be burdensome and expensive. Reproductions would be listed in a record retention schedule only if the original of the official record is not available. Accordingly, OFHEO has revised the second sentence of the proposed definition to read: “The record retention schedule includes all media, such as microfilm and machine-readable computer records, for each record category. Reproductions are also included for each record category if the original of the official record is not available.”

Fannie Mae also commented that the record retention schedule is envisioned as a “form.” Fannie Mae also requested a technical change to the definition, *i.e.*, substitution of the word “schedule” for the term “form,” to be consistent with the standard industry approach. OFHEO agrees and has changed the term “form” to “schedule” in the definition of the term “record retention schedule” in the final regulation.

Record Period

As proposed, the definition of the term “Retention period” would be defined in § 1732.2(l) to mean the length of time that records must be kept before they are destroyed. Records not authorized for destruction would have a retention period of “permanent.”

Fannie Mae made a technical comment that the definition is ambiguous, and requested that the definition be changed to state that: “Records not provided with a ‘retention period’ must be retained, unless scheduled for destruction.”

OFHEO has determined that the definition, as proposed, is clear and, therefore, has not made the technical change.

Vital Records

As proposed, the term “vital records” would be defined in § 1732.2(m) to mean documents that are needed to meet operational responsibilities of an Enterprise under emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of an Enterprise and those affected by Enterprise activities. Emergency operating records would be defined to mean the type of vital records essential to the continued functioning or reconstitution of an Enterprise during and after an emergency. Moreover, a vital record would be further defined to include a record that could be both an emergency operating record and a legal and financial rights record.

Fannie Mae commented that the definition includes documents “needed * * * to protect the legal and financial rights of * * * those affected by Enterprise activities.” Fannie Mae stated that the company is very concerned about the possible impact of this language, as it arguably could be read to create new, unpredictable obligations to third parties, and thus potential legal risk. To allay such concerns and to be consistent with industry best practices, Fannie Mae requested that the words “those affected by Enterprise activities” be substituted with the phrase “its employees, creditors, customers and holders of its securities.”

In response to the comment, OFHEO has determined to delete the words “those affected by Enterprise activities” from the definition of the term “vital records” in the final regulation. Also, as noted above, the word “records” has been substituted for the word “documents.”

C. Section 1732.5 Establishment and Evaluation of Record Retention Program

Section 1732.5(a) of the proposed regulation would require each Enterprise to establish and maintain a written record retention program and provide a copy of such program to the Examiner-in-Charge (EIC) of the Enterprise within 120 days of the regulation’s effective date, and annually thereafter, and whenever a significant revision to the program has been made.

Fannie Mae advised in its comments that the company will be prepared to submit a written plan within 120 days of the effective date on the understanding that the EIC will advise if the planned program is acceptable before investments are made in order to avoid costly changes and unnecessary delays. For the build-out process, Fannie Mae further advised that the company anticipates using one or more pilots to test and improve its proposed policy, approach and technology.

Freddie Mac stated that the company expects to include in its initial report to OFHEO a snapshot of its current records retention program, including any additional enhancements that are implemented by the date of that report, together with a description of planned enhancements (both short-term and long-term) to that program. That first report will reflect that Freddie Mac has a records management program in place that encompasses records retention, but that the company is continuing to develop and strengthen its program. Freddie Mac noted that with OFHEO feedback on both its record retention program, and on planned enhancements, the corporation can align

the records retention program with the expectations of OFHEO under the final regulation.

OFHEO understands that both Enterprises are in the process of developing and upgrading their records management systems to comport with changing technology and the requirements of the final regulation. To that end, OFHEO encourages an Enterprise to submit relevant materials to and confer with its EIC as needed to ensure that its record retention program is compliant.

D. Section 1732.6 Minimum Requirements of Record Retention Program Requirements

Section 1732.6(a)(2)(iii) of the proposed regulation would require that the record retention program established and maintained by an Enterprise be reasonably designed to assure that the format of retained records and the retention period permit ready access by the Enterprise, and, upon request, by the examination and other staff of OFHEO.

As noted above, in response to technical comments received on § 1732.1, OFHEO has revised subsection (a)(2)(iii) of § 1732.6 in the final regulation to clarify the accessibility requirement to mean access by reasonable means, consistent with the nature and availability of the records and existing information technology.

Additionally, Freddie Mac made a technical comment requesting that OFHEO revise this subsection (and § 1732.7(d), which addresses access to and retrieval of records during a record hold) to include at the end the phrase “subject to applicable legal rights.”

OFHEO has determined that it is not necessary to add the requested phrase to either subsection because the record retention requirements of the regulation are imposed for purposes of supervisory access by OFHEO to Enterprise records and do not result in a waiver of existing rights.

Section 1732.6(a)(5) of the proposed regulation would require that the record retention program established and maintained by an Enterprise include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, and administrative requirements.

Fannie Mae commented that the term “administrative” is ambiguous. Fannie Mae stated that, if the term is intended to reference administrative requirements of OFHEO, the term “regulatory”

already captures these requirements, so the term “administrative” should be deleted. If, however, what is intended to be captured are the Enterprises’ business needs, the term “operational” or “business” should be substituted for the term “administrative.”

OFHEO notes that the term “administrative” refers to requirements that are internal to a company, *i.e.*, the Enterprise. Therefore, the term is not duplicative of the term “regulatory.” However, for purposes of clarification, OFHEO has determined to revise § 1732.6(a)(5) in the final regulation by substituting the terms “operational and business” for the term “administrative.”

Training

Section 1732.6(b) of the proposed regulation would require that an Enterprise’s record retention program provide for training of and notice to all employees on a periodic basis on their record retention responsibilities, including instruction regarding penalties provided by law for the unlawful removal or destruction of records.

The Enterprises commented that this provision should be modified to include specific language tailored to requirements appropriate for independent contractors and agents. In its technical comment, Freddie Mac requested that OFHEO modify the proposal to provide that the training provision applies only to actual employees of an Enterprise, and that the Enterprise also takes reasonable steps to ensure that agents or independent contractors who are involved with creating or maintaining Enterprise records receive notice and/or training regarding record retention responsibilities in a manner appropriate to their engagement. Fannie Mae requested amending the proposed section to include specific language making training for agents or independent contractors consistent with their roles and responsibilities.

As noted above in response to comments on § 1732.2(e), OFHEO has added specific language for coverage of agents or independent contractors to several sections of the final regulation. With respect to § 1732.6, a second sentence has been added to subsection (b) that reads as follows: “The record retention program also shall provide for training for the agents or independent contractors of an Enterprise, as appropriate, consistent with their respective roles and responsibilities to the Enterprise.”

E. Section 1732.7 Record Hold

Definition

Section 1732.7(a) of the proposed regulation would define the term "record hold" to mean a requirement, an order, or a directive from an Enterprise or OFHEO that the Enterprise is to retain records relating to a particular issue in connection with an actual or a potential OFHEO examination, investigation, enforcement proceeding, or litigation.

Both Enterprises expressed concern that criteria for a record hold is stated in terms of a "potential" investigation, enforcement proceeding or litigation. Fannie Mae commented that virtually everything that an Enterprise does raises some "potential" for litigation, and virtually every question that OFHEO asks raises some "potential" for an OFHEO investigation. Fannie Mae stated that the overly broad and ambiguous standard would needlessly create an onerous burden both on the Enterprises and OFHEO. Fannie Mae requested that the word "likely" be substituted for the word "potential."

Freddie Mac made the technical comment that the term "potential" requires or suggests that an Enterprise or employee is obligated and accountable to accurately guess when a matter could possibly give rise to an OFHEO examination, investigation, enforcement proceeding or litigation, resulting in an impossible standard with which to comply in practice. Freddie Mac requested that subsection (a) of § 1732.7 be modified to require that an Enterprise receive notice from OFHEO.

To address these comments, OFHEO has amended subsection (a) of § 1732.7 in the final regulation to clarify that the record retention requirements of a record hold result upon receipt by the Enterprise of notice from OFHEO. As amended, subsection (a) reads as follows: "For purposes of this part, the term 'record hold' means a requirement, an order, or a directive from an Enterprise or OFHEO that the Enterprise is to retain records relating to a particular issue in connection with an actual or a potential OFHEO examination, investigation, enforcement proceeding, or litigation of which the Enterprise has received notice from OFHEO." As a result of the amendment, OFHEO has determined that it is not necessary to substitute the word "likely" for the word "potential."

Notification by an Enterprise

Section 1732.7(b)(1) of the proposed regulation would require that the record retention program of an Enterprise "[a]ddress how all employees will

receive prompt notification of a record hold; * * *." Fannie Mae stated that it understands that this provision requires only that the program provide the mechanism by which all relevant employees will be notified of a record hold, and does not require that all employees in fact be made aware of each and every record hold issued. Otherwise, Fannie Mae stated the result would be a great deal of cost, confusion and unnecessary effort, as the vast majority of Enterprise employees would have nothing germane to a particular hold. Moreover, Fannie Mae stated that industry best practice is not to notify each employee at a company of every records hold, but rather to notify only those employees who are likely to have records covered by the records hold. To that end, Fannie Mae requested that the subsection be modified by deleting the words "all employees" and substituting the phrase "the Enterprise will determine which employees, agents and independent contractors need to and."

OFHEO understands that not all employees of an Enterprise may fall within the scope of the notification requirements of § 1732.7(b)(1) in light of the nature of their responsibilities and activities. To clarify that understanding, OFHEO has deleted the word "all" before the word "employees" in the final regulation. Additionally, as noted above, because agents or independent contractors of the Enterprise have been deleted from the definition of the term "employees," specific language has been added to the subsection to cover agents or independent contractors, as appropriate. As amended, § 1732.7(b)(1) reads as follows in the final regulation: "The record retention program of an Enterprise shall: (1) Address how employees and, as appropriate, how agents or independent contractors consistent with their respective roles and responsibilities to the Enterprise, will receive prompt notification of a record hold;".

Section 1732.7(b)(3) of the proposed regulation would require that the record retention program of an Enterprise "[p]rovide that any employee who is aware of a potential investigation, enforcement proceeding, or litigation by OFHEO involving the Enterprise or an employee shall notify immediately the legal department of the Enterprise and shall retain any records that may be relevant in any way to such investigation, enforcement proceeding, or litigation."

Similar to comments made on other sections, both Enterprises expressed concerns regarding the scope of coverage for the notification requirements of § 1732.7(b)(3) and

criteria for determining a "potential" investigation, enforcement proceeding, or litigation by OFHEO involving the Enterprise or an employee.

The concerns expressed have been addressed by OFHEO. As noted above in its response to comments received on § 1732.2(e), OFHEO has deleted coverage of agents or independent contractors acting on behalf of an Enterprise from the definition of the term "employee," and their coverage is limited to certain sections of the final regulation as appropriate. OFHEO also amended subsection (a) of § 1732.7 in the final regulation to clarify that the record retention requirements of a record hold result upon receipt by an Enterprise of notice from OFHEO.

To further allay any concerns, OFHEO has amended § 1732.7(b)(3) by replacing the words "aware of" with "has received notice of" and also by inserting the phrase ", or otherwise has actual knowledge that an issue is subject to such an enforcement proceeding or litigation," before the words "shall notify." Thus, OFHEO would provide written notice to an Enterprise of its intent to conduct an investigation some time in the future, thereby providing notice of a "potential investigation." Also, consistent with other sections discussed above, language has been added to the subsection to require that agents and independent contractors receive notice of a record hold to the extent appropriate in light of the nature of their engagement.

Specifically, § 1732.7(b)(3) of the final regulation provides that the record retention program of an Enterprise shall "provide that any employee and, as appropriate, any agent or independent contractor consistent with his or her respective role and responsibility to the Enterprise, who has received notice of a potential investigation, enforcement proceeding, or litigation by OFHEO involving the Enterprise or an employee, or otherwise has actual knowledge that an issue is subject to such an investigation, enforcement proceeding or litigation, shall notify immediately the legal department of the Enterprise and shall retain any records that may be relevant in any way to such investigation, enforcement proceeding, or litigation."

It is noted that OFHEO also has revised subsection (b)(1) of § 1732.7, which requires prompt notification of a record hold, to include, as appropriate, coverage of agents and independent contractors consistent with their roles and responsibilities.

F. Section 1732.10 Supervisory Action

Section 1732.10(a) of the proposed regulation would provide that failure by an Enterprise to comply with this part may subject the Enterprise or the board members, officers, or employees thereof to supervisory action by OFHEO under the Act, including but not limited to cease-and-desist proceedings, temporary cease-and-desist proceedings, and civil money penalties.

Both Enterprises commented on compliance with the proposed section. Fannie Mae noted the necessary complexities of developing a comprehensive record retention scheme and suggested that, consistent with the approach of federal banking regulators, OFHEO establish a specific system for the submission of Enterprise remediation plans (over perhaps a thirty-day period) with regard to any deficiencies regarding compliance with § 1732.10(a). Fannie Mae stated that such a system would provide a routine, efficient framework for the resolution of issues that do not merit formal enforcement action, without foreclosing the ability to take more formal action, as OFHEO deemed appropriate.

Freddie Mac commented that in light of the lack of bright lines as to precisely what is required for full compliance with the regulation, the rapidly changing best practices in the records management field, and the time required to develop and implement enhancements to records management programs, it would be appropriate for OFHEO to first consider using feedback, followed by a request for a remediation plan, prior to considering formal enforcement actions, in instances where OFHEO believes an Enterprise acting in good faith is not in full compliance with the regulation. Thus, Freddie Mac requested that § 1732.10(a) be revised to require appropriate supervisory notification before noncompliance would subject the Enterprise to a supervisory action by OFHEO.

OFHEO understands that both Enterprises are in the process of developing and upgrading their records management systems to comport with changing technology. To that end, both during the 120-day implementation period and afterwards, OFHEO encourages each Enterprise to submit relevant materials to and confer with its EIC as needed to ensure that its record retention program is compliant.

III. Final Regulation

Except with respect to the technical and clarifying revisions of the proposed language as described above, OFHEO

has determined to issue the regulation as proposed.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This regulation does not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. Nevertheless, this regulation was submitted to the Office of Management and Budget for review under other provisions of Executive Order 12866 as a significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the regulation, as herein adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises which are not small entities for purposes of the Regulatory Flexibility Act.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. The Enterprises are federally chartered corporations

supervised by OFHEO. This regulation sets forth minimum record retention requirements with which the Enterprises must comply for Federal supervisory purposes and address the safety and soundness authorities of the agency. This regulation does not affect in any manner the powers and authorities of any State with respect to the Enterprises or alter the distribution of power and responsibilities between State and Federal levels of government. Therefore, OFHEO has determined that this final regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

List of Subjects in 12 CFR Part 1732

Government-Sponsored Enterprises, Reporting and recordkeeping requirements, Records.

■ Accordingly, for the reasons stated in the preamble, OFHEO adds part 1732 to subchapter C of 12 CFR chapter XVII to read as follows:

Subchapter C—Safety and Soundness

PART 1732—RECORD RETENTION

Subpart A—General

Sec.

1732.1 Purpose and scope.

1732.2 Definitions.

1732.3–4 [Reserved]

Subpart B—Record Retention Program

1732.5 Establishment and evaluation of record retention program.

1732.6 Minimum requirements of record retention program.

1732.7 Record hold.

1732.8–1732.9 [Reserved]

Subpart C—Supervisory Action

1732.10 Supervisory action.

Authority: 12 U.S.C. 4513(a), 4513(b)(1), 4513(b)(5), 4514, 4631, 4632, and 4632.

Subpart A—General

§ 1732.1 Purpose and scope.

In furtherance of the safety and soundness authorities of OFHEO, this part sets forth minimum requirements in connection with the record retention program of each Enterprise. The requirements are intended to ensure that complete and accurate records of an Enterprise are readily accessible by OFHEO for examination and other supervisory purposes. Such access shall be by reasonable means, consistent with the nature and availability of the records and existing information technology.

§ 1732.2 Definitions.

For purposes of this part, the term:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993) (12 U.S.C. 4501 *et seq.*).

(b) *Active record* means a record that is necessary to conduct the current business of an office or business unit of an Enterprise and, therefore, is readily available for consultation and reference.

(c) *Director* means the Director of OFHEO, or his or her designee.

(d) *Electronic record* means a record created, generated, communicated, or stored by electronic means.

(e) *Employee* means any officer or employee of an Enterprise or any conservator appointed by OFHEO.

(f) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term “Enterprises” means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(g) *E-mail* means electronic mail, which is a method of communication in which:

(1) Usually, text is transmitted (but sometimes also graphics and/or audio information);

(2) Operations include sending, storing, processing, and receiving information;

(3) Users are allowed to communicate under specified conditions; and

(4) Messages are held in storage until called for by the addressee, including any attachment of separate electronic files.

(h) *Inactive record* means a record that is seldom used but must be retained by an Enterprise for fiscal, legal, historical, or vital records purposes.

(i) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(j) *Record* means any information whether generated internally or received from outside sources by an Enterprise or employee maintained in connection with Enterprise business, regardless of the following:

(1) Form or format, including hard copy documents (*e.g.*, files, logs, and reports) and electronic documents (*e.g.*, e-mail, databases, spreadsheets, PowerPoint presentations, electronic reporting systems, electronic tapes and back-up tapes, optical discs, CD-ROMS, and DVDs), and voicemail records;

(2) Where the information is stored or located, including network servers, desktop or laptop computers and handheld computers, other wireless devices with text messaging capabilities,

and on-site or off-site at a storage facility;

(3) Whether the information is maintained or used on Enterprise-owned equipment, or personal or home computer systems of an employee; or

(4) Whether the information is active or inactive.

(k) *Record retention schedule* means a schedule that details the categories of records an Enterprise is required to retain and the corresponding retention periods. The record retention schedule includes all media, such as microfilm and machine-readable computer records, for each record category. Reproductions are also included for each record category if the original of the official record is not available.

(l) *Retention period* means the length of time that records must be kept before they are destroyed. Records not authorized for destruction have a retention period of “permanent.”

(m) *Vital records* means records that are needed to meet operational responsibilities of an Enterprise under emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of an Enterprise. Emergency operating records are the type of vital records essential to the continued functioning or reconstitution of an Enterprise during and after an emergency. A vital record may be both an emergency operating record and a legal and financial rights record.

§ 1732.3–1732.4 [Reserved]

Subpart B—Record Retention Program

§ 1732.5 Establishment and evaluation of record retention program.

(a) *Establishment.* An Enterprise shall establish and maintain a written record retention program and provide a copy of such program to the OFHEO Examiner-in-Charge of the Enterprise within 120 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made.

(b) *Evaluation.* Management of the Enterprise shall evaluate in writing the adequacy and effectiveness of the record retention program at least every three years and provide a copy of the evaluation to the board of directors and the OFHEO Examiner-in-Charge of the Enterprise.

§ 1732.6 Minimum requirements of record retention program.

(a) *Requirements.* The record retention program established and maintained by an Enterprise under § 1732.5 shall:

(1) Be reasonably designed to assure that retained records are complete and accurate;

(2) Be reasonably designed to assure that the format of retained records and the retention period—

(i) Are adequate to support litigation and the administrative, business, external and internal audit functions of the Enterprise;

(ii) Comply with requirements of applicable laws and regulations; and

(iii) Permit ready access by the Enterprise and, upon request, by the examination and other staff of OFHEO by reasonable means, consistent with the nature and availability of the records and existing information technology;

(3) Assign in writing the authorities and responsibilities for record retention activities;

(4) Include policies and procedures concerning record holds, consistent with § 1732.7;

(5) Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, and operational and business requirements;

(6) Include adequate security and internal controls to protect records from unauthorized access and data alteration; and

(7) Provide for adequate back-up and recovery of electronic records.

(b) *Training.* The record retention program shall provide for training of and notice to all employees on a periodic basis on their record retention responsibilities, including instruction regarding penalties provided by law for the unlawful removal or destruction of records. The record retention program also shall provide for training for the agents or independent contractors of an Enterprise, as appropriate, consistent with their respective roles and responsibilities to the Enterprise.

§ 1732.7 Record hold.

(a) *Definition.* For purposes of this part, the term “record hold” means a requirement, an order, or a directive from an Enterprise or OFHEO that the Enterprise is to retain records relating to a particular issue in connection with an actual or a potential OFHEO examination, investigation, enforcement proceeding, or litigation of which the Enterprise has received notice from OFHEO.

(b) *Notification by Enterprise.* The record retention program of an Enterprise shall:

(1) Address how employees and, as appropriate, how agents or independent

contractors consistent with their respective roles and responsibilities to the Enterprise, will receive prompt notification of a record hold;

(2) Designate an individual to communicate specific requirements and instructions, including, when necessary, the instruction to cease immediately any otherwise permissible destruction of records; and,

(3) Provide that any employee and, as appropriate, any agent or independent contractor consistent with his or her respective role and responsibility to the Enterprise, who has received notice of a potential investigation, enforcement proceeding, or litigation by OFHEO involving the Enterprise or an employee, or otherwise has actual knowledge that an issue is subject to such an investigation, enforcement proceeding or litigation, shall notify immediately the legal department of the Enterprise and shall retain any records that may be relevant in any way to such investigation, enforcement proceeding, or litigation.

(c) *Method of record retention.* The record retention program of an Enterprise shall address the method by which the Enterprise will retain records during a record hold. Specifically, the program shall describe the method for the continued preservation of electronic records, including e-mails, and the conversion of records from paper to electronic format as well as any alternative storage method.

(d) *Access to and retrieval of records.* The record retention program of an Enterprise shall ensure access to and retrieval of records by the Enterprise and access, upon request, by OFHEO, during a record hold. Such access shall be by reasonable means, consistent with the nature and availability of the records and existing information technology.

§§ 1732.8–1732.9 [Reserved]

Subpart C—Supervisory Action

§ 1732.10 Supervisory action.

(a) *Supervisory action.* Failure by an Enterprise to comply with this part may subject the Enterprise or the board members, officers, or employees thereof to supervisory action by OFHEO under the Act, including but not limited to cease-and-desist proceedings, temporary cease-and-desist proceedings, and civil money penalties.

(b) *No limitation of authority.* This part does not limit or restrict the authority of OFHEO to act under its safety and soundness mandate, in accordance with the Act. Such authority includes, but is not limited to, conducting examinations, requiring

reports and disclosures, and enforcing compliance with applicable laws, rules, and regulations.

Dated: October 23, 2006.

James B. Lockhart, III,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. E6–18034 Filed 10–26–06; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21968; Directorate Identifier 2005–NM–077–AD; Amendment 39–14798; AD 2006–22–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200CB, and –300 series airplanes. This AD requires repetitive detailed inspections for proper functioning of the girt bar leaf springs for the escape slides to ensure the leaf springs retain the sliders and the required 0.37-inch minimum engagement between the sliders and floor fittings is achieved at passenger doors 1, 2, and 4, and corrective actions if necessary. This AD results from a report that the escape slides failed to deploy correctly during an operator's tests of the escape slides. We are issuing this AD to prevent escape slides from disengaging from the airplane during deployment or in use, which could result in injuries to passengers or flightcrew.

DATES: This AD becomes effective December 1, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 1, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757–200, –200CB, and –300 series airplanes. That supplemental NPRM was published in the **Federal Register** on May 19, 2006 (71 FR 29092). That supplemental NPRM proposed to require repetitive detailed inspections for proper functioning of the girt bar leaf springs for the escape slides to ensure the leaf springs retain the sliders and the required 0.37-inch minimum engagement between the sliders and floor fittings is achieved at passenger doors 1, 2, and 4, and corrective actions if necessary.

Comments

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

Support for the Supplemental NPRM

Boeing supports the contents of the supplemental NPRM.

Request To Clarify Prohibition for Bending Girt Bar

One commenter, a private citizen, states that it is unclear what to do if the subject girt bar retention leaf springs are bent before the effective date of the AD. The commenter states that it is virtually impossible to determine if such springs were bent before. Therefore, the commenter requests that we clarify paragraphs (f) and (g) of the supplemental NPRM if the intent is to prohibit bending of the spring in the future. The commenter suggests that we revise the final rule to add the following words to paragraphs (f) and (g): “* * *

this AD does not allow that procedure from the effective date of this AD.”

We disagree that it is necessary to change paragraphs (f) and (g) of the final rule to add the suggested wording. Both paragraphs prohibit bending the girt bar during the actions accomplished in accordance with this AD, which are required within 24 months after the effective date of this AD. Therefore, the paragraphs already prohibit bending the girt bars as of the effective date of the actions in the AD. We have not changed the AD in this regard.

Explanation of Change to Paragraph (g)

Paragraph (g) of the NPRM referred to the paragraph titled “Part 2—‘Inspection’” in Boeing Special Attention Service Bulletin 757–52–0085, dated March 24, 2005; and Boeing Special Attention Service Bulletin 757–52–0086, dated March 24, 2005. However that paragraph title is not included in Boeing Special Attention Service Bulletin 757–52–0085. Therefore, we have changed paragraph (g) of the AD to remove the reference to the paragraph titled “Part 2—‘Inspection’” in the service bulletins. The requirement to do an “approved equivalent procedure” in accordance with the applicable chapter/section of the Boeing 757 AMM or Boeing 757 CMM specified in the applicable service bulletin remains.

Conclusion

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

Costs of Compliance

There are about 944 airplanes of the affected design in the worldwide fleet. This AD affects about 632 airplanes of U.S. registry. The inspection takes about 2 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$101,120, or \$160 per airplane, per inspection cycle.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of

the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency’s authority.

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13

by adding the following new airworthiness directive (AD):

2006–22–01 Boeing: Amendment 39–14798. Docket No. FAA–2005–21968; Directorate Identifier 2005–NM–077–AD.

Effective Date

(a) This AD becomes effective December 1, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200 and –200CB series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–52–0085, dated March 24, 2005; and Boeing Model 757–300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–52–0086, dated March 24, 2005.

Unsafe Condition

(d) This AD results from a report that the escape slides failed to deploy correctly during an operator’s tests of the escape slides. We are issuing this AD to prevent escape slides from disengaging from the airplane during deployment or in use, which could result in injuries to passengers or flightcrew.

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.

Detailed Inspection and Corrective Actions

(f) Within 24 months after the effective date of this AD: Do a detailed inspection for inadequate spring retention force and inadequate girt bar slider dimensions of the girt bar leaf springs for the escape slides at passenger doors 1, 2, and 4; and do any applicable corrective actions before further flight. Do all the actions in accordance with the Accomplishment Instructions of the applicable service bulletin in paragraph (f)(1) or (f)(2) of this AD, except as provided by paragraph (g) of this AD. Where the airplane maintenance manuals (AMMs) and component maintenance manuals (CMMs) referenced by the applicable service bulletin include procedures that allow bending the girt bar retention spring, this AD does not allow that procedure. Repeat the inspection thereafter at intervals not to exceed 24 months, or after each maintenance task where removal of and installation of the girt bar is necessary, whichever occurs earlier.

(1) For Boeing Model 757–200 and –200CB series airplanes: Boeing Special Attention Service Bulletin 757–52–0085, dated March 24, 2005.

(2) For Boeing Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–52–0086, dated March 24, 2005.

Equivalent Procedures

(g) Where the applicable service bulletin specified in paragraph (f)(1) or (f)(2) of this AD specifies that actions may be accomplished in accordance with an

“approved equivalent procedure”: The corrective actions must be accomplished in accordance with the applicable chapter/section of the Boeing 757 AMM or Boeing 757 CMM specified in the applicable service bulletin. Where the AMMs and CMMs include procedures that allow bending the girt bar retention spring, this AD does not allow that procedure.

Alternative Methods of Compliance (AMOCs)

(h)(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.

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 757-52-0085, dated March 24, 2005; or Boeing Special Attention Service Bulletin 757-52-0086, dated March 24, 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 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 11, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17656 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25088; Directorate Identifier 2006-NM-085-AD; Amendment 39-14799; AD 2006-22-02]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model A300 C4-605R Variant F Airplanes (Collectively Called A300-600 Series Airplanes)

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A300-600 series airplanes. That AD currently requires an inspection for evidence of chafing between the hydraulic flexible hose and the ram air turbine (RAT) hub, and related investigative and corrective actions if necessary. This new AD extends the applicability to include all Model A300-600 series airplanes that are equipped with a certain RAT. This AD results from reports of holes in the RAT hub cover. We are issuing this AD to prevent a hole in the RAT hub cover. A hole in the RAT hub cover could allow water to enter the RAT governing mechanism, freeze during flight, and jam the governing mechanism. In addition, the metal particles that result from chafing between the hydraulic flexible hose and the RAT could mix with the lubricant grease and degrade the governing mechanism. In an emergency, a jammed or degraded RAT could result in its failure to deploy, loss of hydraulic pressure or electrical power to the airplane, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective December 1, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 1, 2006.

On August 26, 2005 (70 FR 42267, July 22, 2005), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300-29-6054, Revision 01, excluding Appendix 01, dated November 4, 2004.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department

of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace 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.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005-15-05, amendment 39-14194 (70 FR 42267, July 22, 2005). The existing AD applies to certain Airbus Model A300-600 series airplanes. That NPRM was published in the **Federal Register** on June 21, 2006 (71 FR 35575). That NPRM proposed to require an inspection for evidence of chafing between the hydraulic flexible hose and the ram air turbine (RAT) hub, and related investigative and corrective actions if necessary.

Comments

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

Request To Provide Chafe Limits in the AD

Air Transport Association (ATA) of America, on behalf of its member, FedEx, requests that we provide the chafe limits for the RAT hub cover in the AD to ensure clarity for compliance purposes. FedEx points out that Airbus Service Bulletin A300-29-6054, Revision 02, dated January 12, 2006 (the appropriate source of service information for accomplishing the required actions), specifies evaluating any damage to the hub cover in accordance with Hamilton Sundstrand Component Maintenance Manual

(CMM) 29-21-21. FedEx reviewed CMM 29-21-21 and did not find any discussion of chafing damage. FedEx points out that the CMM addresses only dent limits and scratches. FedEx also points out that, for scratches, the CMM gives repair instructions for those under 0.005 inch in depth or requires replacement, but the CMM gives no serviceable limit. FedEx would like to know if it can assume, since chafing is not specifically addressed in the CMM, that the RAT must be removed immediately and replaced, or if the scratch damage criteria apply. FedEx queried both Hamilton Sundstrand and Airbus for clarification, but states that no publications have yet been revised to provide a reasonable amount of clarity.

Since we issued the NPRM, Hamilton Sundstrand incorporated into CMM 29-21-21, dated March 6, 2006, values that clarify the damage limits for the RAT hub cover, as follows:

- Check criteria, page 505 (check number 35); and
- Repair, page 601 (repair number 16).

CMM 29-21-21 and Airbus Service Bulletin A300-29-6054, Revision 02, state that all external scores, smooth dents, and abrasions that do not include cracks, and that meet the requirement of Flag 1 and Flag 2 of CMM 29-21-21, Figure 818, are acceptable and do not require further action. If damage exceeds the limits provided in Figure 818 of the CMM, the CMM specifies that

the cover should be repaired in accordance with CMM 29-21-21, repair number 13. Otherwise, the CMM specifies that the RAT be replaced. Both the CMM and paragraph (f) of the NPRM specify that repair and replacement must be done before further flight. However, operators may request approval of an alternative method of compliance (AMOC) by following the procedures in paragraph (h) of this AD. Since the CMM is secondary reference material, no change to the final rule is needed.

Request To Change Compliance Time

ATA, on behalf of its member, FedEx, requests that the time allotted for operators to accomplish the inspections be increased from 2,500 flight hours to 3,500 flight hours after the effective date of this AD. FedEx states that its A300 maintenance program currently requires heavy maintenance (C-check) to be performed at the earlier of every 3,500 flight hours or 30 months. FedEx states that, since this RAT inspection has the potential for component replacement that cannot be performed at most line maintenance stations because of test equipment requirements, the longer compliance time would help FedEx to align the work with currently scheduled heavy maintenance checks. This longer compliance time would allow FedEx an additional 200 days (according to its utilization rate) to do the inspection in a heavy maintenance environment.

FedEx notes that it began doing the inspections specified in the NPRM in June 2006, but has yet to experience any chafing problems.

We do not agree with the commenter's request to change the compliance time. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. However, operators may request approval of an alternative method of compliance (AMOC) by following the procedures in paragraph (h) of this AD to request a different compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety. We have not changed the final rule in this regard.

Conclusion

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

Costs of Compliance

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

Estimated Costs

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	\$80	\$80	120	\$9,600
Rework binding	1	80	80	120	9,600

Authority for This Rulemaking

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

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

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14194 (70 FR 42267, July 22, 2005) and by adding the following new airworthiness directive (AD):

2006–22–02 Airbus: Amendment 39–14799. Docket No. FAA–2006–25088; Directorate Identifier 2006–NM–085–AD.

Effective Date

(a) This AD becomes effective December 1, 2006.

Affected ADs

(b) This AD supersedes AD 2005–15–05.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; certificated in any category; equipped with a Hamilton Sundstrand Ram Air Turbine (RAT).

Unsafe Condition

(d) This AD results from reports of holes in the ram air turbine (RAT) hub cover. We are issuing this AD to prevent a hole in the RAT hub cover. A hole in the RAT hub cover could allow water to enter the RAT governing mechanism, freeze during flight, and jam the governing mechanism. In addition, the metal particles that result from chafing between the hydraulic flexible hose and the RAT could mix with the lubricant grease and degrade the governing mechanism. In an emergency, a jammed or degraded RAT could result in its failure to deploy, loss of hydraulic pressure or electrical power to the airplane, and consequent reduced controllability of the airplane.

Compliance

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

Restatement of the Requirements of AD 2005–15–05 With Compliance Times for New Airplanes**Inspection and Related Investigative/Corrective Actions**

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Do a one-time detailed inspection for evidence of chafing between the hydraulic flexible hose and the RAT hub, and any applicable related investigative and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–29–6054, Revision 01, excluding Appendix 01, dated November 4, 2004; or Revision 02, excluding Appendix 01, dated January 12, 2006. After the effective date of this AD, only Revision 02 of the service bulletin may be used. Any applicable corrective actions must be accomplished before further flight. Where the service bulletins specify to submit certain information to the manufacturer, and to submit damaged RATs to the vendor or a repair station, this AD does not include those requirements.

(1) For airplanes having serial numbers (S/Ns) 0812, 0813, 0815 through 0818 inclusive, 0821 through 0828 inclusive, and 0836 through 0838 inclusive: Within 2,500 flight hours after August 26, 2005 (the effective date of AD 2005–15–05).

(2) For airplanes not identified in paragraph (f)(1) of this AD: Within 2,500 flight hours after the effective date of this AD.

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

Actions Accomplished Previously

(g) Actions accomplished before the effective date of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–29–6054, excluding Appendix 01, dated June 8, 2004, are acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2005–15–05 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(i) French airworthiness directive F–2006–035, dated February 1, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A300–29–6054, Revision 01, excluding Appendix 01, dated November 4, 2004; or Airbus Service Bulletin A300–29–6054, Revision 02, excluding Appendix 01, dated January 12, 2006; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–29–6054, Revision 02, excluding Appendix 01, dated January 12, 2006, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On August 26, 2005 (70 FR 42267, July 22, 2005), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–29–6054, Revision 01, excluding Appendix 01, dated November 4, 2004.

(3) 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 11, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–17657 Filed 10–26–06; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2005–21343; Directorate Identifier 2004–NM–117–AD; Amendment 39–14800; AD 2006–22–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus models, as specified above. This AD requires modifying the aft pressure bulkhead for improved corrosion protection and drainage, and related concurrent actions. This AD results from severe corrosion found in the lower rim area of the aft pressure bulkhead during routine maintenance of an airplane. We are issuing this AD to prevent corrosion on the inner rim angle and cleat profile splice of the aft pressure bulkhead, which could result in the loss of airplane structural integrity.

DATES: This AD becomes effective December 1, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 1, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 B4-600, B4-600R, and F4-600R series airplanes, and Model C4-605R Variant F airplanes (collectively called A300-600 series airplanes); and Model A310 series airplanes. That NPRM was published in the **Federal Register** on June 3, 2005 (70 FR 32547). That NPRM proposed to require modifying the aft pressure

bulkhead for improved corrosion protection and drainage, and related concurrent actions.

Actions Since NPRM Was Issued

Since we issued the NPRM, Airbus has released Service Bulletin A310-53-2025, Revision 06, dated August 3, 2006. In the NPRM, we referred to Airbus Service Bulletin A310-53-2025, Revision 5, dated March 24, 1989, as the appropriate source of service information for modifying the aft pressure bulkhead to improve the fatigue life of the attachment angles at frame (FR)80/82 on Model A310 series airplanes. The procedures in Revision 06 are essentially the same as those in Revision 5. Therefore, we have revised Table 1 of this AD to refer to Revision 06 as the appropriate source of service information for accomplishing the modification on Model A310 series airplanes. We have also added a new paragraph (k) to this AD, which gives credit for actions accomplished before the effective date of this AD in accordance with Revision 5.

Comments

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

Request To Use Alternative Sealant

FedEx requests that we revise the NPRM to identify an alternative to sealant PR-2752 (consumable material list (CML) 09-035), since it is not available from any worldwide source. FedEx states that Airbus has identified an alternative sealant for use on FedEx's airplanes. However, that sealant has an 1,800-flight-cycle life limit, which creates an undue burden on FedEx's operational planning of airplane downtime and resources. FedEx also states that the FAA issued alternative method of compliance (AMOC) letter ANM-116-04-175, dated May 27, 2004, allowing use of that same alternative sealant, which requires repetitively resealing the applicable areas within intervals of 1,800 flight cycles. FedEx asserts that sealant PR-2752, due to its brittleness and low elongation properties, tends to separate from the structure, creating a moisture trap that leads to corrosion. FedEx proposes substituting sealant PR-2752 with an epoxy adhesive like 3M Scotch-Weld EC-2216 to maintain an adequate level of safety and meet design parameters.

We partially agree. Since we issued the NPRM, Airbus has identified another alternative to sealant PR-2752. Sealant MC-650B (CML 09-056), from Chemetall, should be available in

December of 2006. Airbus Service Bulletin A310-53-2025, Revision 06, which we described previously, already specifies using MC-650B. Although Airbus Service Bulletin A300-53-6006, Revision 3, dated March 24, 1989, specifies using sealant PR-2752, Airbus does not intend to revise this service bulletin because all affected Model A300-600 series airplanes have been modified already. Airbus has advised us that it does intend to revise Airbus Service Bulletins A300-53-6017 and A310-53-2036, both Revision 02, both dated February 25, 2004, to specify using sealant MC-650B. We have revised paragraph (g) of this AD to allow use of sealant MC-650B as an alternative to sealant PR-2752.

Request To Withdraw NPRM

FedEx requests that we withdraw the NPRM. As justification, FedEx states that, due to the complex structural configuration of the aft pressure bulkhead between FR80 and FR82 and the use of several different compounds for modification of the drain hole, the referenced service bulletins in the NPRM need to identify additional work instructions and substitute materials. In addition, FedEx asserts that removal of sealants, especially sealant PR-2752, could cause more surface protection damage because of the complexity of the joint. FedEx further requests that we coordinate with the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, to ask Airbus to develop a better solution for the application of corrosion-inhibiting compounds and sealants in the discrepant area.

We do not agree to withdraw the NPRM. As stated previously, Airbus has either revised or intends to revise the referenced service bulletins to identify an alternative sealant. Also, the revised service bulletins use specific indicators and criteria to avoid removing the sealant if it is not necessary. These changes should alleviate the complexity of the service bulletins. We have not changed this AD in this regard.

Request To Harmonize Various Service Bulletins and ADs

FedEx requests that we harmonize the modification and inspection programs of several service bulletins and ADs that address corrosion in the aft pressure bulkhead. For Model A300-600 series airplanes, FedEx cites Airbus Service Bulletins A300-53-6006, Revision 3, dated March 24, 1989; A300-53-6017, Revision 02, dated February 25, 2004; and A300-53-6136, dated October 27, 2004. For Model A310 series airplanes, FedEx cites Airbus Service Bulletins

A310-53-2025, Revision 5, dated March 24, 1989; A310-53-2036, Revision 02, dated February 25, 2004; and A310-53-2114, dated October 27, 2004. FedEx also cites AD 88-06-03, amendment 39-5871 (53 FR 7730, March 10, 1988), and AD 98-19-22, amendment 39-10763 (63 FR 49656, September 17, 1998).

We disagree and have not revised this AD in this regard. Although the various service bulletins and ADs involve work in the area of the aft pressure bulkhead, they address unsafe conditions related to either corrosion or fatigue. Also, the affected airplanes in the various service bulletins and ADs are different. This AD and AD 88-06-03 both refer to Airbus Service Bulletin A310-53-2025 as the appropriate source of service information for modifying the attachment of the rear pressure bulkhead to FR80/82. This AD requires Revision 06 of that service bulletin, while AD 88-06-03 requires the original issue, dated April 21, 1986, or Revision 3, dated April 7, 1987. However, we

specified in the NPRM that paragraph (i) of this AD provides credit for accomplishment of paragraph A.2. of AD 88-06-03. AD 88-06-03 also refers to Airbus Service Bulletin A310-53-2024, Revision 1, dated June 20, 1986; or Revision 3, dated February 17, 1987; as appropriate sources of service information for accomplishing repetitive inspections of the rear pressure bulkhead for cracks. We issued AD 88-06-03 to improve the fatigue life of the attachment angles at FR80/82 on certain Model A310 series airplanes.

AD 98-19-22 refers to Airbus Service Bulletins A300-53-6066 and A310-53-2092, both dated October 16, 1996; and Revision 01, both dated March 11, 1998; as appropriate sources of service information for accomplishing repetitive inspections to detect corrosion of the lower rim area of the aft pressure bulkhead. After we issued AD 98-19-22, severe corrosion was found on certain airplanes that were inspected previously in accordance with that AD.

Based on those findings, we determined that the inspection methods in AD 98-19-22 were obsolete and inadequate, and that a new inspection program was necessary. Subsequently, we issued AD 2005-26-16, amendment 39-14437 (70 FR 77307, December 30, 2005), to supersede AD 98-19-22. The inspections required by AD 98-19-22, which refers to Airbus Service Bulletins A300-53-6066 and A310-53-2092, were not retained in AD 2005-26-16. AD 2005-26-16 instead refers to Airbus Service Bulletins A300-53-6136, Revision 01, dated July 18, 2005; and A310-53-2114, Revision 01, dated September 1, 2005; as the appropriate sources of service information for accomplishing the actions in that AD. Further, Airbus has informed us that it issued Airbus Service Bulletins A300-53-6136 and A310-53-2114 to supersede Airbus Service Bulletins A300-53-6066 and A310-53-2092. The table below provides an overview of the ADs we have issued.

AD—	Refers to airbus service bulletin—	Requiring—	Addressing—
88-06-03	A310-53-2024, Revision 1 and Revision 3.	Repetitive inspections	Fatigue.
	A310-53-2025, original issue and Revision 3.	Modification	Fatigue.
98-19-22 (superseded by AD 2005-26-16).	A300-53-6066, original issue and Revision 01.	Repetitive inspections	Corrosion.
	A310-53-2092, original issue and Revision 01.	Repetitive inspections	Corrosion.
2005-26-16	A300-53-6136, Revision 01	Repetitive inspections with reduced intervals.	Corrosion.
	A310-53-2114, Revision 01	Repetitive inspections with reduced intervals.	Corrosion.
This AD	A300-53-6017, Revision 02	Modification	Corrosion.
	A310-53-2036, Revision 02	Modification	Corrosion.
	A300-53-6006, Revision 3	Modification	Fatigue.
	A310-53-2025, Revision 06	Modification	Fatigue.

Request for Credit for Airbus Service Bulletins A300-53-6066 and A310-53-2092

FedEx requests that we give credit for accomplishment of Airbus Service Bulletins A300-53-6066 and A310-53-2092. FedEx states that these service bulletins are referenced in AD 98-19-22 and also involve the lower rim area of the pressure bulkhead.

We disagree. As discussed previously, the repetitive inspections specified in Airbus Service Bulletins A300-53-6066 and A310-53-2092 are obsolete and inadequate for addressing corrosion at the lower rim area of the rear pressure bulkhead. Further, the referenced service bulletins in this AD are intended to not only improve the corrosion protection at the lower rim area of the aft pressure bulkhead, but to also improve the fatigue life of the

attachment angles at FR80/82. We have not changed this AD in this regard.

Request To Refer to Airbus Service Bulletins A300-53-6136 and A310-53-2114

FedEx requests that we revise Table 1 of the NPRM to refer to Airbus Service Bulletins A300-53-6136 and A310-53-2114, both dated October 27, 2004, instead of Airbus Service Bulletins A300-53-6006, Revision 3, dated March 24, 1989 (for Model A300-600 series airplanes); and A310-53-2025, Revision 5, dated March 24, 1989 (for Model A310 series airplanes). (In the NPRM, we referred to Airbus Service Bulletins A300-53-6006, Revision 3; and A310-53-2025, Revision 5; as appropriate sources of service information for accomplishing certain related concurrent actions.) As justification, FedEx states that Airbus Service

Bulletins A300-53-6136 and A310-53-2114 were issued to address incomplete adhesion of sealant and damage caused to surface protection during cleaning of the drain hole, or during accomplishment of Airbus Service Bulletins A300-53-6006 and A310-53-2025. FedEx states that Airbus Service Bulletins A300-53-6136 and A310-53-2114 also involve inspections for corrosion in the lower rim angle area of the rear pressure bulkhead. FedEx further requests that we coordinate with Airbus and the DGAC to address the apparent discrepancy between Airbus Service Bulletins A300-53-6136 and A300-53-6006 and between Airbus Service Bulletins and A310-53-2025 and A310-53-2114.

We do not agree to refer to Airbus Service Bulletins A300-53-6136 and A310-53-2114 in this AD. As stated previously, AD 2005-26-16 mandates

accomplishment of Revision 01 of Airbus Service Bulletins A300-53-6136 and A310-53-2114, as applicable. Airbus has informed us that Airbus Service Bulletins A300-53-6136 and A310-53-2114 were issued to address corrosion prevention, while Airbus Service Bulletins A300-53-6006 and A310-53-2025 were issued to address an unsafe condition caused by fatigue. Airbus has also informed us that Airbus Service Bulletins A300-53-6136 and A310-53-2114 mention accomplishment of 6767yttyyAirbus Service Bulletins A300-53-6006 and A310-53-2025 only as possible sources for corrosion if surface protection is damaged. Airbus states that the service bulletins must be accomplished independently of each other. Therefore, we have not changed this AD in this regard.

Request for Credit for Airbus Service Bulletin A300-53-0218

The Air Transport Association (ATA), on behalf of its member ASTAR Air Cargo (ASTAR), questions the basis of the NPRM since Airbus has issued Service Bulletin A300-53-0218, Revision 02, dated May 10, 2005. ASTAR states that it has accomplished Revision 02 of the service bulletin and intends to use it to show compliance with the proposed requirements of the NPRM. We infer that ASTAR would like us to revise this AD to allow Airbus Service Bulletin A300-53-0218, Revision 02, as an acceptable method of compliance.

We do not agree that Revision 02 of Airbus Service Bulletin A300-53-0218 is acceptable for complying with the

requirements of this AD. For Model A300-600 series airplanes, this AD requires accomplishment of Airbus Service Bulletins A300-53-6017, Revision 02; and A300-53-6006, Revision 3. Airbus Service Bulletin A300-53-6017 describes procedures for improving the corrosion protection at the aft pressure bulkhead and enlarging the drainholes for improved drainage. Airbus Service Bulletin A300-53-6006 describes procedures for modifying the aft pressure bulkhead to improve the fatigue life of the attachment angles at FR80/82. Airbus Service Bulletin A300-53-0218 describes procedures for inspecting for corrosion and cracks in the upper rim area of the rear pressure bulkhead aft face, between stringer (STGR) 26 left-hand (LH) and right-hand (RH) and all service apertures, and removing corrosion and repairing as necessary. The service bulletins address different issues; therefore, we have not changed this AD in this regard.

We point out that Airbus Service Bulletin A300-53-218, Revision 1, July 28, 1989, is mandated by AD 90-03-08, amendment 39-6481 (55 FR 1799, January 19, 1990). That AD applies to all Model A300 airplanes. That AD requires repetitive inspections for cracking and corrosion in the lower rim area of the rear pressure bulkhead and adjacent areas, repetitive inspections for cracking or corrosion in the service apertures and the upper rim area of the rear pressure bulkhead, and corrective actions if necessary. We issued AD 90-03-08 to prevent reduced structural capability of the fuselage and subsequent decompression of the airplane. Since we issued AD 90-03-08, we have issued an

NPRM to supersede that AD. That NPRM was published in the **Federal Register** on August 1, 2006 (71 FR 43386). That NPRM refers to Revision 02 of Airbus Service Bulletin A300-53-0218 as the appropriate source of service information for accomplishing certain actions. The procedures in Revision 02 are essentially the same as those in Revision 1, except that Revision 02 reduces the repetitive intervals for the eddy current inspections of the auxiliary power unit (APU) bleed-air line, removes certain airplanes from the inspection of the area between STGR 25 LH and RH, and removes certain airplanes from the inspection of the area between STGR 26 LH and RH.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs (at an average labor rate of \$65 per hour) for U.S. operators to comply with this AD.

ESTIMATED COSTS

Models	Action	Work hours ¹	Parts ¹	Cost per airplane ¹	Number of U.S.-registered airplanes	Fleet cost ¹
A300-600 series airplanes.	Modification	34	\$1,200	\$3,410	0	\$0.
	Concurrent Actions ¹ .	Between 590 and 660.	Between \$2,442 and \$9,884.	Between \$40,792 and \$52,784.	0	
A310 series airplanes.	Modification	34	\$1,200	\$3,410	52	\$177,320.
	Concurrent Actions ¹ .	Between 590 and 660.	Between \$2,442 and \$9,884.	Between \$40,792 and \$52,784.	52		Between $2,121,184 and $2,744,768.

¹ The number of work hours and estimated costs for concurrent actions depend on airplane configuration.

Authority for This Rulemaking

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

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–22–03 Airbus: Amendment 39–14800. Docket No. FAA–2005–21343; Directorate Identifier 2004–NM–117–AD.

Effective Date

(a) This AD becomes effective December 1, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310 series airplanes; certificated in any category; except those modified in production by Airbus Modification 6788.

Unsafe Condition

(d) This AD results from severe corrosion found in the lower rim area of the aft pressure bulkhead during routine maintenance of an airplane. We are issuing this AD to prevent corrosion on the inner rim angle and cleat profile splice of the aft pressure bulkhead, which could result in the loss of airplane structural integrity.

Compliance

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

Service Bulletin References

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins listed in Table 1 of this AD, as applicable:

TABLE 1.—SERVICE BULLETIN REFERENCES

Models	Requirement	Airbus service bulletin
A300–600 series airplanes	Paragraph (g) of this AD	A300–53–6017, Revision 02, dated February 25, 2004.
	Paragraph (h) of this AD	A300–53–6006, Revision 3, dated March 24, 1989.
A310 series airplanes	Paragraph (g) of this AD	A310–53–2036, Revision 02, dated February 25, 2004.
	Paragraph (h) of this AD	A310–53–2025, Revision 06, dated August 3, 2006.

Modification To Improve Corrosion Protection and Drainage

(g) Within 60 months after the effective date of this AD, modify the aft pressure bulkhead for improved corrosion protection and drainage by doing all of the actions specified in the Accomplishment Instructions of the applicable service bulletin. Where the service bulletin specifies to use sealant PR–2752 (consumable material list (CML) 09–035), sealant MC–650B (CML 09–056) may be used.

Concurrent Modification To Improve Attachment Angles

(h) Before or concurrently with accomplishing the modification required by paragraph (g) of this AD, modify the aft pressure bulkhead to improve the fatigue life of the attachment angles at frame (FR) 80/82 by doing all of the actions specified in the Accomplishment Instructions of the applicable service bulletin. Where the service bulletin specifies doing a visual inspection around the entire circumference between FR80/82 and the aft pressure bulkhead for damaged filler, do a general visual inspection.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area,

installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Credit for Concurrent Actions

(i) For Model A310 series airplanes, accomplishment of the actions specified in paragraph A.2. of AD 88–06–03, amendment 39–5871 (53 FR 7730, March 10, 1988), is considered acceptable for compliance with the requirements of paragraph (h) of this AD.

Credit for Previous Service Bulletins

(j) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–53–2036, Revision 01, dated October 9, 2003 (for Model A310 series airplanes), are acceptable for compliance with the requirements of paragraph (g) of this AD.

(k) Actions done before the effective date of this AD in accordance with Airbus Service

Bulletin A310–53–2025, Revision 5, dated March 24, 1989 (for Model A310 series airplanes), are acceptable for compliance with the requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(m) French airworthiness directive F–2004–004, dated January 7, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

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

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Airbus Service Bulletin, A300–53–6006	3	March 24, 1989.
Airbus Service Bulletin, A300–53–6017	02	February 25, 2004.
Airbus Service Bulletin, A310–53–2025	06	August 3, 2006.
Airbus Service Bulletin, A310–53–2036	02	February 25, 2004.

Airbus Service Bulletin, A300–53–6006, Revision 3, dated March 24, 1989, contains the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 29, 47, 48	3	March 24, 1989.
2–28, 30–46, 49–52	2	August 11, 1988.

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 11, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–17661 Filed 10–26–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2006–25221; Directorate Identifier 2006–NM–122–AD; Amendment 39–14804; AD 2006–22–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A310 Airplanes; and Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Model A300 and A310 airplanes and A300–600 series airplanes. This AD requires inspecting for discrepancies of all electrical bundles located in the leading and trailing edges of the wings, and performing corrective actions if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective December 1, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 1, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the

Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Airbus Model A300 and A310 airplanes and A300–600 series airplanes. That NPRM was published in the **Federal Register** on June 30, 2006 (71 FR 37512). That NPRM proposed to require inspecting for discrepancies of all electrical bundles located in the leading and trailing edges of the wings, and performing corrective actions if necessary.

Comments

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

Request To Change Incorporation of Certain Information

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an airworthiness directive, it loses its private, protected status and becomes a

public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated-by-reference service documents should be made available to the public by publication in the Document Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporated-by-reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; 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 repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under part 21 of the Federal Aviation Regulations (14 CFR part 21), § 21.303 (parts manufacturer approval). MARPA adds 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 service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

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 documents 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.

Additionally, we do not publish service documents in DMS. We are currently reviewing our practice of publishing proprietary service information. 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. However, we consider that to delay this AD action for that reason would be inappropriate, since we have determined that an unsafe condition exists and that the requirements in this AD must be accomplished to ensure continued safety. Therefore, we have not changed the AD in this regard.

Conclusion

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

Costs of Compliance

This AD affects about 227 airplanes of U.S. registry. The actions take about 10 work hours per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is \$181,600, or \$800 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–22–07 Airbus: Amendment 39–14804. Docket No. FAA–2006–25221; Directorate Identifier 2006–NM–122–AD.

Effective Date

(a) This AD becomes effective December 1, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 and A310 airplanes; and all Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes, and A300 C4–605R Variant F airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Service Bulletin References

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model A300 airplanes: Airbus Service Bulletin A300-24-0102, including Appendix 01, dated December 15, 2005;

(2) For Model A310 airplanes: Airbus Service Bulletin A310-24-2095, including Appendix 01, dated December 15, 2005; and

(3) For Model A300 B4-601, B4-603, B4-620, B4-622, B4-605R, B4-622R, F4-605R, and F4-622R airplanes, and A300 C4-605R Variant F airplanes: Airbus Service Bulletin A300-24-6092, including Appendix 01, dated December 15, 2005.

Inspections and Corrective Actions

(g) Within 44 months after the effective date of this AD, perform detailed inspections for discrepancies of all electrical bundles located in the leading and trailing edges of the wings, and all applicable corrective actions, by doing all of the actions in the service bulletin, except as provided by paragraph (h) of this AD. All corrective actions must be done before further flight.

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

Exception to Corrective Action Instructions

(h) If inadequate clearance is found between any electrical wire harness and adjacent components or structure: Before further flight, correct the inadequate clearance using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Reporting

(i) Within 30 days after doing the inspections required by this AD, or within 30 days after the effective date of the AD, whichever is later: Submit a report of the findings (both positive and negative) of the inspections required by paragraph (g) of this AD to Airbus Engineering, c/o SE-E54, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. The report must include the airplane serial number or registration number, the number of flight cycles and flight hours on the airplane, the date of the inspection, the location of the defect, the conditions found, and the type of repair. Submitting Appendix 01 of the service bulletin to Airbus is acceptable for compliance with this requirement. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection

requirements contained in this AD and has assigned OMB Control Number 2120-0056.

Alternative Methods of Compliance (AMOCs)

(j)(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

(k) EASA airworthiness directive 2006-0076, dated April 3, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus Service Bulletin A300-24-0102, including Appendix 01, dated December 15, 2005; Airbus Service Bulletin A310-24-2095, including Appendix 01, dated December 15, 2005; or Airbus Service Bulletin A300-24-6092, including Appendix 01, dated December 15, 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 17, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17747 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25171; Directorate Identifier 2006-CE-35-AD; Amendment 39-14807; AD 2006-22-10]

RIN 2120-AA64

Airworthiness Directives; Schempp-Hirth GmbH & Co. KG Models Mini-Nimbus B and Mini-Nimbus HS-7 Sailplanes

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 aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a failure in the flap actuating circuit. An investigation showed that the lever at the torsional drive in the fuselage failed at the weld. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 1, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 1, 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: Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4130; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register**

requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

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

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 August 10, 2006 (71 FR 45744). That NPRM proposed to require reinforcing the flap drive.

Comments

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

Jack Buster with the Modification and Replacement Parts Association (MARPA) provides comments to the MCAI AD process pertaining to how the FAA addresses publishing manufacturer service information as part of a proposed AD action. The commenter states that the rule, as proposed, attempts to require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). The commenter would like the FAA to incorporate by reference (IBR) the Schempp-Hirth Flugzeugbau GmbH. Technical Note.

We agree with Mr. Buster. However, we do not IBR any document in a proposed AD action, instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, Schempp-Hirth Flugzeugbau GmbH. Technical Note No. 286-35/No. 328-13, EASA approved on: July 1, 2005, is incorporated by reference.

Mr. Buster requests IBR documents be made available to the public by publication in the **Federal Register** or in the Docket Management System (DMS).

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the 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.

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 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

We estimate that this AD will affect 13 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$13 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$6,409, or \$493 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 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:

2006-22-10 Schempp-Hirth GmbH & Co. KG: Amendment 39-14807; Docket No. FAA-2006-25171; Directorate Identifier 2006-CE-35-AD.

Effective Date

- (a) This airworthiness directive (AD) becomes effective December 1, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models Mini-Nimbus B and Mini-Nimbus HS-7 sailplanes, all serial numbers, that are certificated in any U.S. category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that the aircraft manufacturer has identified, during the daily check after assembling a Mini Nimbus C, a failure in the flap actuating circuit. An investigation showed that the lever at the torsional drive in the fuselage failed at the weld. If not corrected, this condition could lead to a failure in the flap actuating circuit, which could result in reduced controllability of the sailplane.

Actions and Compliance

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

(1) Within the next 90 days after December 1, 2006 (the effective date of this AD), reinforce the flap drive.

(2) Do the reinforcement following Schempp-Hirth Flugzeugbau GmbH. Technical Note No. 286-35/No. 328-13, EASA approved on: July 1, 2005.

FAA AD Differences

(f) None.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Staff, FAA, Small Airplane Directorate, ATTN: Gregory Davison, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4130; fax: (816) 329-4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

Related Information

(h) This AD is related to German AD D-2005-239, Effective Date: July 22, 2005, which references Schempp-Hirth Flugzeugbau GmbH. Technical Note No. 286-35/No. 328-13, EASA approved on: July 1, 2005.

Material Incorporated by Reference

(i) You must use Schempp-Hirth Flugzeugbau GmbH. Technical Note No. 286-35/No. 328-13, EASA approved on: July 1, 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 Schempp-Hirth, Flugzeugbau GmbH, Postfach 14 43, D-73222 Kirchheim/Teck, Germany; telephone: ++ 49 7021 7298-0; fax: ++ 49 7021 7298-199; Web site: <http://www.schempp-hirth.com>, e-mail: info@schempp-hirth.com.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, 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/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on October 19, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17870 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2006-25841; Directorate Identifier 86-ANE-7; Amendment 39-14809; AD 2006-22-12]

RIN 2120-AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC-B5MP-3()/M10282A()+6 and HC-B5MP-3()/M10876() () Five-Bladed Propellers.

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Hartzell Propeller Inc. model HC-B5MP-3()/M10282A()+6 five-bladed propellers. That AD currently requires initial and repetitive torque check inspections on the mounting bolts on certain model Hartzell Propeller Inc. HC-B5MP-3()/M10282A()+6 five-bladed propellers, replacement of mounting bolts if necessary, and inspection and resurfacing of the engine and propeller mounting flanges if necessary. This AD requires the same actions but requires more detailed overhaul inspections and maintenance than the previous AD, AD 2004-21-01. This AD also adds Hartzell Propeller Inc. HC-B5MP-3()/M10876() () five-bladed propellers to the applicability. This AD results from

reports of fretting wear still occurring between the engine and propeller mounting flanges. The fretting wear results in loss of mounting bolt preload, causing failure of the mounting bolts. We are issuing this AD to prevent propeller separation from the airplane.

DATES: Effective November 13, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 13, 2006.

We must receive any comments on this AD by December 26, 2006.

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

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

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

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

- *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 Hartzell Propeller Inc.

Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778-4200; fax (937) 778-4391, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; *telephone:* (847) 294-7132; *fax:* (847) 294-7834.

SUPPLEMENTARY INFORMATION: On October 4, 2004, the FAA issued AD 2004-21-01, Amendment 39-13822 (69 FR 62179, October 25, 2004). That AD requires initial and repetitive torque check inspections on the mounting bolts on certain model Hartzell Propeller Inc. model HC-B5MP-3()/M10282A()+6 five-bladed propellers, and replacement of mounting bolts if necessary. That AD also reduces compliance time from the previous AD, for the initial inspection on certain Short Brothers Ltd. Model SD3-30 airplanes to before further flight and within 100 hours time-in-service for propellers installed on certain Aerospatiale (Nord) Model 262A airplanes. That AD also requires repetitive torque check inspections of

mounting bolts at reduced intervals from the previous AD, on Model SD3–30 airplanes, and requires additional visual inspections of mounting flanges, threads in hub bolt holes, and replacement of mounting bolts and hubs, if necessary. That AD resulted from four reports in the previous 12 months of eleven cracked or failed propeller mounting bolts on Short Brothers Model SD3–30 airplanes. That condition, if not corrected, could result in propeller separation from the airplane.

Actions Since AD 2004–21–01 Was Issued

Since AD 2004–21–01 was issued, Hartzell Propeller Inc. reviewed the propeller mounting flange loads for all similar installations, including airplanes listed in Hartzell Propeller Inc. Alert Service Bulletin (SB) No. A203A, which is incorporated by reference in the previous AD, AD 2004–21–01. Hartzell Propeller Inc. has now addressed all of the propeller models on affected airplanes in a later service bulletin, including those airplanes that generate higher propeller loads during normal flight operations.

Relevant Service Information

We have reviewed and approved the technical contents of Hartzell Propeller Inc. SB No. HC–SB–61–275, dated June 2, 2005. That SB describes procedures for performing initial and repetitive torque inspections of propeller mounting bolts, initial and repetitive inspections of the propeller mounting flange and engine mounting flange, and resurfacing of the flanges if necessary.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Hartzell Propeller Inc. model HC–B5MP–3()/M10282A()+6 and HC–B5MP–3()/M10876() () five-bladed propellers of the same type design. We are issuing this AD to prevent propeller separation from the airplane. This AD requires more detailed overhaul inspections and maintenance than the previous AD, AD 2004–21–01, for the airplane installations listed under paragraph (c) of this AD. This AD requires initial and repetitive torque inspections of propeller mounting bolts, and initial and repetitive inspections of the propeller mounting flange and engine mounting flange, and resurfacing of the flanges if necessary. You must use the service information described previously to perform the actions required by this AD.

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.

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–2006–25841; Directorate Identifier 86–ANE–7" 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>.

Docket Number Change

We are transferring the docket for this AD to the Docket Management System as part of our on going docket management consolidation efforts. The new Docket No. is FAA–2006–25841. The old Docket No. became the Directorate Identifier, which is 86–ANE–7. This final rule might get logged into the DMS docket, ahead of the previously collected documents from the old docket file, as we are in the process of sending those items to the DMS.

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, Incorporation by reference, 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 removing Amendment 39–13822 (69 FR 62179, October 25, 2004), and by adding a new airworthiness directive, Amendment 39–14809, to read as follows:

2006–22–12 Hartzell Propeller Inc. (formerly Hartzell Propeller Products Division): Amendment 39–14809. Docket No. FAA–2006–25841; Directorate Identifier 86–ANE–7.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 13, 2006.

Affected ADs

(b) This AD supersedes AD 2004–21–01.

Applicability

(c) This AD applies to Hartzell Propeller Inc. model HC–B5MP–3()/M10282A()+6 and HC–B5MP–3()/M10876()() () five-bladed propellers. These propellers are installed on the following:

Airplane manufacturer	Model	Propeller/blade	Supplemental type certificate
Nord	262(A) Frakes (Mohawk)	HC–B5MP–3(A)/M10282A(B)+6	SA2369SW
Short Brothers	SD3–30 (Sherpa)	HC–B5MP–3A/M10282AB+6.	
Short Brothers	SD3–60	HC–B5MP–3C/M10876ASK.	
Short Brothers	SD3–60–200 (Sherpa)	HC–B5MP–3C/M10876ANSK.	
PZL Mielec	PZL–M18() (Dromader)	HC–B5MP–3C/M10876(A)()	SA1014GL

(d) The parentheses appearing in the propeller model number indicates the presence or absence of an additional letter(s) that varies the basic propeller model. This AD still applies regardless of whether these letters are present or absent in the propeller model designation.

Unsafe Condition

(e) This AD results from reports of fretting wear still occurring between the engine and propeller mounting flanges. The fretting wear results in loss of mounting bolt preload, causing failure of the mounting bolts. The actions specified in this AD are intended to prevent propeller separation from the airplane.

Compliance

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

Bolt Torque Inspections on Mounting Flanges Not Resurfaced

(g) If on the effective date of this AD, either the propeller mounting flange or the engine mounting flange has not been resurfaced using either Hartzell Propeller Inc. Alert Service Bulletin (SB) No. A203A, dated January 5, 1995, or SB No. HC–SB–61–275, dated June 2, 2005; and either flange:

(1) Has 3,000 or more operating hours time-since-new (TSN), then:

(i) Perform a torque inspection of the propeller mounting bolts before further flight, if the bolt torque inspection has never been done.

(ii) For bolts last inspected using AD 2004–21–01, perform a torque inspection of the propeller mounting bolts within 120 operating hours from the last inspection, or from the effective date of this AD, whichever occurs first, unless already done.

(2) Has fewer than 3,000 operating hours TSN, then perform a torque inspection of the propeller mounting bolts upon reaching 3,000 operating hours TSN.

(h) Thereafter, repeat the torque inspections within every 120 operating hours.

(i) Use paragraphs 3.A. through 3.A.(4) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–275, dated June 2, 2005 to do the inspections.

(j) If the torque of any one bolt is found to be less than 90 ft-lbs, remove and inspect the propeller, and resurface the flanges as necessary.

(k) Use paragraphs 3.B. through 3.B.(5) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–275, dated June 2, 2005, to do the inspection and resurfacing. Replace all mounting bolts with new mounting bolts.

Bolt Torque Inspections on Mounting Flanges Resurfaced

(l) If the propeller and engine mounting flanges have been resurfaced using either Hartzell Propeller Inc. Alert SB No. A203A, dated January 5, 1995, or SB No. HC–SB–61–275, dated June 2, 2005, and a fretting disk was not installed, then:

(1) Within 120 operating hours after reaching 1,500 operating hours from the time the flanges were last resurfaced, perform a torque inspection of the propeller mounting bolts.

(2) Thereafter, repeat the torque inspection within every 120 operating hours.

(3) Use paragraphs 3.A. through 3.A.(4) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–275, dated June 2, 2005 to do the inspections.

(m) If the torque of any one bolt is found to be less than 90 ft-lbs, remove and inspect the propeller, and resurface the flanges as necessary.

(n) Use paragraphs 3.B. through 3.B.(5) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–275, dated June 2, 2005 to do the inspection and resurfacing. Replace all mounting bolts with new mounting bolts.

Inspection of Propeller and Engine Mounting Flanges

(o) If the propeller and engine mounting flanges have been resurfaced, using either Hartzell Propeller Inc. Alert SB No. A203A, dated January 5, 1995, or SB No. HC–SB–61–275, dated June 2, 2005, and a fretting disk was installed, then:

(1) Within 120 operating hours after reaching 1,500 operating hours from the time the flanges were last resurfaced, remove the propeller, and inspect the propeller and engine mounting flanges. Resurface the flanges if necessary and replace the fretting disk.

(2) Thereafter, remove the propeller and repeat the flange inspections within every 1,500 operating hours and replace the fretting disk.

(3) Use paragraphs 3.B. through 3.B.(5) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–275, dated June 2, 2005 to do the inspection and resurfacing. Replace all mounting bolts with new mounting bolts.

(p) Whenever the propeller is removed from the engine:

(1) Inspect the propeller and engine mounting flanges and resurface the flanges if necessary.

(2) Use paragraphs 3.B. through 3.B.(5) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–275, dated June 2, 2005 to do the inspection and resurfacing. Replace all mounting bolts with new mounting bolts.

(q) Whenever a propeller is removed from an engine to be installed on an airplane model not listed in this AD:

(1) Inspect the propeller and engine mounting flanges before installation and resurface the flanges if necessary.

(2) Use paragraphs 3.B. through 3.B.(5) of the Accomplishment Instructions of Hartzell Propeller Inc. SB No. HC–SB–61–275, dated June 2, 2005 to do the inspection and resurfacing. Replace all mounting bolts with new mounting bolts.

Alternative Methods of Compliance

(r) The Manager, Chicago Aircraft 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.

Material Incorporated by Reference

(s) You must use Hartzell Propeller Inc. SB No. HC-SB-61-275, dated June 2, 2005 to perform the actions 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 Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778-4200; fax (937) 778-4391, 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 20, 2006.

Peter A. White,

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

[FR Doc. E6-17925 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2006-25332; Directorate Identifier 2006-CE-40-AD; Amendment 39-14808; AD 2006-22-11]

RIN 2120-AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 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 aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as unsatisfactory initial elevator trim actuator greasing, which may lead to the icing of the elevator trim and generate an untrimmed nose-up attitude after an autopilot disconnection. We are issuing this AD

to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 1, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 1, 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: Gunnar Berg, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4141; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:**Streamlined Issuance of AD**

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

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

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 35223). That NPRM proposed to require you to lubricate the elevator trim tab actuator rods without removal.

Comments

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

The Modification and Replacement Parts Association (MARPA) provides comments to the MCAI AD process pertaining to how the FAA addresses publishing manufacturer service information as part of a proposed AD

action. The commenter states that the rule, as proposed, attempts to require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). The commenter would like the FAA to incorporate by reference (IBR) the EADS SOCATA service bulletin.

We agree with the commenter. However, we do not IBR any document in a proposed AD action, instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB70-124, Amendment 1, ATA No. 27, dated January 2005, is incorporated by reference.

MARPA requests IBR documents be made available to the public by publication in the **Federal Register** or in the Docket Management System (DMS).

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the 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.

Celine Rouge, an Airworthiness Engineer at EADS SOCATA, states the language used in paragraph (e)(2) of the proposed AD may be confusing. Paragraph (e)(2) specifies doing the action required in paragraph (e)(1) of the AD following EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB70-124, Amendment 1, ATA No. 27, dated January 2005.

Celine Rouge states that in France, using the word "following" may lead people to believe they have to lubricate the elevator trim tab actuator rods without removal, which is the action required in paragraph (e)(1) of this AD, once more after they do the actions required in the service bulletin.

Celine Rouge requests we change the word "following" to "in accordance with."

We use the word "following" and the phrase "in accordance with" interchangeably. We will change the final rule AD action to incorporate this wording.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 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

We estimate that this AD will affect 256 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$8 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. 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 this AD to the U.S. operators to be \$22,528, or \$88 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 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:

2006-22-11 EADS SOCATA: Amendment 39-14808; Docket No. FAA-2006-25332; Directorate Identifier 2006-CE-40-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 1, 2006.

Affected ADs

(b) None.

Applicability

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

Reason

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

Actions and Compliance

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

(1) Within the next 25 hours time-in-service after December 1, 2006 (the effective date of this AD), lubricate the elevator trim tab actuator rods without removal.

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

FAA AD Differences

(f) None.

Other FAA AD Provisions

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

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

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

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

Related Information

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

Material Incorporated by Reference

(i) You must use EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB70-124, Amendment 1, ATA No. 27, dated

January 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 EADS SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; telephone: 33 (0)5 62.41.73.00; fax: 33 (0)5 62.41.76.54; or SOCATA Aircraft, INC., North Perry Airport, 7501 Airport Road, Pembroke Pines, Florida 33023; telephone: (954) 893-1400; fax: (954) 964-4141.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, 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/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on October 19, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17930 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-24119; Directorate Identifier 2005-NM-100-AD; Amendment 39-14806; AD 2006-22-09]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747 airplanes. This AD requires repetitive mid- and low-frequency eddy current inspections for cracks in the overlapped skin panels in the fuselage skin lap joints in sections 41, 42, 44, and 46, and corrective actions if necessary. This AD results from a report indicating that an operator found multiple small cracks in the overlapped skin panels in the fuselage skin lap joints. We are issuing this AD to detect and correct cracks in the overlapped skin panels, which could join together and result in reduced structural capability in the skin and consequent rapid decompression of the airplane.

DATES: This AD becomes effective December 1, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 1, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6437; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747 airplanes. That NPRM was published in the **Federal Register** on March 14, 2006 (71 FR 13055). That NPRM proposed to require repetitive mid- and low-frequency eddy current inspections for cracks in the overlapped skin panels in the fuselage skin lap joints in sections 41, 42, 44, and 46, and corrective actions if necessary.

Comments

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

Support for the NPRM

Boeing supports the NPRM as proposed.

Request To Delay Final Rule Pending New Service Information

Japan Airlines (JAL) states that Boeing Alert Service Bulletin 747-53A2501, dated March 24, 2005, which was referenced as the appropriate source of service information for accomplishing

the actions proposed in the NPRM, contains various errors and omissions. For example, the alert service bulletin does not have inspection procedures for certain internal structural details that cover the lap, and there is no inspection procedure specific to the Boeing Model 747-400 converted freighter. JAL would like us to delay issuing the final rule until Boeing has revised the alert service bulletin.

We partially agree with JAL. We agree that there are details and configurations that could be changed in future revisions of the alert service bulletin. The issues JAL mentions would require an alternative method of compliance (AMOC) to the inspection instructions as given in the original issue of the alert service bulletin. Operators may request an AMOC in accordance with the procedures in paragraph (j) of the final rule. We disagree that we should delay the final rule until Boeing revises the alert service bulletin. We have identified an unsafe condition, and delaying issuance of the final rule until Boeing revises its service information would result in an unwarranted delay of the inspections that are intended to address that unsafe condition. We have not changed the final rule in this regard.

Request To Revise Inspection Threshold

Air Transport Association (ATA), on behalf of its member Northwest Airlines (NWA), requests that we allow the initial inspection to occur within 3,000 flight cycles after the most recent Supplemental Structural Inspection Document (SSID) inspection for items F-25K, F-25L, and F-25M in Boeing SSID D6-35022.

We disagree with the commenters. The SSID program is an exploratory inspection program. The inspection intervals in the SSID were derived from required damage tolerance ratings (DTRs) that were based on "fleet crack" criteria. This means that at the time the DTRs were developed, there was no known cracking in the area; therefore, the required DTRs could remain at a lower level until cracking was discovered. However, operators subsequently found cracking in certain lap joint lower skins, and Boeing issued Alert Service Bulletin 747-53A2501 to detect and correct this cracking. The required DTRs that drive the thresholds and intervals were developed using "first crack" criteria, which is higher than "fleet crack" criteria. "First crack" criteria must detect cracking that is known to have occurred on other airplanes and, therefore, cannot rely on a worldwide fleet of airplanes as a statistical sample group.

The inspection specified in Boeing Alert Service Bulletin 747-53A2501 is an internal medium frequency eddy current (MFEC) inspection, which is able to detect a crack size smaller than that detectable by the external low frequency eddy current (LFEC) inspection required by the SSID program. Both inspection techniques are used to detect cracks on the outer surface of the lower skin panel at the lower row of fasteners of the lap splice. However, the LFEC inspection looks through the upper skin panel; the MFEC technique uses a probe that is in direct contact with the lower skin panel on the inner surface. Therefore, a 3,000-flight-cycle repetitive interval using an LFEC method does not provide the same level of certainty as a 3,000-flight-cycle repetitive inspection using the MFEC method.

We have not changed the final rule in this regard.

Request To Change Costs of Compliance

ATA, on behalf of NWA, also requests that we change the costs of compliance. NWA states that it has determined that approximately 120 work hours would be required to accomplish the non-destructive test procedures specified in Boeing Alert Service Bulletin 747-53A2501. The NPRM gives a cost estimate of 68 hours to do this task. NWA states that it is worth noting that if the inspection has to be performed independent of other major fuselage internal inspections, then over 1,000

additional hours of access and restoration labor will be required. NWA states that this scenario is likely if the initial inspection is required independent of the SSID or fuselage fatigue inspection programs. The 1,000-flight-cycle initial inspection threshold could prompt such a scenario.

We disagree with the request to change the costs of compliance. The 68 work-hour estimate represents the time necessary to perform only the action actually required by the AD. The action in the NPRM reflects only the direct costs of the specific required action (inspection) based on the best available data from the manufacturer. The cost analysis in AD rulemaking actions typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessary for other administrative tasks. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. We have not changed the final rule in this regard.

Request To Revise Compliance Time

ATA also recommends that we align the compliance period for the non-destructive test procedures specified in Boeing Alert Service Bulletin 747-53A2501, with scheduled maintenance intervals in order to avoid the order-of-magnitude increase in the effect of the proposed actions if they must be accomplished on an unscheduled basis.

We disagree with the request to revise the compliance time. We acknowledge that for certain airplanes the inspections may have to be performed independent of the SSID or fuselage fatigue inspection programs. In developing an appropriate compliance time for this action, including the 1,000-flight-cycle initial inspection threshold, we considered the urgency associated with the subject unsafe condition, the manufacturer's recommendations, and the practical aspect of accomplishing the required inspections within a period of time that corresponds to the normal scheduled maintenance for most affected operators. We have not changed the final rule in this regard. However, according to the provisions of paragraph (j) of the final rule, we may approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

Conclusion

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

Costs of Compliance

There are about 1,081 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection for Model 747SP series airplanes.	48	\$80	\$3,840, per inspection cycle	10	\$38,400, per inspection cycle.
Inspection for all other Model 747 series airplanes.	68	80	\$5,440, per inspection cycle	196	\$1,066,240, per inspection cycle.

Authority For this Rulemaking

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

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

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006-22-09 Boeing: Amendment 39-14806. Docket No. FAA-2006-24119; Directorate Identifier 2005-NM-100-AD.

Effective Date

(a) This AD becomes effective December 1, 2006.

Affected ADs

(b) 2004-13-02.

Applicability

(c) This AD applies to Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747-53A2501, dated March 24, 2005.

Unsafe Condition

(d) This AD results from a report indicating that an operator found multiple small cracks in the overlapped skin panels in the fuselage skin lap joints. We are issuing this AD to detect and correct cracks in the overlapped skin panels, which could join together and result in reduced structural capability in the skin and consequent rapid decompression 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.

Inspections and Corrective Actions: For Airplanes With Line Numbers 1 Through 200 Inclusive

(f) For airplanes with line numbers 1 through 200 inclusive, at the applicable time in paragraph (f)(1) or (f)(2) of this AD: Do the applicable eddy current inspection or inspections for cracks in the overlapped skin panels in the fuselage skin lap joints in sections 41, 42, 44, and 46; and do all applicable corrective actions before further flight. Except as provided by paragraph (f)(1)(ii) of this AD, repeat the applicable inspection or inspections thereafter at

intervals not to exceed 3,000 flight cycles. Except as provided by paragraph (h) of this AD, do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2501, dated March 24, 2005.

(1) Except as provided by paragraph (f)(2) of this AD, do the applicable action in paragraph (f)(1)(i) or (f)(1)(ii) of this AD.

(i) For airplanes that have accumulated fewer than 29,000 total flight cycles as of the effective date of this AD: Before the accumulation of 25,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, do a mid-frequency eddy current inspection for cracks of the internal surface at the overlapped skin around the bottom row of fasteners in the lap joint.

(ii) For airplanes that have accumulated 29,000 or more total flight cycles, do the inspections in accordance with the requirements of AD 2004-13-02, amendment 39-13682, at the applicable threshold and intervals in that AD. Doing the repeat inspections in accordance with AD 2004-13-02, terminates the repetitive inspection requirements of this AD only for airplanes with line numbers 1 through 200 inclusive.

(2) For airplanes that have had overlapped skin panels replaced: Do the eddy current inspections of the replaced overlapped panel prior to the accumulation of 25,000 total flight cycles since panel replacement, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later. Skin panel replacement, along with ongoing inspections in accordance with paragraph (f) of this AD, terminates the requirements of paragraphs (a) and (d) of AD 2004-13-02, only for the skin lap sections where the overlapped panel has been replaced.

Inspections and Corrective Actions: For Airplanes With Line Numbers 201 and Subsequent

(g) For airplanes with line numbers 201 and subsequent: Before the accumulation of 25,000 total flight cycles, within 1,000 flight cycles after the effective date of this AD, or within 25,000 flight cycles after the time when the overlapped skin was replaced, whichever occurs later, do the applicable inspection in paragraphs (g)(1) and (g)(2) of this AD for cracks in the overlapped skin panels in the fuselage skin lap joints in sections 41, 42, 44, and 46; and do all applicable corrective actions before further flight. Repeat the applicable inspection thereafter at intervals not to exceed 3,000 flight cycles. Except as provided by paragraph (h) of this AD, do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-53A2501, dated March 24, 2005.

(1) Do a mid-frequency eddy current inspection for cracks of the internal surface at the overlapped skin around the bottom row of fasteners in the lap joint.

(2) Do a low-frequency eddy current inspection for cracks of the overlapped skin around the bottom row of fasteners at the section 41 lap joints with four rows of fasteners.

Repair Instructions

(h) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747-53A2501, dated March 24, 2005, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

No Reporting Required

(i) Although Boeing Alert Service Bulletin 747-53A2501, dated March 24, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

(2) 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, and the approval must specifically refer to this AD.

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

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin 747-53A2501, dated March 24, 2005, 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 18, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17941 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2005-20080; Directorate Identifier 2003-NM-193-AD; Amendment 39-14802; AD 2006-22-05]

RIN 2120-AA64

Airworthiness Directives; Various Aircraft Equipped With Honeywell Primus II RNZ-850()/-851() Integrated Navigation Units

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to various aircraft equipped with certain Honeywell Primus II RNZ-850()/-851() integrated navigation units (INUs). That AD, as one alternative for compliance, provides for a one-time inspection to determine whether a certain modification has been installed on the Honeywell Primus II NV-850 navigation receiver module (NRM), which is part of the INU. In lieu of accomplishing this inspection, and for aircraft found to have an affected NRM, the existing AD provides for revising the aircraft flight manual to include new limitations for instrument landing system approaches. This new AD requires inspecting to determine whether certain modifications have been done on the NRM; and doing related investigative, corrective, and other specified actions, as applicable; as well as further modifications to address additional anomalies. This AD results from reports indicating that erroneous glideslope indications have occurred on certain aircraft equipped with the subject INUs. We are issuing this AD to ensure that the flightcrew has an accurate glideslope deviation indication. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain.

DATES: This AD becomes effective December 1, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 1, 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.

Go to <https://pubs.cas.honeywell.com> or contact Honeywell International, Inc., Commercial Electronic Systems, 21111 North 19th Avenue, Phoenix, Arizona 85027-2708, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT:

J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5345; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

ADDRESSES section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2003-04-06, amendment 39-13054 (68 FR 8539, February 24, 2003). The existing AD applies to various aircraft equipped with certain Honeywell Primus II RNZ-850/-851 integrated navigation units (INUs). That supplemental NPRM was published in the **Federal Register** on May 18, 2006 (71 FR 28827). That supplemental NPRM proposed to continue to require inspecting to determine whether certain modifications have been done on the NRM; and doing related investigative, corrective, and other specified actions, as applicable; as well as further modifications to address additional anomalies.

Comments

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

Request To Clarify Reply to Comment to Original NPRM

The commenter, Air Wisconsin, has requested an explanation of our reply to its comment to the original NPRM. The original comment requested clarification of the proposed requirements for inspecting to determine the

modification level of the NRM and proposed that paragraph (k) of the original NPRM be revised to state that paragraph (j) of the AD need not be performed under certain conditions. The commenter asserts that our reply to that original comment was contradictory and confusing because we stated that we had made no change to paragraph (k) of the original NPRM when, in fact, paragraph (k) of the supplemental NPRM had been changed.

We acknowledge the commenter's concern. As stated in our original reply, we determined that paragraph (j) of the AD is required regardless of compliance time or the findings of paragraph (f); this is because paragraph (j) requires inspecting for Mod N, P, R, or T, as well as Mod L. Therefore, we did not change paragraph (k) of the original NPRM as the commenter suggested. However, we determined that paragraph (k) was incorrect in that it stated that paragraph (f) did not need to be done if paragraph (j) was accomplished within the compliance time specified by paragraph (f). Paragraph (f) of the AD deals with compliance times and has no findings, while paragraph (g) of the AD requires an inspection and has findings. Therefore, it was our intent to revise paragraph (k) to read as it appears in the supplemental NPRM; that is, if paragraph (j) is accomplished within the compliance time specified by paragraph (f), paragraph (g) does not need to be done. We have made no further changes to paragraph (k) of the AD in this regard.

Explanation of Change To Applicability

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

Clarification of INU References

The applicability of the supplemental NPRM specifies that the AD applies to aircraft "equipped with a Honeywell Primus II RNZ-850/-851 INU having a part number identified in Table 1 of this AD." However, the Honeywell service bulletins identified in the following table variously refer to "-850/-851," "-850/A/B/C," "-851/A/B/C," and "-850(X)/-851(X)" INUs, indicating that the RNZ-850/-851 part number might or might not contain a suffix letter. Although the service bulletins identified in the following table make it clear that the INU part numbers, as identified in Table 1 of the AD, are the primary identifiers of all affected INUs, we have determined that these various suffix references could cause confusion. Therefore, to address all references to suffix letters in the service bulletins, we

have revised the AD to read “-850()/-851()” where applicable.

HONEYWELL SERVICE INFORMATION

Honeywell	Revision level	Date
Alert Service Bulletin 7510100-34-A0034	Original	February 28, 2003.
Alert Service Bulletin 7510100-34-A0035	Original	July 11, 2003.
Alert Service Bulletin 7510134-34-A0016	001	March 4, 2003.
Service Bulletin 7510134-34-0018	Original	July 8, 2004.
Service Bulletin 7510100-34-0037	Original	July 8, 2004.

Conclusion

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

Costs of Compliance

For the purposes of this AD, we estimate that there are 3,063 aircraft worldwide that may be equipped with a part that is subject to this AD, including about 1,500 aircraft of U.S. registry.

The inspection to determine whether Mod L has been done, which is currently required by AD 2003-04-06 and retained in this AD, will take about 1 work hour per aircraft, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the currently required actions is \$80 per aircraft.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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 FAA amends § 39.13 by removing amendment 39-13054 (68 FR 8539, February 24, 2003) and adding the following new airworthiness directive (AD):

2006-22-05 Various Aircraft: Amendment 39-14802. Docket No. FAA-2005-20080; Directorate Identifier 2003-NM-193-AD.

Effective Date

(a) This AD becomes effective December 1, 2006.

Affected ADs

(b) This AD supersedes AD 2003-04-06.

Applicability

(c) This AD applies to aircraft, certificated in any category, equipped with a Honeywell Primus II RNZ-850()/-851() integrated navigation unit (INU) having a part number identified in Table 1 of this AD; including, but not limited to, BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes; Bombardier Model BD-700-1A10 series airplanes; Model Bombardier CL-215-6B11 (CL-415 variant) series airplanes; Cessna Model 560, 560XL, and 650 airplanes; Dassault Model Mystere-Falcon 50 series airplanes; AvCraft Dornier Model 328-100 and -300 series airplanes; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 airplanes and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes; Learjet Model 45 airplanes; Raytheon Model Hawker 800XP and Hawker 1000 airplanes; and Sikorsky Model S-76A, S-76B, and S-76C aircraft.

TABLE 1.—INU PART NUMBERS

Part Nos.	
7510100-811 through 7510100-814 inclusive.	
7510100-831 through 7510100-834 inclusive.	
7510100-901 through 7510100-904 inclusive.	
7510100-911 through 7510100-914 inclusive.	
7510100-921 through 7510100-924 inclusive.	
7510100-931 through 7510100-934 inclusive.	

Note 1: This AD applies to Honeywell Primus II RNZ-850()/-851() INUs installed on any aircraft, regardless of whether the aircraft has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m) of this AD. The request should include an assessment of the effect of the

modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Unsafe Condition

(d) This AD results from reports indicating that erroneous glideslope indications have occurred on certain aircraft equipped with the subject INUs. We are issuing this AD to ensure that the flightcrew has an accurate glideslope deviation indication. An erroneous glideslope deviation indication could lead to the aircraft making an approach off the glideslope, which could result in impact with an obstacle or terrain.

Compliance

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

Requirements of AD 2003-04-06

Compliance Time For Action

(f) Within 5 days after March 11, 2003 (the effective date of AD 2003-04-06), accomplish the requirements of either paragraph (g) or (h) of this AD. After the effective date of this AD, only accomplishing the requirements of paragraph (g) of this AD is acceptable for compliance with this paragraph.

Inspection To Determine Part Number

(g) Perform a one-time general visual inspection of the modification plate for the Honeywell Primus II NV-850 Navigation Receiver Module (NRM); part number 7510134-811, -831, -901, or -931; which is part of the Honeywell Primus II RNZ-850()/-851() INU; to determine if Mod L has been installed. The modification plate is located on the bottom of the Honeywell Primus II RNZ-850()/-851() INU, is labeled NV-850, and contains the part number and serial number for the Honeywell Primus II NV-850 NRM. If Mod L is installed, the letter L will be blacked out. Honeywell Alert Service Bulletin 7510100-34-A0035, dated July 11, 2003, is an acceptable source of service information for the inspection required by this paragraph.

(1) If Mod L is installed, before further flight, do paragraph (h) or (j) of this AD. After the effective date of this AD, only accomplishment of paragraph (j) is acceptable for compliance with this paragraph.

(2) If Mod L is not installed, no further action is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors.

Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: For more information on the inspection specified in paragraph (g) of this AD, refer to Honeywell Technical Newsletter A23-3850-001, Revision 1, dated January 21, 2003.

Aircraft Flight Manual (AFM) Revision

(h) Revise the Limitations section of the AFM to include the following statements (which may be accomplished by inserting a copy of the AD into the AFM):

"Flight Limitations

When crossing the Outer Marker on glideslope, the altitude must be verified with the value on the published procedure.

For aircraft with a single operating glideslope receiver, the approach may be flown using normal procedures no lower than Localizer Only Minimum Descent Altitude (MDA).

For aircraft with two operating glideslope receivers, the aircraft may be flown to the published minimums for the approach using normal procedures if both glideslope receivers are tuned to the approach and both crew members are monitoring the approach using independent data and displays."

Parts Installation

(i) As of March 11, 2003, no person may install a Honeywell Primus II NV-850 NRM on which Mod L has been installed, on the Honeywell Primus II RNZ-850()/-851() INU of any aircraft, unless paragraph (h) or (k) of this AD is accomplished. As of the effective date of this AD, only accomplishment of paragraph (k) is acceptable for compliance with this paragraph.

New Requirements of This AD

Inspection To Determine Modification Level of NRM

(j) For aircraft on which Mod L was found to be installed during the inspection required by paragraph (g) of this AD, or for aircraft on which paragraph (h) of this AD was accomplished: Within 24 months after the effective date of this AD, do an inspection of the modification plate on the Honeywell Primus II NV-850 NRM; part number 7510134-811, -831, -901, or -931; which is part of the Honeywell Primus II RNZ-850()/-851() INU; to determine if Mod L, N, P, R or T is installed. The modification plate located on the bottom of the Honeywell Primus II RNZ-850()/-851() INU is labeled NV-850, and contains the part number and serial number for the Honeywell Primus II NV-850 NRM. If Mod L, N, P, R or T is installed, the corresponding letter on the modification plate will be blacked out. Honeywell Alert Service Bulletin 7510100-34-A0035, dated July 11, 2003, is an acceptable source of service information for this inspection. If Mod T is installed, no further action is required by this paragraph. If Mod L, N, P, or R is installed, before further flight, do all applicable related investigative, corrective, and other specified actions, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7510100-34-A0035,

dated July 11, 2003; and Honeywell Service Bulletin 7510100-34-0037, dated July 8, 2004; to ensure that the NRM is at the Mod T configuration. Once the actions in this paragraph are completed, the AFM revision required by paragraph (h) of this AD may be removed from the AFM.

Note 4: Honeywell Alert Service Bulletin 7510100-34-A0035, dated July 11, 2003, refers to Honeywell Alert Service Bulletin 7510100-34-A0034, dated February 28, 2003, as an additional source of service information for inspecting to determine the NRM part number, marking the modification plates of the NRM and INU accordingly, testing the INU for discrepant signals, and replacing the unit with a new or modified INU, as applicable. Honeywell Alert Service Bulletin 7510100-34-A0034 refers to Honeywell Alert Service Bulletin 7510134-34-A0016, currently at Revision 001, dated March 4, 2003, as an additional source of service information for marking the modification plates of the NRM and INU.

Note 5: Honeywell Service Bulletin 7510100-34-0037, dated July 8, 2004, refers to Honeywell Service Bulletin 7510134-34-0018, dated July 8, 2004, as an additional source of service information for modifying the NRM to the Mod T configuration.

(k) If the inspection specified in paragraph (j) of this AD is done within the compliance time specified in paragraph (f) of this AD, paragraph (g) of this AD does not need to be done.

No Reporting Requirement

(l) Where Honeywell Alert Service Bulletin 7510100-34-A0035, dated July 11, 2003 (or any of the related service information referenced therein), specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(n) You must use Honeywell Alert Service Bulletin 7510100-34-A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100-34-0037, dated July 8, 2004, 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. Go to <https://pubs.cas.honeywell.com> or contact Honeywell International, Inc., Commercial Electronic Systems, 21111 North 19th Avenue, Phoenix, Arizona 85027-2708, 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 13, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17658 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-24228; Directorate Identifier 2006-CE-22-AD; Amendment 39-14805; AD 2006-22-08]

RIN 2120-AA64

Airworthiness Directives; Air Tractor, Inc. Models AT-602, AT-802, and AT-802A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Air Tractor, Inc. Models AT-602, AT-802, and AT-802A airplanes. This AD requires you to repetitively inspect the engine mount for any cracks, repair or replace any cracked engine mount, and report any cracks found to the FAA. This AD results from reports of cracked engine mounts. We are issuing this AD to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

DATES: This AD becomes effective on December 1, 2006.

As of December 1, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564-5616; facsimile: (940) 564-5612.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2006-24228; Directorate Identifier 2006-CE-22-AD.

FOR FURTHER INFORMATION CONTACT:

Andrew McAnaul, Aerospace Engineer, ASW-150 (c/o MIDO-43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308-3365; facsimile: (210) 308-3370.

SUPPLEMENTARY INFORMATION:

Discussion

On April 26, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Air Tractor, Inc. Models AT-602, AT-802, and AT-802A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 2, 2006 (71 FR 25793). The NPRM proposed to require you to repetitively inspect the engine mount for any cracks, repair or replace any cracked engine mount, and report any cracks found to the FAA.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Flight Test and Analysis

Ronald G. Bush suggests that proper flight testing of a correctly instrumented engine mount and structure, combined with analysis of the data collected, may provide for a more efficient solution to the cracking problem than the repetitive inspections currently provide. He notes that the cost of each inspection is estimated at \$120, and a properly substantiated terminating action may prove less costly over time.

We partially agree that a properly executed flight test and analysis is a method to provide substantiating data that can be used to validate an alternate method for addressing the engine mount fatigue cracking. The FAA has not received any data at this time that proposes and substantiates a terminating action for the required inspections. If and when such information is received, we will consider mandating it through AD action.

We are not changing the AD as a result of this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 368 airplanes in the U.S. registry.

We estimate the following costs to do each required inspection:

Labor cost	Parts cost	Total cost per airplane per inspection	Total cost on U.S. operators for initial inspection
1.5 work-hours × \$80 per hour = \$120	Not Applicable	\$120	368 × \$120 = \$44,160.

We have no way of determining the number of airplanes that may need replacement of the engine mount. We

estimate the following costs to do the replacement:

Labor cost	Parts cost	Total cost per airplane per inspection	Total cost on U.S. operators for initial inspection
81 work-hours × \$80 per hour = \$6,480	\$3,982	\$10,462	368 × \$10,462 = \$3,850,016.

Any required “upon-condition” repairs would vary depending upon the damage found during each inspection. Based on this, we have no way of determining the potential repair costs for each 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 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) 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**. Include “Docket No. FAA–2006–24228; Directorate Identifier 2006–CE–22–AD” in your request.

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 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. FAA amends § 39.13 by adding a new AD to read as follows:

2006–22–08 Air Tractor, Inc.: Amendment 39–14805; Docket No. FAA–2006–24228; Directorate Identifier 2006–CE–22–AD.

Effective Date

(a) This AD becomes effective on December 1, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects all Models AT–602, AT–802, and AT–802A airplanes, all serial numbers, that are certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracked engine mounts. We are issuing this AD to detect and correct cracks in the engine mount, which could result in failure of the engine mount. Such failure could lead to separation of the engine from the airplane.

Compliance

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

Actions	Compliance	Procedures
(1) Visually inspect the engine mount for any cracks.	Initially inspect upon accumulating 4,000 hours time-in-service (TIS) or within the next 100 hours TIS after December 1, 2006 (the effective date of this AD), whichever occurs later, unless already done. Thereafter, repetitively inspect every 300 hours TIS.	Follow Snow Engineering Co. Service Letter #253, dated December 12, 2005.
(2) If you find any crack damage, do one of the following: (i) Obtain an FAA-approved repair scheme and incorporate this repair scheme; or (ii) Replace the engine mount with a new engine mount.	Before further flight after any inspection required by paragraph (e)(1) of this AD where crack damage is found. If you repair the cracked engine mount, then continue to re-inspect at intervals not to exceed 300 hours TIS, unless the repair scheme states differently. If you replace the engine mount, then initially inspect upon accumulating 4,000 hours TIS and repetitively at intervals not to exceed 300 hours TIS thereafter.	<i>For obtaining a repair scheme:</i> Follow Snow Engineering Co. Service Letter #253, dated December 12, 2005. <i>For the replacement:</i> The maintenance manual includes instructions for the replacement.
(3) Report any cracks that you find to the FAA at the address specified in paragraph (f) of this AD. Include in your report: (i) Airplane serial number; (ii) Airplane and engine mount hours TIS; (iii) Crack location(s) and size(s); (iv) Corrective action taken; and (v) Point of contact name and telephone number.	Within the next 10 days after you find the cracks or within the next 10 days after December 1, 2006 (the effective date of this AD), whichever occurs later.	The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, FAA, Attn: Andrew McAnaul, Aerospace Engineer, ASW-150 (c/o MIDO-43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308-3365; facsimile: (210) 308-3370, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(g) You must do the actions required by this AD following the instructions in Snow Engineering Co. Service Letter #253, dated December 12, 2005. 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. To get a copy of this service information, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564-5616; facsimile: (940) 564-5612. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html or call (202) 741-6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2006-24228; Directorate Identifier 2006-CE-22-AD.

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

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-17828 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153, 157, 375, and 385

[Docket No. RM06-1-000; Order No. 687]

Regulations Implementing the Energy Policy Act of 2005; Coordinating the Processing of Federal Authorizations for Applications Under Sections 3 and 7 of the Natural Gas Act and Maintaining a Complete Consolidated Record

October 19, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Section 313 of the Energy Policy Act of 2005 (EPAc 2005) ¹

amends section 15 of the Natural Gas Act (NGA) ² to provide the Federal Energy Regulatory Commission (Commission) with additional authority to coordinate the processing of authorizations required under Federal law for proposed natural gas projects subject to NGA sections 3 and 7 and to maintain a complete consolidated record of decisions with respect to such Federal authorizations. This Final Rule promulgates regulations governing its exercise of this authority whereby the Commission will establish a schedule for the completion of reviews of requests for authorizations necessary for a proposed project and compile a consolidated record to be used in the event of review of actions by the Commission and other agencies in responding to requests for authorizations necessary for a proposed project.

DATES: *Effective Date:* The rule will become effective December 26, 2006.

FOR FURTHER INFORMATION CONTACT: Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; gordon.wagner@ferc.gov; (202) 502-8947.

Lonnie Lister, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; lonnie.lister@ferc.gov; (202) 502-8587.

William O. Blome, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426; (202) 502-8462.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff

1. On May 18, 2006, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM06-1-000,³ requesting comments on proposed regulations to implement section 313 of the Energy Policy Act of 2005 (EPAc 2005).⁴ EPAc 2005 section 313 amends the Natural Gas Act (NGA) to provide the Commission with the authority (1) to set a schedule for Federal agencies, and state agencies acting under federally delegated authority, to reach a final decision on requests for Federal authorizations necessary for proposed NGA section 3 or 7 gas projects and (2) to maintain a complete consolidated record of all decisions and actions by

the Commission and other agencies with respect to such authorizations. In this Final Rule, the Commission considers comments submitted in response to the NOPR, and as a result, makes certain modifications to the proposed regulatory revisions.

Background

2. The Commission authorizes the construction and operation of proposed natural gas projects under NGA sections 3 and 7.⁵ However, the Commission does not have jurisdiction over every aspect of each natural gas project. Hence, for a natural gas project to go forward, in addition to Commission approval, several different agencies must typically reach favorable findings regarding other aspects of the project. To better coordinate the activities of separate agencies with varying responsibilities over proposed natural gas projects, EPAc 2005 modified the Commission's role. Section 313 of EPAc 2005 directs the Commission (1) to establish a schedule for agencies to review requests for Federal authorizations required for a project ⁶

⁵ Under NGA section 7, the Commission has jurisdiction over the transportation or sale of natural gas in interstate commerce and the construction, acquisition, operation, and abandonment of facilities to transport natural gas in interstate commerce. Under NGA section 3(e), the Commission has exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of a liquefied natural gas (LNG) terminal. The Secretary of the Department of Energy (DOE) has delegated to the Commission the authority under NGA section 3 to approve or disapprove applications for the siting, construction, and operation of facilities to import or export natural gas. The most recent delegation is in Delegation Order No. 00-004-00A, effective May 16, 2006.

⁶ EPAc 2005 section 313 describes "Federal authorizations" as decisions or actions by a Federal agency or official, "or State administrative agency or officer acting under delegated Federal authority," granting or denying requests for permits, certificates, opinions, approvals, and other authorizations. The United States Environmental Protection Agency (EPA) asks what types of state actions would qualify as being under delegated Federal authority. The Commission finds that a state action qualifies as an action under delegated Federal authority if it is an action that (1) a State entity is permitted, approved, or directed to take under Federal law and (2) provides the basis for a reasoned decision on a request for a Federal authorization. The United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) asks whether a Federal authorization would include recommendations or biological opinions issued subsequent to consultations under the Magnuson-Stevens Fishery Conservation and Management Act and Endangered Species Act (ESA). To the extent recommendations and opinions are necessary for a Federal agency, or state agency acting under federally delegated authority, to reach a decision on a request for a Federal authorization that is needed for a proposed NGA section 3 or 7 project to go forward, the Commission interprets EPAc 2005's mandate as encompassing such recommendations and opinions as "Federal authorizations."

² 15 U.S.C. 717n (2005).

³ 71 FR 30632 (May 30 2006); FERC Stats. & Regs. ¶ 32,601 (2006); 115 FERC ¶ 61,203 (2006).

⁴ Pub. L. 109-58, 119 Stat. 594 (2005).

¹ Pub. L. 109-58, 119 Stat. 594 (2005).

and (2) to compile a record of each agency's decision, together with the record of the Commission's decision, to serve as a consolidated record for the purpose of appeal, including judicial review.

3. On November 17, 2005, the Commission issued an order initially implementing the authority conferred by EAct 2005⁷ and delegating to the Director of OEP the authority to set schedules for agencies to act on requests for Federal authorizations necessary for natural gas projects to ensure such requests are processed expeditiously. In that order, the Commission stated a subsequent rulemaking would codify the pertinent provisions of EAct 2005. To that end, the May 2006 NOPR set forth proposed regulatory revisions.

In this Final Rule, the Commission responds to comments concerning the NOPR, and adopts further regulatory revisions to implement its new responsibilities under EAct 2005.

Notice and Comment

4. Notice of the NOPR was published in the **Federal Register** on May 30, 2006.⁸ Comments on the NOPR were filed by Baker Botts, L.L.P. (Baker Botts); Cheniere Energy, Inc. (Cheniere); City of Fall River, Massachusetts; Coastal States Organization; Conservation Law Foundation; Delaware Department of Natural Resources and Environmental Control, Division of Soil & Water Conservation (Delaware DNR); U. S. Department of the Army Corps of Engineers (Army COE); Dominion Transmission, Inc., Dominion Cove Point LNG, LP, and Dominion South Pipeline Company, LP (Dominion); Duke Energy Transmission, LLC (Duke); United States Environmental Protection Agency (EPA); Interstate Natural Gas Association of America (INGAA); United States Department of the Interior (Interior); Islander East Pipeline Company, L.L.C. (Islander East); Mr. Mark Mendelson; Massachusetts Office of the Attorney General; Massachusetts Executive Office of Environmental Affairs (Massachusetts EOEA); New Jersey Department of Environmental Protection (New Jersey DEP); Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company,

Crossroads Pipeline Company, Granite State Gas Transmission, Inc., and Central Kentucky Transmission Company (collectively NiSource); Oregon Coastal Management Program; United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS); and Williston Basin Interstate Pipeline Company (Williston).

Discussion

5. The comments raise objections to various aspects of the proposed regulatory revisions. In response, various aspects of the NOPR's proposed revisions are modified, as discussed below.

Electronic Submission of Information

6. There are several different events that trigger the obligation on the part of other agencies and officials to submit information to the Commission. In the NOPR, the Commission proposed all such information be submitted electronically, but requested that affected agencies and officials comment on whether electronic submission could prove impractical. Several agencies stated that they are not yet prepared to transmit information by electronic means. Consequently, to avoid any undue hardship, while stressing its preference to receive information via electronic means, the Commission removes the requirement to submit information by electronic means.

Coordinating Federal Authorizations

When to Submit Requests for Federal Authorizations

7. Proposed §§ 153.8 and 157.14 specify that an application filed with the Commission for a natural gas project under NGA section 3 or 7 must include:

A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, which will issue each authorization; the date each request for authorization was submitted; and the date by which final action on each Federal authorization has been requested or is expected.

The NOPR observed that if an application does not include this proposed new information statement, the Commission may deem the application incomplete.

8. Several commenters explain that it is impractical, if not impossible, to submit applications for all Federal authorizations before or contemporaneously with the project application filed with the Commission. These commenters propose instead that

a project sponsor be permitted to file an application with the Commission first; list the authorizations necessary for the new project; identify those authorizations for which applications have already been submitted and the dates upon which they were submitted; and then state the dates by which any outstanding authorization requests will be submitted.

9. The Commission observes that most applications to construct major new gas projects are filed with the Commission after the project sponsor has participated in the Commission's prefiling process. This prefiling period affords a project sponsor, Commission staff, and staff from other agencies the opportunity to identify which Federal authorizations will be needed for a project, and ample time for the project sponsor to prepare requests for related Federal authorizations in advance of filing an application with the Commission.⁹ Thus, the prefiling process can establish coordination among the agencies responsible for reviewing a project proposal and diminish the chance that the Commission might find an application to be incomplete.

10. The Commission nevertheless acknowledges that there may be circumstances that preclude a project sponsor from presenting all requests for necessary Federal authorizations by the time it files an application with the Commission.¹⁰ Therefore, §§ 153.8 and

⁹ The NOPR noted that project sponsors that have made use of the prefiling period and process to prepare and submit requests for Federal authorizations to agencies before an NGA application is filed with the Commission have been able to compress the time needed to obtain Commission authorization. In large part, this is because completion of the Commission's assessment of an application often rests on other agencies reaching favorable determinations on separate authorization requests. Dominion and Duke are concerned that the new filing requirement might force a project sponsor to devote undue resources to preparing to submit requests for related Federal authorizations at the same time as an NGA application. The Commission believes the prefiling process can minimize the resources needed by a project sponsor by spacing out its submission of authorization requests over a period of several months.

¹⁰ Cheniere, for example, posits that an agency may refuse to accept a request for a Federal authorization "through no fault of the applicant." Were this to occur, the project sponsor should inform the Commission, which can then inquire as to the circumstances. NMFS points out that with respect to certain Federal authorizations, such as an affirmation of compliance with the Endangered Species Act or the National Historic Preservation Act, the project sponsor is not in a position to submit an authorization request, since a request to initiate consultation with the responsible agency must be submitted by the Commission. The Commission notes this does not relieve the project sponsor of its obligation, as described in Part 380 of the existing regulations, to develop and submit

⁷ *Coordinated Processing of NGA Section 3 and 7 Proceedings*, 113 FERC ¶ 61,170 (2005). This Final Rule codifies this delegation of authority by revising § 375.308, Delegations to the Director of the Office of Energy Projects (OEP), to add a new § 375.308(bb), which delegates authority to the Director of OEP to establish schedules, consistent with Federal law, for agencies to complete their analysis and decision making processes and issue decisions on requests for Federal authorizations necessary for natural gas projects.

⁸ 71 FR 30632 (May 30, 2006).

157.14 of the Commission's regulations will be modified to provide for a sponsor to explain why requests for Federal authorizations remain outstanding and state anticipated dates for submitting such requests. A project sponsor will now be required to state "the date each request for authorization was submitted; why any request has not been submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected." For requests that remain outstanding at the time an application is filed, the Commission will review the reasons given, the projected dates of submission, and an applicant's interactions with the agencies. The Commission may then accept the application for consideration, and based on the state of documents and studies needed to support prospective authorization requests, accept the projected submission dates as a basis for establishing a schedule.

Determining a Schedule for Federal Authorizations

11. Initially, upon receiving an application, the Commission issues a notice "within 10 days of filing," in accordance with § 157.9 of its regulations,¹¹ or rejects the application in accordance with § 157.8 of its regulations. In issuing a notice of an application, the Commission, or the Director of OEP acting pursuant to delegated authority, may also declare a schedule for final decisions on outstanding requests for Federal authorizations. When a schedule is established, it will comply with agencies' applicable schedules established by Federal law.¹² The NOPR stated that in the event the Commission or the Director of OEP does not set a schedule for a particular project in the notice or at a later date, the default deadline for decisions by those agencies without applicable schedules established by Federal law will be no

all necessary technical information. Baker Botts and INGAA call attention to difficulties that may be presented by compelling a project sponsor to file a permit under the Clean Air Act contemporaneously with an NGA section 3 or 7 application. Such difficulties should be alleviated by the modifications that this Final Rule makes to the filing requirements as proposed in the NOPR. Provided a project sponsor presents good cause for not submitting a particular authorization request by the time an application is submitted, the Commission stands ready to accept the application.

¹¹ Section 157.9 is revised by this Final Rule to state that in calculating this deadline, only days during which the Commission is open for business are counted.

¹² In response to a query by NMFS, the Commission states it interprets the reference in EPA Act 2005 section 313(c)(1)(B) to "Federal law" to consist of schedules specified either in the United States Code or in the Code of Federal Regulations.

later than 90 days after the issuance of the Commission's final environmental document on the proposed project, or if no environmental document is issued, then no later than 90 days after issuance of a final order.

12. Commenters point out that if no schedule is included in the notice of an application, agencies are left to wonder whether a project-specific schedule will be issued at some later date, or whether silence indicates the default deadline applies. The Commission acknowledges the desirability of informing agencies in a timely manner of the schedule that will apply in each case. Accordingly, the Commission will adopt a different procedural approach, as described below.

13. The NOPR proposed requiring that agency action on authorization requests be completed within 90 days of the issuance of the Commission's final environmental document in a proceeding, or if an environmental document were not prepared, then within 90 days of the issuance of a final Commission order. Previously, the Commission has not always issued its environmental assessment (EA) at the time of its completion. Going forward, the Commission commits to issue its final environmental document in every proceeding by placing it in the public record. In addition, going forward, the Commission commits to issuing a notice within 90 days of the notice of an application describing the schedule that will apply to the environmental review process conducted by the Commission to ensure compliance with the National Environmental Policy Act of 1969 (NEPA).¹³ This notice of the schedule for the environmental review will state, among other milestones, the anticipated date for the Commission's completion of its EA or final environmental impact statement (EIS).¹⁴ This NEPA notice will thus serve to inform agencies without a schedule established by Federal law of the projected date by which they are to reach a decision on requested authorizations, *i.e.*, within 90 days after the anticipated issuance of the Commission's EA or final EIS. Section 157.9 is revised accordingly.

14. Under this approach, there is no longer any distinction—as was

¹³ 42 U.S.C. 4321–4347 (2005).

¹⁴ It has been the Commission's experience that in processing applications for certain minor and routine projects, the Commission's assessment, including its NEPA review, can often be completed within 90 days. For such projects, the Commission will either include a notice of the environmental schedule in conjunction with the notice of the application (*i.e.*, the initial notice issued within 10 days of an application's being filed with the Commission), or will issue a separate notice of the environmental schedule shortly thereafter.

discussed in the NOPR—between a "default" and a "project-specific" schedule. For agencies without a schedule established by Federal law, the deadline for a final decision will follow from the date the Commission issues its final environmental document by placing it in the public record, with the anticipated issuance date stated in the NEPA notice. However, this anticipated issuance date is subject to change. As explained in the NOPR, during the course of considering an application or a request for a Federal authorization, unanticipated issues and circumstances can arise and affect the time needed to complete the review. The Commission will monitor such changed circumstances, and may find it appropriate to revise the milestones set out in its initial schedule for its environmental review.¹⁵ If the Commission does so, it will issue a notice updating the milestones associated with its environmental review process. Any revision that alters the date that the Commission anticipates issuing its EA or final EIS will correspondingly shift the projected 90-day deadline for agencies without a schedule established by Federal law to reach a final decision.

15. As described above, the Commission will now issue a notice describing the schedule for its environmental review as a part of, or within 90 days of, its initial notice of an application. Therefore, agencies will know, relatively early in the processing of all applications, where they stand with respect to due dates for their final decisions on requests for Federal authorizations.¹⁶

16. Commenters expressed the concern that the Commission could reach a decision on a schedule for agency action without first considering

¹⁵ This flexibility should alleviate the concern of commenters such as the City of Fall River, Massachusetts, regarding situations where apparently straightforward issues are discovered during the course of analysis to be more complex and time-consuming than originally anticipated.

¹⁶ The New Jersey DEP recommends that each State agency reviewing a request for a Federal authorization be provided with formal notice of the date the Commission issues a final environmental document, arguing that "[w]ithout formal notice . . . a State agency will not know that the 90-day review period for a decision has begun." New Jersey DEP's Comments at 1 (July 28, 2006). In view of the Commission's commitment to issue a formal notice of the schedule for the environmental review, agencies should have adequate notice of the anticipated start date of the last 90 days of the review period applicable to those agencies without a schedule set by Federal law. State and Federal agencies and officers are urged to make use of the Commission's eSubscription service as a means to monitor documents submitted in a proceeding, updates, and the date of issuance of the Commission's EA or final EIS.

agency comments on authorization requests. As discussed below, agencies' reports on authorization requests will still be due within 30 days of the receipt of such requests. In addition, it is expected that project sponsors will submit as many requests for necessary Federal authorizations as possible by the time an application is filed with the Commission. Therefore, in most cases the Commission will have approximately 60 days to consider agency comments in advance of issuing the notice of its schedule for the environmental review, enabling the Commission to review agencies' input in setting the milestones for the completion of the Commission's environmental review.¹⁷

17. The Conservation Law Foundation requests doubling the 90 days following the issuance of the Commission's final environmental document to 180 days, whereas INGA and interstate pipelines promote reducing the time to 30 days. The Conservation Law Foundation points out that a final decision on a request for a necessary Federal authorization may not be reached within 90 days of the issuance of the EA or EIS. The Commission acknowledges that although infrequent, this can occur. However, the Commission expects that project sponsors' increasing use of the Commission's pre-filing consultation process, in conjunction with the regulatory revisions instituted herein, will eliminate such delayed authorization decisions.¹⁸ Further, the Commission believes that providing the

¹⁷ As noted above, in minor and routine cases where issues that might complicate agencies' reviews are unlikely to arise, the Commission may issue notice of its environmental schedule in its initial notice of the filing of an application or shortly thereafter. However, if concerns regarding authorization requests are subsequently raised in agency reports to the Commission, the Commission would then reconsider the given time frames. In determining whether a proposal qualifies as minor and routine, and thereby suitable for processing on an accelerated schedule, EPA recommends the Commission first consult with the other agencies that will be involved. The Commission expects such projects to be readily identifiable or identified in the course of a pre-filing consultation. The Commission will not identify a proposal as a candidate for accelerated processing unless it is confident of consensus among agencies that it merits such treatment. An agency may object to any schedule set by the Commission, and the Commission will reassess the grounds for its determination.

¹⁸ The Commission notes that for the most part, instances in which final decisions on requests for necessary Federal authorizations have not been reached within the 90-day time frame designated herein, have involved authorizations for which a schedule for agency action is established by Federal law, e.g., a Coastal Zone Management Act (CZMA) consistency determination or a water quality certification under section 401 of the Clean Water Act (CWA). Nothing in this Final Rule will alter schedules set by Federal law.

180 days requested would be incompatible with the EPA Act 2005 mandate to "ensure expeditious completion" of NGA section 3 and 7 proceedings.¹⁹ On the other hand, the Commission finds no reason to adopt a 30-day requirement. Comments in favor advocate harmonizing the amount of time provided for agencies to act with the 30 days from issuance of a Commission order currently provided for filing a request for rehearing or accepting a certificate. The Commission sees no need to do so, as there is no evidence that project sponsors are currently hindered in reaching decisions on whether to seek rehearing of the Commission's orders or accept a certificate when other agencies take more than 30 days after an order to complete action on authorization requests. The Commission believes that the 90 days provided strikes an appropriate balance between providing adequate time for agencies' deliberation and avoiding delay to project sponsors.

18. The NOPR observed that:

In some cases—for example, when there is a demonstrated need to have a new natural gas project in service by a certain date—the Commission may set deadlines that are shorter than the maximum times permitted under Federal law. In such cases, the Commission recognizes that compliance with its specified deadlines would be voluntary for agencies with deadlines determined by Federal law.²⁰

19. Several commenters contend this observation conflicts with Federal law. In setting a schedule for agencies to conclude their reviews of requests for Federal authorization, the Commission has no ability to contract or expand a schedule established by Federal law. Consequently, there can be no conflict between a schedule set by the Commission and a schedule set by Federal law.²¹ The Commission's observation in the NOPR was no more than an acknowledgment of current practice. Agencies frequently complete their review of certain project proposals—most often for modest and uncontroversial facilities—well in

¹⁹ EPA Act 2005 section 313(c)(1)(A) (2005).

²⁰ 71 FR 30632 at 30635 (May 30, 2006); FERC Stats. & Regs. ¶ 32,601 at 32,558 (2006); 115 FERC ¶ 61,203 at P 17 (2006).

²¹ Baker Botts raises a related issue in requesting clarification that an agency presented with an authorization request must not be permitted to await the outcome of another agency's action prior to commencing its own review. While such an approach might be viewed as contrary to EPA Act 2005's expressed intent to expedite the review process for proposed gas projects, provided the agency in waiting is able to meet its deadline to reach a final decision—be it established by Federal law or by the Commission—there would not necessarily be cause to seek to compel the recalcitrant agency to commence its review sooner.

advance of deadlines allotted by Federal law. The NOPR stated the aspiration that agencies might continue to do so, recognizing that in exercising its new authority to set schedules, the Commission can only encourage agencies to act in advance of deadlines set by Federal law, it cannot compel them to do so.

20. The Army COE states that the deadlines established by the Commission for final agency action will be "voluntary and non-binding."²² This would be the case if, as discussed above, the schedule set by the Commission calling for a shorter time frame did not meet the EPA Act 2005 requirement that it "comply with applicable schedules established by Federal law."²³ However, if an agency without a schedule established by Federal law fails to meet a deadline set by the Commission, this "failure of the agency to take action * * * in accordance with the Commission schedule established pursuant to section 15(c) shall be considered inconsistent with Federal Law," and as a result, can be brought to the attention of the United States Court of Appeals, which can "remand the proceeding to the agency to take appropriate action consistent with the order of the Court" by the "schedule and deadline for the agency to act on remand" that will be set by the court.²⁴

Informing the Commission Upon Receipt of an Authorization Request

21. New § 385.2013 specifies that within 30 days of receiving an authorization request, an agency must inform the Commission of: (1) Whether the agency deems the application to be ready for processing and, if not, what additional information or materials will be necessary to assess the merits of the request; (2) the time the agency will allot the applicant to provide the necessary additional information or materials; (3) what, if any, studies will be necessary in order to evaluate the request; (4) the anticipated effective date of the agency's decision; and (5) if

²² Army COE's Comments at 3 (July 31, 2006).

²³ EPA Act 2005 section 313(c)(1)(B) (2005).

²⁴ EPA Act 2005 section 313(d)(2) and (3). Note this described civil action for the review of an agency's alleged failure to act on a requested authorization does not apply to CZMA determinations, since the Department of Commerce, not a Federal court, is the body to review a failure to act on, or the outcome of, a CZMA request. This section of EPA Act 2005 was recently discussed and applied in *Islander East Pipeline Co. LLC v. Connecticut Department of Environmental Protection*, Docket No. 05-4139-ag (2d Cir. Oct. 5, 2006); the court found a State agency acting under delegated Federal authority had not conducted a complete and reasoned review of a request for a Federal authorization, and required the state agency to either do so within 75 days or abdicate its delegated Federal authority.

applicable, the schedule set forth by Federal law for the agency to act. Further, if an agency asks for additional information, the agency is to provide the Commission with a copy of its data request.²⁵

22. Commenters claim that 30 days is an unreasonably short time to be able to render a meaningful assessment of an authorization request. The Commission recognizes that 30 days will often be insufficient for agencies to reach definitive conclusions on each of the stipulated aspects of an authorization request. But that is not the intent. Instead, the information submission is intended to give the Commission an overview to enable it to determine a realistic timetable for the environmental review process. The Commission recognizes that agencies' reports will necessarily be provisional and subject to change, and will take this into account both when first determining a schedule for its NEPA review, and thereafter, to take into account agencies' progress in processing authorization requests.

23. For the purpose of measuring the time for an agency to act on an authorization request, in the NOPR the Commission explained the clock begins to run on the day a request is submitted to the agency. Interior questions whether this would be the day a request is sent or the day it is received; the Commission clarifies that the day the agency receives a request is the first day counted. This is unlikely to be the day an agency takes official notice that a complete application has been received and is ready for processing; rather, this will be the first day an agency is in receipt of a formal written request by a project sponsor for an authorization needed for a prospective NGA section 3 or 7 project.

24. Commenters are concerned with the prospect that an agency might receive a cursory authorization request that could not be evaluated absent additional information. The NOPR stated that if an agency deems a request to be incomplete, and the project sponsor fails to provide the necessary information in time for the agency to reach a decision by the Commission's scheduled deadline, then the agency

²⁵ This establishes the minimum information required of an agency. EPA, Duke, and Islander East suggest a more collaborative approach to establish a schedule. To this end, the Commission invites agencies to go beyond the requisite minimum and provide additional information, which the Commission will consider in exercising its scheduling responsibilities. Further, in determining a schedule appropriate to a particular application, Commission takes into account not only agencies' input but also the project sponsor's proposed construction schedule and in-service date.

may deny the request.²⁶ In turn, the Commission may deny the application before it, or authorization to commence construction, due to the project sponsor's failure to obtain a necessary Federal authorization. The Commission reiterates that whether an agency finds a request complete has no bearing on the agency's allotted response time. That said, the Commission does not expect to have to frequently reject NGA applications due to imperfections in requests for related Federal authorizations in view of the decision to revise the procedural schedule, as described above, to tie agencies' deadlines to issuance of the EA or final EIS. This approach to scheduling should give agencies and applicants adequate advance notice of when decisions on requests for Federal authorizations will be due, and motivate project sponsors to make all necessary information available in order for agencies to reach timely decisions on the merits.

25. The Army COE asks if submitting an electronic copy to the Commission of the agency's response to a project sponsor's authorization request would satisfy the § 385.2013 reporting requirement. It would, provided the submission contains the specified information; moreover, as discussed herein, submission to the Commission need not be by electronic means. Regardless of whether an agency's submission is made electronically or by paper copy, it should be filed in the PF or CP docket number, if available, assigned to the project sponsor's application to the Commission.

Procedural Clarifications

26. Once an application is filed with the Commission and a schedule is established, if a project sponsor seeks to make a modification to its proposal that is material to one or more of its requested Federal authorizations, the project sponsor should file a description

²⁶ This presumably would be the outcome with respect to an authorization required for a project if, as the Oregon Coastal Management Program and Coastal States Organization speculate, the agency is unable to obtain all the information needed to make an appropriate assessment of the proposal in time to meet the scheduled deadline for a final decision. Dominion requests that if an agency informs the Commission that a project sponsor has not adequately supported its request, then "the Commission will give the applicant an opportunity to respond and cure the alleged deficiencies." Dominion's Comments at 11 (July 31, 2006). In the event of a disagreement regarding the adequacy of the contents of a request for a Federal authorization, the Commission may find reason to revise an agency's deadline for a final decision. However, although the Commission implores project sponsors and agencies to work cooperatively, it cannot compel them to do so. An agency retains the discretion to reject a request on the grounds that information necessary to reach a decision is lacking.

of the modification with the Commission—regardless of whether the Commission has approved the application or whether the modification would require amendment of the proposal before the Commission. NiSource requests the Commission clarify that a material modification would include a modification to an aspect of the proposal that would substantially change the overall environmental impacts. The Commission accepts this characterization. Following a project sponsor's notice to the Commission of a material modification, it will be within the discretion of the Director of OEP to determine whether the modification will make it impossible for an agency to reach a final decision on a request for a Federal authorization within 90 days of the issuance of the Commission's final environmental document.²⁷ If so, pursuant to § 375.308, the Director of OEP may establish a revised, separate deadline for a final decision by that agency. Finally, a material modification to a project pending approval by the Commission may merit revising and re-noticing the schedule for the environmental review. The schedule for agencies to complete their reviews would then be adjusted in accordance with the revised schedule for completing the NEPA process.

27. The New Jersey DEP suggests that in submitting a request for a necessary Federal authorization for an NGA section 3 or 7 project, the project sponsor identify the request as such. The Commission endorses this suggestion, and urges project sponsors to include the Commission's applicable PF or CP docket number, if available, in its authorization request. Identifying the proposed project in this manner, and informing the agency that the request is being submitted in conjunction with an application to the Commission, will alert the agency of the need to inform the Commission of its receipt of the request, pursuant to new § 385.2013. Agencies, in turn, in submitting a report to the Commission on the status of a requested Federal authorization, should identify the party submitting the request, identify the proposed project, and include, if available, the applicable PF or CP docket number.

²⁷ As one such instance, the Army COE describes circumstances where a project sponsor made a material modification that impacted the authorization request under consideration by the Army COE after the Commission's final EIS was completed. Army COE Comments at 3 (July 31, 2006). In such a case, the project sponsor should inform the Commission, and where appropriate, a revised, separate deadline will be established for the affected agency.

28. The New Jersey DEP and Delaware DNR propose making the project sponsor, rather than the agency receiving a request for a Federal authorization, responsible for submitting to the Commission the agency's initial 30-day status report and any data requests. The Commission sees disadvantages in having the project sponsor assume this responsibility. In part, the aim of the 30-day report is to open, or extend, the dialogue between the agency and the Commission, since the Commission expects to confer with the responsible agencies over the course of the NEPA review process. Initial contact would not necessarily be established early were the project sponsor to act as an intermediary between agencies and the Commission. The burden on agencies to copy the Commission on a data request sent to a project sponsor is minimal; thus, the Commission finds that rather than having project sponsors receiving an agency's data request forward it on, it is better, in terms of timing and simplicity, to have the agency that generates the data request submit it directly to the Commission.

29. NMFS suggests the Commission serve as a central point of contact linking project sponsors to agencies. The Commission sees no benefit to placing itself between the company seeking to develop a new project and the agencies responsible for examining aspects of the proposal. As is, Commission staff maintains communication with the project sponsor and agencies from the receipt of a request to make use of the pre-filing process through issuance of the final decision.

30. The Commission declares, in response to questions raised by INGAA and Islander East, that the procedures described herein do not apply to activities that do not involve "an application for authorization under section 3 or a certificate of public convenience and necessity under section 7."²⁸ For example, auxiliary installations and the replacement of facilities under § 2.55, and activities authorized under the blanket certificate provisions of Part 157, subpart F, of the Commission's regulations, and certain activities undertaken in response to a gas emergency, do not require authorization under NGA section 3 or issuance of a certificate under NGA section 7.

31. When a request to authorize a proposed project under the blanket certificate provisions is protested, and the protest is not either dismissed or

resolved and withdrawn, the "request filed by the certificate holder shall be treated as an application for section 7 authorization for the particular activity."²⁹ However, although a protested blanket project proposal is treated as an application for a case-specific certificate, once the merits of the issues raised in the protest are addressed, and provided the proposal is not denied, the project is authorized under the project sponsor's existing blanket certificate.³⁰ A project sponsor that makes a prior notice filing for a proposed project to be constructed under blanket certificate authority is acting under the authority of its existing blanket certificate issued pursuant to NGA section 7(c). Consequently, to undertake projects that comply with the blanket certificate provisions, the project sponsor does not need to obtain an additional, separate NGA section 7(c) certificate. Therefore, the new regulatory requirements promulgated herein pursuant to EAct 2005 will not apply to projects authorized pursuant to the blanket certificate program.

32. The City of Fall River, Massachusetts, the Massachusetts EOE, and the Massachusetts Attorney General seek clarification on how the Federal NEPA review and the environmental review undertaken by a State or the District of Columbia may interact. The different environmental reviews proceed on separate jurisdictional tracks, each on its own schedule and each arriving at its own independent findings. However, as a practical matter, if Federal and State agencies are able to work in tandem, the result can be greater efficiencies for all concerned. Accordingly, where possible, the Commission coordinates its efforts with State agencies when assessing the environmental impacts of a proposed project and intends to continue to do so going forward.

33. Islander East seeks clarification on how the revised regulations will apply to pending projects. The Commission, as a general matter, will not apply the §§ 153.8 and 157.14 filing requirements for project sponsors, or the § 385.2013 reporting requirements for agencies, to applications filed prior to the effective date of this rule. That said, as noted above, the Director of OEP currently has delegated authority to establish schedules in pending proceedings,³¹ and if there is cause to do so, the Director of OEP may establish a

schedule applicable to an ongoing proceeding.

34. Mr. Mark Mendelson is concerned that the Commission is creating a "standardized" schedule that will not allow for an adequate assessment of safety risks and long-term project impacts of proposed gas projects on individuals and communities. Mr. Mendelson expresses general dissatisfaction regarding the content, timing, and availability of information concerning proposed projects. He contends that affected individuals do not always receive adequate notice of proposed projects and suggests all potential stakeholders be notified by mail via the United States Postal Service of potential hazards or risks in their general locale posed by a proposed project.

35. The Commission's new reporting requirements and commitment to issue a notice of the environmental review schedule should serve to inform potentially interested persons of a pending project proposal. The Commission expects that its authority to establish schedules will lead to tailoring milestones appropriate to the particularities of proposed projects, and not to a one-size-fits-all standard. Mr. Mendelson's proposal to review and revise the existing public notice requirements is beyond the scope of and is not germane to the matters being addressed in this rulemaking proceeding. However, any affected landowner that does not receive notice of a proposed project in a docketed proceeding as specified in the Commission's regulations, or any individual that suspects the public notice provided is procedurally insufficient or substantively incomplete, can bring such concerns to the Commission's attention and the specific circumstances will be investigated.

Consolidated Record

36. Section 313 of EAct 2005 directs the Commission to "maintain a complete consolidated record of all decisions made or actions taken by the Commission or by a Federal administrative agency or officer (or State administrative agency or officer acting under delegated Federal authority) with respect to any Federal authorization."

37. The NOPR proposed to require agencies and officers issuing decisions or approvals necessary for proposed projects under NGA sections 3 and 7 to provide the Commission with a copy of the final decision reached or action taken, or a summary thereof, within three days of issuance of a final decision or action. The Commission proposed requiring agencies and officers to file an

²⁹ 18 CFR 157.205(f) (2006).

³⁰ See, e.g., *Texas Eastern Transmission Corp.*, 76 FERC ¶ 61,178 (1996).

³¹ See note 7.

²⁸ EAct 2005 section 313(a)(3) (2005).

index of the record, identifying all documents and materials—including pleadings, comments, evidence, exhibits, transcripts of testimony, project alternatives (including alternative routings), studies, and maps—relevant to the decision, within three days of issuance of a final decision or action.

38. Commenters object to the proposed requirement that a copy of the decision and an index to the record be filed within three days of the decision and suggest that the Commission allow 30 days for the filing of the decision and record index. In addition to promoting a 30-day interval, the Conservation Law Foundation recommends the Commission reimburse agencies for reasonable costs incurred in providing the index.

39. The Commission accepts the claim that three days may not provide every agency with adequate time to organize and send the requested information—although, if an agency maintains and updates its index throughout the course of its proceeding, all it need do when a decision is issued is add the decision, or a summary thereof, to the index and submit it to the Commission. The Commission anticipated agencies' submission of the requested information would be merely ministerial, *i.e.*, that the information would be available and electronically transmittable—or at least, easily duplicated and then sent—on the same day a final decision was reached. Commenters persuasively argue that this is not the case. In any event, the Commission does not believe that it is necessary to receive an agency's information within three days of a final decision in order to satisfy the EPA Act 2005 mandate to maintain a complete consolidated record. Accordingly, the Final Rule revises the reporting requirement to provide agencies and officers 30 days, not three, to submit a final decision, or summary thereof, and index to the Commission. Further, while the Commission encourages electronic submissions, the proposed regulations are modified to provide the option to make paper filings with the Commission.³² In view of this modification to the means of filing, the Commission will modify the time provided for agencies to file a copy of data requests with the Commission, extending it from three days to 10 business days.

40. The Commission finds no cause to adopt the Conservation Law

³² As is currently the case, agencies will be expected to conform their filings to the requirements of 18 CFR 385.2003, to the extent that they are able.

Foundation's request to provide reimbursement to agencies for expenses related to compliance with the provisions of this rule. Compliance is mandatory pursuant to the authority provided to the Commission by EPA Act 2005. Further, in view of the revision above regarding the time permitted and means of submission, and the clarification below regarding the contents of the index, the Commission expects the additional cost incurred by agencies to meet these new reporting requirements will not be unduly burdensome.

41. Commenters' objections to submitting an index appear to stem in part from an overly broad interpretation of what this index must include. The Commission clarifies that the index need not summarize the contents of each item in the agency's record; rather, the index can be any method of notation capable of identifying each item in the record sufficiently to allow a reviewing body to select items of relevance to an issue on appeal. The Oregon Coastal Management Program observes that it typically relies on and references the outcome of multiple state and local actions, but does not include in its record the underlying documents that make up the record in those other actions. There is no need for agencies that follow such an approach to make any adjustment. Any methodology and recordkeeping that an agency now employs that is sufficient to serve as the basis for appeals or reviews is an acceptable "index" for the purposes of the consolidated record. Note that in filing an index, agencies should title the submission "Consolidated Record" and include a prominent reference on the first page to the docket number applied to the Commission proceeding which gave rise to the request for agency authorization.

42. Baker Botts requests the Commission require that agencies provide the Commission with their full record, and not just an index thereto. The Commission finds no cause to require agencies to reproduce and transmit the contents of their entire record to the Commission. Only in the event of appeal will there be any call to view the original or duplicate materials, and even then it is unlikely anything other than a limited subset of the record will be relevant. Therefore, provided an index is prepared, and original materials are retained and available for a minimum of three years, or until an appeal or review is concluded, there should be no delay in producing the portion of an agency's record requested by a reviewing entity.

43. The Army COE points out that when it issues a requested permit, the permit with terms and conditions is sent to the applicant, which has 60 days to appeal the terms and conditions if it chooses to do so; if the permit is denied, the applicant may appeal the denial. The Army COE asks that the date of final agency action for purposes of providing the record to the Commission be "at the end of any appeals process."

44. The Commission expects that individual agencies' own regulations will determine when their actions are considered "final" and thereby start the 30-day clock for filing their decisions and indices with the Commission. However, the Commission will consider a decision or action on a request for a Federal authorization to be "final," and consequently subject to the 30-day deadline for filing with the Commission, if the project sponsor submitting the request can rely on an affirmative determination as sufficient authority to proceed. In other words, the agency's deliberation must go beyond verification that a request is complete, or a preliminary determination, or an agency decision that approves a project sponsor's application but makes its right to proceed contingent on the outcome of certain agency review or appeal processes; *i.e.*, the outcome of the agency's final decision or action must grant, condition, or deny the applicant's requested authorization. At this point, the 30-day period begins for an agency to provide the Commission with a copy of its decision, or a summary, and an index to its record in the proceeding. The 30-day period should permit the Commission to receive agencies' decisions and indices in time to compile a complete consolidated record for the purposes of judicial review (or in the case of a CZMA determination, review by the Department of Commerce).³³

45. The Army COE asserts the Commission should forward Freedom of Information Act (FOIA) requests to agencies, instead of preparing a response using the consolidated record. The Commission clarifies that FOIA requests should be submitted directly to the agency responsible for generating the information in question. While an agency's index filed with the

³³ The Commission notes that when it issues an order granting a project sponsor a section 7 certificate or section 3 authorization under the NGA to construct gas facilities, clearance to commence construction generally is withheld until the project sponsor has obtained other necessary authorizations from other agencies. However, once such authorizations have been obtained by the project sponsor, the project sponsor generally is granted clearance to commence construction, notwithstanding any pending requests for rehearing.

Commission may be useful in identifying records relevant to a FOIA request, the Commission will not be capable of effectively responding to FOIA requests, or other types of requests, that concern the substantive matters of another agency's proceeding. Further, the Commission's responsibilities under EPAAct 2005 do not include compiling documents to respond to FOIA requests. The Commission does not expect to receive or respond to FOIA requests, unless the information sought is part of the Commission's own record of its deliberations in a particular proceeding.

Information Collection Statement

46. The Office of Management and Budget (OMB) regulations require that

OMB approve certain reporting, record keeping, and public disclosure (collections of information) requirements imposed by agency rules.³⁴ Pursuant to OMB regulations, the Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).³⁵ Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The information collection requirements

in this Final Rule are: FERC-539, FERC-537, FERC-606, and FERC-607. These are mandatory reporting requirements.

Public Reporting Burden

47. The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule. Several commenters expressed concern with the burden that would be imposed if information was required to be submitted under the initially proposed time frame. However, as discussed herein, the Commission has taken these comments into consideration and extended the time frame for submitting information.

Data collection	Number of respondents	Number of responses	Hours per response	Total hours
FERC-537	76	815	0.5	408
FERC-539	12	12	0.5	6
FERC-606	48	1702	4.4	7,489
FERC-607	48	1654	6.3	10,423
Totals .....	.....	.....	.....	18,326

Total Annual Hours for Collection: 18,326.

Information Collection Costs: Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical, and support), the Commission is using an hourly rate of \$150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost is \$2,748,900.

Title: FERC-539 "Gas Pipeline Certificates: Import/Export Related;" FERC-537 "Gas Pipeline Certificates: Construction, Acquisition and Abandonment;" FERC-606 "Gas Pipeline Certificates: Notification of Request for Federal Authorization;" and FERC-607 "Report on Decision or Action on Request for Federal Authorization."

Action: Data Collection.

OMB Control No.: FERC-539 (1902-0062); FERC-537 (1902-0060); FERC-606 and FERC-607 (To be determined).

Respondents: Natural gas pipeline companies and state agencies and officers.

Frequency of Responses: On occasion.

Necessity of Information: EPAAct 2005 section 313 directs the Commission to (1) establish schedules for State and Federal agencies and officers to act on requests for Federal authorizations required for natural gas projects under sections 3 and 7 of the NGA and (2) maintain a complete consolidated record of all decisions or actions taken by the Commission and other agencies and officers with respect to such authorizations. The Commission considers the regulatory provisions adopted herein to be the minimum necessary for the Commission to implement the new authority provided by EPAAct 2005.

48. For information regarding the requirements of the collections of information and the associated burden estimates, including suggestions for reducing this burden, please send comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director), or send e-mail to *michael.miller@ferc.gov*, or to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission), by fax to (202) 395-7285, or by e-mail to *oira_submission@omb.eop.gov*.

Environmental Analysis

49. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.³⁶ No environmental consideration is raised by promulgation of a rule that is procedural in nature or that does not substantially change the effect of legislation or regulations being amended.³⁷ The regulations adopted herein require authorizing agencies to provide the Commission with copies or summaries of decisions and indices to the records of those decisions in cases arising under the Commissions jurisdiction under the Natural Gas Act. These are minor procedural changes to the Commission's existing regulations and do not substantially change the effect of any legislation or regulations. Nor do they substantially change any regulatory requirements to which pipeline companies or authorizing agencies are currently subject. Accordingly, the preparation of an environmental document is not required.

Regulatory Flexibility Act Certification

50. The Regulatory Flexibility Act of 1980 (RFA)³⁸ generally requires a

³⁴ 5 CFR 1320.11 (2006).

³⁵ 44 U.S.C. 3507(d) (2005).

³⁶ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

³⁷ 18 CFR 380.4(a)(2)(ii) (2006).

³⁸ 5 U.S.C. 601-612 (2005).

description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if proposed regulations would not have such an effect.

51. Although it appears that agencies affected by the rule promulgated today do not fall within the RFA's definition of "small governmental jurisdiction"³⁹ or its definition of "small entities,"⁴⁰ the Commission is nevertheless mindful of costs and burdens to be imposed upon agencies required to provide copies of decisions and indexes to the record in Federal authorization proceedings. In response to commenters that observe certain agencies may lack the resources needed to comply with the proposed three-day deadline for filing and the proposed requirement for electronic filing, the Commission is adopting alternative requirements to take into account the resources available to the agencies to accommodate the limited resources of small entities.⁴¹ The three-day deadline is extended to 30 days, and electronic filing, while still the preferred option, is no longer required.

52. Most of the natural gas companies regulated by the Commission do not fall within the RFA's definition of a small entity.⁴² Approximately 114 natural gas companies are potential respondents subject to the requirements adopted by this rule. For the year 2004 (the most recent year for which information is available), 32 companies had annual revenues of less than \$6.5 million. The procedural modifications enacted herein should have no significant economic impact on those entities—be they large or small—subject to the Commission's NGA jurisdiction. In view of these considerations, the Commission certifies that this Final Rule's amendments to the regulations will not have a significant

³⁹ 5 U.S.C. 601(5) (2005) provides that "the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a populations of less than fifty thousand."

⁴⁰ 5 U.S.C. 601(6) (2005) provides that "the term 'small entity' shall have the same meaning as the terms 'small business,' 'small organization,' and 'small governmental jurisdiction.'"

⁴¹ 5 U.S.C. 603(c)(1) and (2) (2005).

⁴² See 5 U.S.C. 601(3) (2005), citing section 3 of the Small Business Act, 15 U.S.C. 623 (2005). Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed \$6.5 million for the previous year.

impact on a substantial number of small entities.

Document Availability

53. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available in eLibrary in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type RM06-1 in the docket number field.

54. User assistance is available for eLibrary and the Commission's Web site during normal business hours at (202) 502-8222 or the Public Reference Room at (202) 502-8371 Press 0, TTY (202) 502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov.

Effective Date and Congressional Notification

55. These regulations are effective December 26, 2006.

56. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.⁴³

List of Subjects

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

⁴³ 5 U.S.C. 804(2) (2005).

By the Commission.

Magalie R. Salas,
Secretary.

■ In consideration of the foregoing, the Commission amends parts 153, 157, 375, and 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

■ 1. The authority citation for part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949-1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204-112, 49 FR 6684 (February 22, 1984).

■ 2. In subpart B, § 153.4 is added to read as follows:

§ 153.4 General requirements.

The procedures in §§ 157.5, 157.6, 157.8, 157.9, 157.10, 157.11, and 157.12 of this chapter are applicable to the applications described in this subpart.

■ 3. In § 153.8:

- a. The word "and" is removed from the end of paragraph (a)(7);
- b. The period is removed from the end of paragraph (a)(8), and ";" and "and" is added in its place; and
- c. Paragraph (a)(9) is added to read as follows:

§ 153.8 Required exhibits.

(a) * * *

(9) *Exhibit H.* A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 4. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w.

■ 5. In § 157.9:

- a. The section heading is revised;

■ b. The existing text is designated as paragraph (a) and the word “business” is added immediately before the phrase “days of filing”; and

■ c. A new paragraph (b) is added, to read as follows:

§ 157.9 Notice of application and notice of schedule for environmental review.

* * * * *

(b) For each application that will require an environmental assessment or an environmental impact statement, notice of a schedule for the environmental review will be issued within 90 days of the notice of the application, and subsequently will be published in the **Federal Register**.

■ 6. In § 157.14, paragraph (a)(12) is added to read as follows:

§ 157.14 Exhibits.

(a) * * *

(12) *Exhibit J—Federal authorizations.* A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.

* * * * *

■ 7. In subpart A, § 157.22 is added to read as follows:

§ 157.22 Schedule for final decisions on a request for a Federal authorization

For an application under section 3 or 7 of the Natural Gas Act that requires a Federal authorization—*i.e.*, a permit, special use authorization, certification, opinion, or other approval—from a Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, a final decision on a request for a Federal authorization is due no later than 90 days after the Commission issues its final environmental document, unless a schedule is otherwise established by Federal law.

PART 375—THE COMMISSION

■ 8. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 9. In § 375.308, paragraph (bb) is added to read as follows:

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(bb) Establish a schedule for each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, to issue or deny Federal authorizations required for natural gas projects subject to section 3 or 7 of the Natural Gas Act.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 10. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 11. Section 385.2013 is redesignated as § 385.2015 and the heading of newly designated § 385.2015 is revised to read as follows:

§ 385.2015 Videotapes (Rule 2015).

* * * * *

■ 12. New §§ 385.2013 and 385.2014 are added to read as follows:

§ 385.2013 Notification of requests for Federal authorizations and requests for further information (Rule 2013).

(a) For each Federal authorization—*i.e.*, permit, special use authorization, certification, concurrence, opinion, or other approval—required under Federal law with respect to a natural gas project for which an application has been filed under section 3 of the Natural Gas Act for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for a Federal authorization must file with the Commission within 30 days of the date of receipt of a request for a Federal authorization, notice of the following:

(1) Whether the application is ready for processing, and if not, what additional information or materials will be necessary to assess the merits of the request;

(2) The time the agency or official will allot the applicant to provide the necessary additional information or materials;

(3) What, if any, studies will be necessary in order to evaluate the request;

(4) The anticipated effective date of the agency’s or official’s decision; and

(5) If applicable, the schedule set by Federal law for the agency or official to act.

(b) A Federal agency or officer, or State agency or officer acting pursuant

to delegated Federal authority, considering a request for a Federal authorization that submits a data request to an applicant must file a copy of the data request with the Commission within 10 business days.

§ 385.2014 Petitions for appeal or review of Federal authorizations (Rule 2014).

(a) For each Federal authorization—*i.e.*, permit, special use authorization, certification, concurrence, opinion, or other approval—required under Federal law with respect to a natural gas project for which an application has been filed for authorization under section 3 of the Natural Gas Act for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for each Federal authorization must file with the Commission within 30 days of the effective date of a final decision or action on a request for a Federal authorization or the expiration of the time provided by the Commission or by Federal law for a final decision or action, the following:

(1) A copy of any final decision or action;

(2) An index identifying all documents and materials—including pleadings, comments, evidence, exhibits, testimony, project alternatives, studies, and maps—relied upon by the agency or official in reaching a decision or action; and

(3) The designation “Consolidated Record” and the docket number for the Commission proceeding applicable to the requested Federal authorization.

(b) The agencies’ and officers’ decisions, actions, and indices, and the Commission’s record in each proceeding, constitute the complete consolidated record. The original documents and materials that make up the complete consolidated record must be retained by agencies, officers, and the Commission for at least three years from the effective date of a decision or action or until an appeal or review is concluded.

(c) Upon appeal or review of a Federal authorization, agencies, officers, and the Commission will transmit to the reviewing authority, as requested, documents and materials that constitute the complete consolidated record.

[FR Doc. E6–18025 Filed 10–26–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 123

Required Advance Electronic Presentation of Cargo Information for Truck Carriers: ACE Truck Manifest

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

ACTION: Notice.

SUMMARY: Pursuant to section 343(a) of the Trade Act of 2002 and implementing regulations published in December, 2003, truck carriers and other eligible parties were directed to transmit advance electronic truck cargo information to the Bureau of Customs and Border Protection (CBP) through a CBP-approved electronic data interchange (EDI). This notice announces that CBP is designating the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of the required data and that the requirement that advance electronic truck cargo information be transmitted through ACE will be phased in by groups of ports of entry identified in this document.

DATES: Trucks entering the United States through all ports of entry in the states of Washington and Arizona and through the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles and Hansboro in North Dakota will be required to transmit the advance information through the ACE Truck Manifest system effective January 25, 2007. ACE will be phased in as the mandatory transmission system for the other ports identified in this notice in the sequential order that they are listed, following publication of 90 days notice in the **Federal Register** for each group of ports.

FOR FURTHER INFORMATION CONTACT: James Swanson, Field Operations, (202) 344-2576.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that CBP promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably

necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule to effectuate the provisions of the Act. In particular, a new § 123.92 (19 CFR 123.92) was added to the regulations to implement the inbound truck cargo provisions. Section 123.92 describes the general requirement that, in the case of any inbound truck required to report its arrival under § 123.1(b), if the truck will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, § 123.92 provides that CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

ACE Truck Manifest Test

On September 13, 2004, CBP published a general notice in the **Federal Register** (69 FR 55167) announcing a test allowing participating Truck Carrier Accounts to transmit electronic manifest data for inbound cargo through ACE, with any such transmissions automatically complying with advance cargo information requirements as provided in section 343(a) of the Trade Act of 2002. Truck Carrier Accounts participating in the test have the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange messaging.

A series of notices have announced additional deployments of the test, with deployment sites being phased in as clusters. Clusters were announced in subsequent notices published in the **Federal Register** including: 70 FR 30964, published on May 31, 2005; 70 FR 43892, published on July 29, 2005; 70 FR 60096, published on October 14, 2005; 71 FR 3875, published on January 24, 2006; and 71 FR 23941, published on April 25, 2006.

The use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test. ACE will be phased in as the required transmission system at some ports even

while it is still being tested at other ports. CBP will continue, as necessary, to announce in subsequent notices in the **Federal Register** the deployment of the ACE truck manifest system test at additional ports.

Designation of ACE Truck Manifest System as the Approved Data Interchange System

Throughout the deployment process, CBP and system users from the trade have expended considerable resources in a collaborative effort to test the ACE Truck Manifest System. This collaboration has helped correct operational difficulties, improve processing times, and develop system enhancements not present in the original configuration. Full implementation of the enhancements will occur over the next few months. Accordingly, CBP has determined that the ACE Truck Manifest System should be mandated for all and is the approved EDI system for transmission of the advance information required pursuant to section 343(a) of the Trade Act of 2002 and the implementing regulations.

Section 123.92(e) of the regulations (19 CFR 123.92(e)) requires CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Effective 90 days from the date of publication of this notice, truck carriers entering the United States through all ports of entry in the states of Washington and Arizona and through the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles and Hansboro in North Dakota, will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest. CBP will be publishing notice in the **Federal Register** as it phases in the requirement that truck carriers utilize the ACE system to present advance electronic truck cargo information at other ports.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at a particular port of entry once the 90-day notice for that port has been published and the 90-day period has elapsed.

Compliance Sequence

At all ports of entry in the states of Washington and Arizona, and the ports

of Pembina, Nече, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota, ACE will be the mandatory truck cargo information transmission system as of January 25, 2007.

Subsequently, ACE will continue to be phased in as the mandatory EDI system, at the ports identified below in the sequential order of the group in which they are listed. As mandatory ACE is phased in at these remaining ports, CBP will provide 90 days' notice through publication in the **Federal Register** prior to requiring the use of ACE for the transmission of advance electronic truck cargo information at a particular group of ports.

The remaining ports at which the mandatory use of ACE will continue to be phased in are divided into 5 groups, listed in sequential order, as follows:

1. All ports of entry in the states of Michigan, Texas, California, New Mexico, and New York.
2. All ports of entry in the states of Vermont and Alaska.
3. All ports in the states of Maine, Idaho, and Montana.
4. All remaining ports in the state of North Dakota (those not identified as having a specific compliance date).
5. All ports in the state of Minnesota.

Dated: October 23, 2006.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E6-17998 Filed 10-26-06; 8:45 am]

BILLING CODE 9111-14-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

RIN 0960-AG11

Medicare Part B Income-Related Monthly Adjustment Amount

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are adding to our regulations a new subpart, Medicare Part B Income-Related Monthly Adjustment Amount, to contain the rules we will follow for Medicare Part B income-related monthly adjustment amount determinations. The monthly adjustment amount represents the amount of decrease in the Medicare Part B premium subsidy, i.e. the amount of the Federal Government's contribution to the Federal Supplementary Medical Insurance (SMI) Trust Fund. This new subpart implements section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of

2003 (the Medicare Modernization Act or MMA) and contains the rules for determining when, based on income, a monthly adjustment amount will be added to a Medicare Part B beneficiary's standard monthly premium. These final rules describe: What the new subpart is about; what information we will use to determine whether you will pay an income-related monthly adjustment amount and the amount of the adjustment when applicable; when we will consider a major life-changing event that results in a significant reduction in your modified adjusted gross income; and how you can appeal our determination about your income-related monthly adjustment amount.

DATES: These final rules are effective December 26, 2006.

FOR FURTHER INFORMATION CONTACT:

Craig Streett, Team Leader, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, 410-965-9793 or TTY 1-800-966-5609, for information about this **Federal Register** document. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Statutory Provisions

Section 811 of the MMA (Pub. L. 108-173), which was enacted into law on December 8, 2003, added subsection (i) to section 1839 of the Social Security Act (the Act), and established a Medicare Part B premium subsidy reduction (referred to in these final rules as "the income-related monthly adjustment amount") effective January 1, 2007, which will be added to the standard monthly Medicare Part B premium amount for certain beneficiaries. Section 1839(i) of the Act was subsequently amended by section 5111 of the Deficit Reduction Act of 2005, Public Law 109-171. The Centers for Medicare & Medicaid Services (CMS), in the Department of Health and Human Services (HHS), has overall responsibility for determining the annual Medicare Part B standard monthly premium amounts and premium increases for late enrollment or reenrollment. CMS regulations at 42 CFR part 408 describe the rules that

CMS uses to determine those amounts. As explained in these final rules, we are responsible only for making initial determinations and reconsidered determinations about income-related monthly adjustment amounts. Any subsequent levels of appeal will be provided by HHS under its regulations at 42 CFR part 405.

Section 702(a)(5) of the Act allows us to make the rules and regulations necessary or appropriate to carry out the functions of SSA. Other provisions in section 811 of the MMA provide us with additional specific authorization to make rules and regulations to determine the income-related monthly adjustment amount. For example, sections 1839(i)(4)(B) and (i)(4)(C)(ii)(II) of the Act authorize us to promulgate regulations necessary for our determinations about income-related monthly adjustment amounts. Section 1839 of the Act requires the Secretary of HHS to determine annually the Medicare Part B standard monthly premium amount. Section 1839 of the Act also authorizes the Secretary of HHS to establish a premium increase for late enrollment and for reenrollment under certain circumstances and provides for a limitation on increases in the Medicare Part B standard monthly premium for some beneficiaries.

The new section 1839(i) requires us to determine the income-related monthly adjustment amount for Medicare beneficiaries with modified adjusted gross income above an established threshold. The income-related monthly adjustment amount is added to the Medicare Part B standard monthly premium and any applicable premium increase for late enrollment or reenrollment. The MMA provides that in 2007 the modified adjusted gross income threshold is \$80,000 for individuals who file their Federal income taxes with a filing status of single, married filing separately, head of household, or qualifying widow(er) with dependent child and \$160,000 for married individuals who file a joint tax return. Section 811(c)(1) of the MMA enacted a new section 6103(1)(20) of the Internal Revenue Code authorizing the Internal Revenue Service (IRS) to provide certain income information to us to use in determining the income-related monthly adjustment amount. The MMA requires that the threshold amount be adjusted yearly based on the Consumer Price Index.

Section 811(b)(1)(C) of the MMA also amended section 1839(f) of the Act, so that the limitation on increases in the Medicare Part B standard monthly premium for some beneficiaries will not apply to beneficiaries who are

responsible for an income-related monthly adjustment amount.

Background

Medicare Part B is a voluntary program which provides medical insurance coverage for medical and health services such as physician services, diagnostic services, and medical supplies. Medicare Part B beneficiaries are responsible for deductibles, co-insurance and monthly premiums towards the cost of covered services. CMS promulgates rules and regulations concerning the Medicare program.

The Medicare Part B standard monthly premium is set by CMS so that it covers approximately 25 percent of the Medicare Part B program costs. Certain beneficiaries may also pay an increased premium for late enrollment in Medicare Part B or for reenrollment after a period without coverage. Approximately 75 percent of the full cost of Medicare Part B is subsidized by the Federal Government by contributions to the Federal Supplementary Medical Insurance Trust Fund. In addition, for certain beneficiaries whose premiums are deducted from other payable Social Security (or railroad retirement) benefit amounts that they receive, the yearly adjustment to the premium amount cannot be raised more than the amount of the cost-of-living adjustment for those other benefits.

Starting in January 2007, the Medicare Part B premium subsidy will be reduced for an estimated 4 to 5 percent of the approximately 40 million Medicare Part B beneficiaries. Beneficiaries who had modified adjusted gross income above the threshold level set in the MMA in the tax year 2 years prior to the year for which we make a determination about whether they must pay an income-related monthly adjustment amount (the effective year) will receive a reduced Federal subsidy of their Medicare Part B premium. The reduction of the Federal premium subsidy will result in beneficiaries with modified adjusted gross income above the threshold paying more of the cost of their Medicare Part B benefits through an income-related monthly adjustment amount that will be added to the Medicare Part B standard monthly premium plus any applicable premium increase for late enrollment or reenrollment.

How This Will Affect You

Your modified adjusted gross income is your adjusted gross income, as defined at 26 U.S.C. 62 and in related regulations, plus certain other forms of

income that may be excluded from adjusted gross income for the purpose of determining the amount of Federal income tax that you must pay. The MMA as amended by the Deficit Reduction Act provides that the payment of the full amount of the income-related monthly adjustment amount will be phased in starting in 2007 and will be completed in 2009. If you must pay an income-related monthly adjustment amount, you will not be eligible for the limitation on Medicare Part B standard monthly premium increase beyond the amount of your Social Security (or tier 1 railroad retirement) cost-of-living adjustments, as described in 42 CFR 408.20.

If you are a Medicare beneficiary prior to January 1, 2007 and you will be required to pay an income-related monthly adjustment amount in 2007, we will notify you by sending you a letter at the end of 2006 about the additional amount of your premium and any related changes in the amount of your Social Security monthly benefits or other payments (railroad retirement or Civil Service annuity payments) from which your premiums will be withheld. If you enroll in Medicare Part B after January 1, 2007, your initial Medicare Part B premium may not include an income-related monthly adjustment amount. If we subsequently determine that you must pay an income-related monthly adjustment amount for your Medicare Part B coverage, you will be notified shortly after you enroll in Medicare Part B, and you will be responsible for your income-related monthly adjustment amount for all months after December 2006 for which you were enrolled in and entitled to Medicare Part B. If you are a Medicare beneficiary during 2007 or after, we will notify you prior to the start of each year if you must pay an income-related monthly adjustment amount in that year.

How We Determine Your Income-Related Monthly Adjustment Amount

The amount of your modified adjusted gross income will determine if you are to pay an income-related monthly adjustment. Section 1839(i)(2) of the Act establishes the threshold for modified adjusted gross income used to determine if you are to pay an income-related monthly adjustment amount. In 2007, the modified adjusted gross income threshold amount is \$80,000 for individuals who file their Federal income tax return with a filing status of single, married filing separately, head of household, or qualifying widow(er) with dependent child, and \$160,000 for

individuals who file a joint income tax return with their spouse.

Section 1839(i)(4) of the Act requires us to request information about your modified adjusted gross income from IRS in the Department of the Treasury and to use this information to determine if you must pay an income-related monthly adjustment amount. We will specify the tax year involved in our information request. We will request that IRS send us Federal income tax return information about your modified adjusted gross income for the tax year which is 2 years before the effective year. If modified adjusted gross income information is not available from IRS for the tax year 2 years before the effective year of our determination, IRS will send us your modified adjusted gross income information for the tax year 3 years before the effective year if it exceeds the threshold. We will use information for the tax year 3 years prior to determine whether you must pay an income-related monthly adjustment amount only until we obtain information for the tax year 2 years prior. When we use such information to make a determination, we will make retroactive corrections that will apply to all months that you paid an incorrect income-related monthly adjustment amount.

If we use information from IRS for the tax year 3 years before the effective year of our determination, you may request that we use information that you provide for the tax year 2 years before that year. In some cases, you may pay a higher premium based on your 2-year information. However, providing that information to us rather than having us receive information from IRS at a later date will help you avoid an extensive retroactive correction. In order for us to make an initial determination based on such a request, you must provide your retained copy of your Federal income tax return for that year, a copy that you request from IRS, or an IRS transcript of your return. If you provide your retained copy, we will also verify this information with IRS.

If we receive information from IRS about your modified adjusted gross income for a tax year for which you did not file a tax return that shows that you had income that year that exceeded the established threshold, we will make a determination about your income-related monthly adjustment amount for that year. We will apply the highest applicable percentage adjustment based on that information, as required by statute. If IRS provides information to us that indicates a change in your modified adjusted gross income for a prior tax year, we will use this information to establish corrections for the appropriate

effective years regardless of when we receive such information. We are consulting with IRS to develop processes for the transmission of modified adjusted gross income information for situations involving those who do not file income tax returns and for changes in information that IRS provides.

The Sliding Scale Formula and How It Applies to You

Section 1839(i)(3) prescribes a sliding scale formula that CMS will use to establish annually four income-related monthly adjustment amounts beginning in 2007. The calculation of the income-related monthly adjustment amount reduces a beneficiary's Medicare Part B premium subsidy using specified percentages. The amount of this premium subsidy reduction is the income-related monthly adjustment amount. To determine each income-related monthly adjustment amount, CMS will use the unsubsidized Medicare Part B premium (approximately four times the Medicare Part B standard monthly premium) and multiply it by a specified percentage. The percentage used in the calculation changes as the amount of modified adjusted gross income increases the income-related monthly adjustment amount.

We will use your modified adjusted gross income and your Federal income tax filing status (e.g., single, married filing jointly, married filing separately) to determine whether you must pay an income-related monthly adjustment amount, and if so, what your income-related monthly adjustment amount will be. Section 1839(i)(3)(C) provides the modified adjusted gross income ranges. The range amounts for individuals who are married filing jointly are double the range amounts for single income tax filers. IRS recognizes three additional filing statuses: head of household, qualifying widow(er) and married filing separately. If you file as a head of household or as a qualifying widow(er), we will apply the modified adjusted gross income range applicable to individuals who file their Federal income tax return with a filing status of single. Section 1839(i)(3)(C)(iii) provides a different rule for determining the income-related monthly adjustment amount for individuals who file their Federal income tax return with a filing status of married filing separately and who lived with their spouse at any time during the year. For these individuals, we subtract the threshold amount as described in section 1839(i)(2)(A) established for single income tax filers for that calendar year from the modified

adjusted gross income ranges for individuals with a tax filing status of single. For 2007, this results in the following two ranges for married filing separately: (1) \$80,000 to less than or equal to \$120,000 and (2) More than \$120,000. Individuals affected by section 1839(i)(3)(C)(iii) will pay either the third or fourth range of income-related monthly adjustment amount as described in section 1839(i)(3)(C)(i) as modified by 1839(i)(3)(B).

Starting in 2007 for calendar year 2008, and annually thereafter for each following calendar year, CMS will publish the annual modified adjusted gross income ranges and income-related monthly adjustment amounts that are associated with each range. We will use this published information to determine which amount applies to you based on your tax filing status in the tax year we are using to determine your income-related monthly adjustment amount.

If you filed an amended tax return for the tax year we used to make a determination of your income-related monthly adjustment amount, you may request that we use your amended tax return for that year. You must provide us with proof that you filed an amended tax return with IRS, including your retained copy of the amended tax return and a letter from IRS verifying receipt of the return or an IRS transcript of your amended tax return. If you believe that IRS provided incorrect modified adjusted gross income information and we used that information to determine your income-related monthly adjustment amount, you may request that we make a new income-related monthly adjustment amount determination. You must provide proof of the error in the IRS data and evidence of your actual modified adjusted gross income, such as a copy of the return that you obtain from IRS. When we use information from your amended or corrected Federal income tax return to make a determination, we will make retroactive adjustments that will apply to all months that you paid an incorrect income-related monthly adjustment amount.

Phase-In and Inflation Adjustment of the Income-Related Monthly Adjustment Amount

Section 1839(i)(3)(B) requires the amount of the full income-related monthly adjustment to be phased in over a 3-year period beginning in 2007. The effect is that from 2007 through 2009 the amount of the income-related monthly adjustment amount will increase, because the subsidy will decrease. The percentage will change each year so that the income-related

monthly adjustment amount will gradually increase, until the full amount is phased in starting in 2009. In 2007, you will pay 33 percent of the income-related monthly adjustment amount, and in 2008, you will pay 67 percent of the income-related monthly adjustment amount. In 2009, you will pay the full income-related monthly adjustment amount for your tax filing status and modified adjusted gross income.

Beginning in 2008, section 1839(i)(5) of the Act requires an annual inflation adjustment for the threshold amount and the amounts used in the modified adjusted gross income ranges. The adjustment will be based on the percentage increase in the Consumer Price Index for all urban consumers and rounding the result to the nearest \$1,000. CMS will calculate and publish these amounts annually.

Changes in Your Modified Adjusted Gross Income

Section 1839(i)(4)(C) of the Act requires us to establish procedures in consultation with the Secretary of the Treasury for determining your modified adjusted gross income for a tax year more recent than the information ordinarily provided by IRS. The statute states that we will grant your request to use a more recent tax year to determine your income-related monthly adjustment amount only when:

- You experience a major life-changing event;
- That major life-changing event results in a significant reduction in your modified adjusted gross income;
- You request that we use a more recent tax year's modified adjusted gross income; and
- You provide evidence of the event and the reduction in your modified adjusted gross income.

These final rules describe the standards that you must meet in order for us to use a more recent tax year's modified adjusted gross income to determine whether you must pay an income-related monthly adjustment amount and what your income-related monthly adjustment amount will be. In these final rules we define qualifying major life-changing events and what is a significant reduction in your modified adjusted gross income. We also specify the evidence we will require of major life-changing events and the resulting reduction in your modified adjusted gross income.

Section 1839(i)(4)(C)(ii)(II) specifies that major life-changing events include marriage, divorce, and death of a spouse. Under that section, we have discretion to include in regulations additional major life-changing events

that would allow us to grant your request that we use information from a more recent tax year to determine your income-related monthly adjustment amount. In these rules we establish the following categories of qualifying major life-changing events:

- Death of a spouse;
- Marriage;
- Marriage ended by divorce or annulment;
- Partial or full work stoppage;
- Loss of income from income-producing property when the loss is not at your direction, for example, loss of income from real property due to a natural disaster in a Presidentially or Governorially-declared disaster area, or due to arson, or destruction of livestock or crops; and
- Reduction or loss of income from an insured pension plan due to termination or reorganization of the pension plan, or a scheduled cessation of your pension benefits.

We have included these additional categories of major life-changing events because we recognize that these events may cause a significant reduction in your modified adjusted gross income. We will include losses in pension income from an insured pension plan that occur due to events outside of your control, such as underfunding that results in a termination of the plan, but not due to your choices about funding an employee-directed pension plan. The statute authorizes us to define as major life-changing events circumstances that affect your income, not circumstances that affect only your expenses.

We define a significant reduction in your modified adjusted gross income as any change that results in a reduction or elimination of your income-related monthly adjustment amount. Therefore, a significant reduction in your modified adjusted gross income is any change that lowers your income below the threshold amount or lowers the modified adjusted gross income range in which your income falls. Section 1839(i)(4)(C)(ii) provides that we may grant your request to use a more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount only if you provide us with a copy of a filed Federal income tax return or equivalent document. These final rules define the evidence that we will consider to be equivalent to a copy of a filed Federal income tax return.

When we make an income-related monthly adjustment amount determination based on your request due to a qualifying major life-changing event, the determination will generally be effective on January 1 of the calendar

year for which we make the determination. If you enrolled in Medicare Part B after January 1 of the year for which we make an income-related monthly adjustment amount determination based on your request due to a major life-changing event, the determination will be effective the month of your Medicare Part B enrollment.

When we make an income-related monthly adjustment amount determination following a major life-changing event using your more recent tax year's modified adjusted gross income, we will continue trying to get IRS data for that tax year. When we receive modified adjusted gross income information from IRS for that tax year, we will use the information from IRS to determine the correct income-related monthly adjustment amount for the year or years for which we used information that you provided, and we will make retroactive adjustments, if necessary. Retroactive adjustments will apply to all months for which you paid an incorrect income-related monthly adjustment amount.

If You Disagree With Our Determination of Your Income-Related Monthly Adjustment Amount

We will decide whether you must pay an income-related monthly adjustment, and the amount of any adjustment, based on information we receive from IRS or you. We will send you a notice of our initial determination of your income-related monthly adjustment amount and the basis for our determination. The notice will explain that, if you disagree with our determination, you may request that we reconsider it within 60 days after the date you receive notice of our initial determination. The notice will also explain that you may request a new initial determination, rather than a reconsideration, if you believe the information we used in our initial determination was correct, but you want us to use different information about your modified adjusted gross income.

For purposes of this subpart, in making initial determinations and reconsiderations, we will use the rules for the administrative review process that we use for determinations of your rights regarding nonmedical issues under title II of the Act. However, in order to expedite the processing of requests for reconsideration under these final rules, we have also provided in these rules that we may accept requests for reconsideration that are filed by electronic or other means that we determine to be appropriate, other than a request in writing, as our title II

regulations provide. If you are dissatisfied with our reconsidered determination, you may request further review, including a hearing before an administrative law judge (ALJ) from the Office of Medicare Hearings and Appeals (OMHA) at HHS, review by the Medicare Appeals Council (MAC), and judicial review, consistent with the CMS regulations at 42 CFR part 405. As part of your request for an ALJ hearing or MAC review, you will be required to provide your consent for us to release your relevant tax return information to OMHA or the MAC for the purposes of adjudicating any appeal of the amount of an income-related adjustment to the Part B premium subsidy and for any judicial review of that appeal.

We are establishing a new procedure, a request for a new initial determination, that you may use when you do not dispute the accuracy of the determination we made based on the modified adjusted gross income information provided by IRS, but you want us to use different information. You may provide evidence of your modified adjusted gross income for a more recent tax year than the information provided by IRS when you have had a major life-changing event that significantly reduces your income or when IRS has provided modified adjusted gross income information from 3 years prior to the premium effective year and you supply your retained copy of your Federal income tax return for the tax year 2 years prior. You may also request that we make a new initial determination when you have amended your Federal income tax return or when you can furnish proof that IRS has provided incorrect information about your modified adjusted gross income for the year that we used to determine your income-related monthly adjustment amount.

We are establishing this alternative procedure in view of the nature of the information that we are required by the MMA to use in making determinations regarding the income-related monthly adjustment amount. We anticipate that the use of this new procedure will allow us to make timely adjustments when you have updated information about your modified adjusted gross income, or when you can prove the IRS information we used is incorrect. This process does not affect your right to appeal an initial determination that we make about your income-related monthly adjustment amount, but allows you to choose an alternative of requesting that we use other information to make a new initial determination.

Explanation of Subpart B

We are adding a new subpart B, Medicare Part B Income-Related Monthly Adjustment Amount, to part 418 of chapter III of title 20 of the Code of Federal Regulations. Subpart B contains the rules that we will use to determine when you will be required to pay an income-related monthly adjustment amount in addition to your Medicare Part B standard monthly premium plus any applicable premium increase for late enrollment or reenrollment. Following is a description of each section for subpart B.

Introduction, General Provisions, and Definitions

- Section 418.1001 describes what subpart B is about, lists the groups of sections in the subpart, and the subject of each group.
- Section 418.1005 explains that the purpose of the income-related monthly adjustment amount is to reduce the premium subsidy of the Medicare Part B program, i.e., the amount of the Federal Government's contribution to the Federal Supplementary Medical Insurance Trust Fund for certain beneficiaries. It also explains how the income-related monthly adjustment amount will be administered.
- Section 418.1010 contains definitions of terms used throughout this subpart.

Determination of the Income-Related Monthly Adjustment Amount

- Section 418.1101 explains what the income-related monthly adjustment amount is and when it is applied.
- Section 418.1105 defines the modified adjusted gross income threshold and what the modified adjusted gross income threshold amounts will be in the year 2007. It also describes how threshold amounts will change in later years.
- Section 418.1110 describes the effective date of our initial determination about the income-related monthly adjustment amount.
- Section 418.1115 defines modified adjusted gross income ranges and explains how we will use them and your tax filing status to determine the amount of your income-related monthly adjustment amount when applicable, and what effect Federal income tax filing status has on the ranges.
- Section 418.1120 explains how we will determine your income-related monthly adjustment amount.
- Section 418.1125 explains how the income-related monthly adjustment amount will affect your total Medicare Part B premium.

- Section 418.1130 explains how we will phase in the full applicable income-related monthly adjustment amounts.

- Section 418.1135 describes what modified adjusted gross income information we will use to determine your income-related monthly adjustment amount.

- Section 418.1140 describes what will happen if the modified adjusted gross income that we later receive from IRS is different from the information that we previously used to make a determination of your income-related monthly adjustment amount.

- Section 418.1145 describes how we will determine the income-related monthly adjustment amount if IRS does not provide your modified adjusted gross income information.

- Section 418.1150 describes when we will use a copy of your amended Federal income tax return filed with IRS to determine the income-related monthly adjustment amount and what proof is necessary to show that you filed a tax return with IRS.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

- Section 418.1201 explains when we will use modified adjusted gross income information for a more recent tax year to determine your income-related monthly adjustment amount.

- Section 418.1205 describes what is considered a major life-changing event that would justify using information from a more recent tax year.

- Section 418.1210 explains what is not considered a major life-changing event that would justify using information from a more recent tax year.

- Section 418.1215 explains what is a significant reduction in your income for the purpose of these rules.

- Section 418.1220 explains what is not a significant reduction in your income for the purpose of these rules.

- Section 418.1225 explains which more recent tax years we may use to determine whether you must pay an income-related monthly adjustment amount and the amount of that adjustment.

- Section 418.1230 explains the effective date of our income-related monthly adjustment amount determination based on your request to use a more recent tax year.

- Section 418.1235 explains when we will stop using your modified adjusted gross income from a more recent tax year for income-related monthly adjustment amount determinations.

- Section 418.1240 explains what you should do if your modified adjusted

gross income for the more recent tax year changes.

- Section 418.1245 explains what will happen if you notify us of a change in your modified adjusted gross income for the more recent tax year.

- Section 418.1250 explains what evidence you will need to support your request for us to use a more recent tax year to determine your income-related monthly adjustment amount.

- Section 418.1255 describes what evidence of a major life-changing event you will need to provide to support your request to use a more recent tax year.

- Section 418.1260 describes the types of evidence of a major life-changing event that we will not accept.

- Section 418.1265 describes what evidence of a significant reduction in your modified adjusted gross income you will need to provide to support your request to use a more recent tax year.

- Section 418.1270 explains what evidence we will not accept of a significant reduction in your modified adjusted gross income.

Determinations and the Administrative Review Process

- Section 418.1301 explains what is an initial determination regarding your income-related monthly adjustment, and provides examples of determinations that are initial determinations for purposes of these rules.

- Section 418.1305 explains that administrative actions that are not initial determinations are not subject to the administrative review process.

- Section 418.1310 explains when you may request that we make a new initial determination.

- Section 418.1315 explains how we will notify you when we make an initial determination, and what information the notice will contain.

- Section 418.1320 explains the effect of the initial determination.

- Section 418.1325 explains when you may request a reconsideration.

- Section 418.1330 explains what will happen if you request a reconsideration because you believe that IRS information we used to make an initial determination about your income-related monthly adjustment amount is incorrect.

- Section 418.1335 explains what to do if you believe our initial determination is based on incorrect modified adjusted gross income information.

- Section 418.1340 tells you the rules for the administrative review process.

- Section 418.1345 tells you the rules we will use to decide if reopening a

prior initial or reconsidered determination made by us is appropriate.

- Section 418.1350 explains that the HHS rules will apply for review of a reconsidered determination or ALJ decision.

- Section 418.1355 explains that the rules for reopening a prior decision made by an ALJ of the OMHA or by the MAC will follow the HHS rules governing reopening.

Public Comments

On March 3, 2006, we published proposed rules in the **Federal Register** at 71 FR 10926 and provided a 60-day period for interested persons to comment. We received comments from three organizations and four individuals. We have condensed, summarized or paraphrased the comments in the following discussion to facilitate comprehension of the issues. We have tried to present all views accurately and address carefully all of the issues raised by the commenters that are within the scope of the proposed rules.

In our proposed rules, we invited but received no comments on the issue of individuals for whom the IRS cannot supply income tax return information. The statute requires that we issue regulations that “provide for the treatment of the premium adjustment with respect to such individual[s]” when we have information that such individuals have income that exceeds the threshold. Consistent with the requirements of § 1839(i)(4)(B)(iii) of the Act, we have added § 418.1135(f) to these rules to clarify that if, after a premium effective year, we receive information from IRS that such an individual had modified adjusted gross income above the applicable threshold, we will apply the highest income-related adjustment percentage to such individual as required by the statute. When we receive such information, we will retroactively correct Medicare premiums for any affected effective year(s), as required by statute.

Introduction, General Provisions and Definitions

Comment: Four commenters expressed concerns over the concept that some higher income Medicare beneficiaries should receive a reduction in the Federal subsidy of their Medicare Part B premiums.

Response: The provision to reduce the amount of the subsidy based on your income levels was specifically legislated by Congress. Our responsibility is to implement section 811 of the MMA through these regulations in a manner

consistent with the requirements of this law.

Comment: One commenter found the proposed rules confusing.

Response: We have reorganized the rules and changed some of the captions and wording of the regulation text in order to improve the clarity of the regulation.

We changed the order of §§ 418.1110 through 418.1120 by moving the section about the effective date of our initial determination so that it precedes the section that describes how we make our initial determination of your income-related monthly adjustment amount. This change provides a more logical progression of concepts related to income-related monthly adjustment amount determinations.

We renumbered the sections related to a determination using a more recent tax year’s modified adjusted gross income because we created two new sections (§§ 418.1215 and 418.1220) to clarify what is a significant reduction in modified adjusted gross income. In the proposed regulation, the definition of a significant reduction in modified adjusted gross income was in § 418.1201(b). We have left that definition intact, but added further clarification in the new sections.

Comment: Several commenters raised concerns about confusion that may arise regarding the administrative review process.

Response: We agree with the comments and have added §§ 418.1340 and 418.1345 which clarify that we will apply our rules for administrative review by SSA and reopening of our determinations. Sections 418.1350 and 418.1355 clarify that HHS will apply its rules for administrative review and reopenings by ALJs from OMHA and by the MAC.

Comment: One commenter suggested that we define what we mean by “significant reduction” in income resulting from a major life-changing event. It was also requested that we add more information to the final rules about what evidence of life-changing events we will require, and how we will establish a causal link between the major life-changing event and the significant reduction in income.

Response: We agree with this suggestion and have added new sections to the regulations that explain what does and does not constitute a significant reduction in income resulting from a major life-changing event. Section 418.1215 defines a significant reduction in modified adjusted gross income, and § 418.1220 explains that we will not consider a reduction in income to be significant if

it does not affect the amount of income-related monthly adjustment you must pay.

Section 418.1250 states that we will ask for evidence of the major life-changing event and how that event significantly reduced your modified adjusted gross income. We have also added explanations of what major life-changing event evidence we will not accept and what modified adjusted gross income information we will not accept. Section 418.1260 describes the types of evidence of major life-changing events that we will not accept, and § 418.1270 describes the types of modified adjusted gross income evidence we will not accept.

In § 418.1265(b) we expanded our description of the evidence that we will accept of reductions in your modified adjusted gross income. The revision clarifies that we will accept a copy of your filed Federal income tax return for a more recent taxable year. If you have amended your tax return for the more recent taxable year, you should provide a copy of the amended tax return. Finally, if you filed a tax return for the more recent taxable year, but have proof from IRS of a correction of your tax return information, you should provide evidence of the correction.

Comment: One commenter expressed concerns about privacy issues surrounding the modified adjusted gross income data that we will obtain from IRS.

Response: Section 811 of the MMA created a new provision of the Internal Revenue Code that authorizes IRS to disclose modified adjusted gross income information to us for the specific purpose of determining income-related monthly adjustments to Medicare Part B premiums. We have worked with the IRS under existing protocols and within the specifications of section 811 and other legislation to limit the information that IRS discloses to us and the information that we will supply to IRS for this purpose. The data exchange will be conducted in accordance with the provisions of section 1106 of the Act (42 U.S.C. 1306), the Privacy Act (5 U.S.C. 552a), and section 6103 of the Internal Revenue Code (26 U.S.C. 6103) to ensure safeguarding of any personally identifiable information that is exchanged. We added a statement in § 418.1350 to clarify that we will not disclose information that we have about your tax information for the purpose of a hearing with an ALJ, MAC review, or judicial review unless you authorize us to do so, and the IRS confirms that the authorization meets all legal requirements.

Comment: One commenter said that the regulations should address beneficiary education activities to inform the public about their appeal rights and how the different agencies involved will coordinate those activities.

Response: After careful consideration, we decided that including education plans in the final regulations would not be appropriate. We are working on the best methods to provide initial and continuing information to the public that explains their appeal rights and other information that the public may need and are coordinating our efforts with CMS. We will include information in notifications that we will send to affected beneficiaries and through other vehicles, such as Fact Sheets and Web page information published by both agencies.

Comment: One commenter addressed concerns about the timing of notifications to beneficiaries about income-related monthly adjustments to Medicare Part B premiums, suggesting that such notices be issued by October 31. The commenter also encouraged us to provide detailed information in those notifications.

Response: As we explained earlier in this preamble, generally we will use 2-year old modified adjusted gross income information from IRS to determine whether you are required to pay an income-related monthly adjustment amount. Section 811 of the MMA gives IRS until October 15 to provide us with 2-year old tax data to use in determining your adjustment amount for the next year. If we do not receive the information by October 15, the law allows us to use 3-year old data. Because we must wait until after October 15 to obtain the required information, it is not possible for us to process the data from IRS and issue notices by the suggested date.

We will send notices that will explain the basis of our decision and what you should do if you disagree with our decision or have better information than we do (such as a copy of a filed 2-year old tax return when we used 3-year old information to set a premium adjustment). The notices will provide information about which year's income tax return information we used to make our determination, and what information IRS gave us about your tax filing status and modified adjusted gross income for that year. The notices will also explain what you may do if there has been a major life-changing event(s) resulting in a significant reduction in income since the year we used to set your Medicare Part B premium.

Comment: One commenter urged us to publish the annual, updated modified adjusted gross income ranges at the same time as the Medicare Part B premium changes and for CMS to include projected amounts for a 5- to 10-year period in its Annual Trustees Report.

Response: We do not determine the annual modified adjusted gross income ranges, nor do we determine the standard Medicare Part B premium. CMS will determine the ranges annually as it does the standard Medicare Part B premium. We will include this information on our Web site <http://www.socialsecurity.gov> as it becomes available to us. We have shared with CMS the suggestion to include projected modified adjusted gross income ranges in CMS's Annual Trustees Report.

Determination of the Income-Related Monthly Adjustment Amount

Comment: Two commenters expressed concern about using information from IRS for a past period. One of those comments focused on the use of IRS information from more than 2 years before the year for which the Medicare Part B premiums will be effective. That commenter expressed hope that IRS would be able to provide appropriate electronic information about beneficiaries' modified adjusted gross income from the tax year 2 years before the premium year well in advance of October 15 each year. The other comment expressed a generalized concern about the coordination of data transfers between Federal agencies.

Response: Based on our discussions with IRS, we expect that the overwhelming majority of income tax returns from the tax year 2 years before the premium year will be processed and in electronic format by October 15 of each year. Although many taxpayers request filing extensions, almost all file a tax return by October 15. The language of the statute dictates the October 15 date and provides an exception for the temporary use of 3-year old data when 2-year old information is not available. We are working with IRS to minimize the temporary use of older data, and to ensure accurate data exchanges.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

Comment: Two commenters addressed the possibility of job loss or retirement affecting income in the past year while we use 2- or 3-year-old information from IRS.

Response: Reduction of work or work stoppage can be a major life-changing event for purposes of determining the

income-related monthly adjustment amount. If you experience a significant reduction of income because of work reduction or stoppage, the final rules provide that you may request that we use information that you provide about your income for a more recent tax year to determine your income-related monthly adjustment amount. If you report a major life-changing event that significantly reduces your income, we will use that information to determine if an income-related monthly adjustment amount is applicable. When we determine that you have paid too much for your Medicare Part B premium, we will follow current processing procedures to refund excess amounts of Medicare Part B premiums that have been paid. If a Medicare beneficiary pays premiums through another Federal agency, we will convey the information that the agency needs to refund excess Medicare Part B premiums that have been paid.

Comment: One commenter thought that the impairment-related work expenses deduction from income for the disabled in other Social Security programs should be extended to the income-related monthly adjustments to Medicare Part B premiums.

Response: We have not adopted the comment. The statute clearly defines the method for determining whether an income-related monthly adjustment is applicable and the amount of such adjustment. The MMA requires us to use only the modified adjusted gross income as defined in section 1839(i)(4) of the Act and does not provide any authority for us to consider an individual's expenses or net income.

Comment: One commenter suggested that the list of significant life-changing events should be flexible. Another commenter suggested that the list of significant life-changing events should be expanded to include decreases in dividend income and requested clarification on whether interest income from financial securities (such as stocks and bonds) is considered the same as dividend income. The latter commenter also expressed concerns about the burden of documenting life-changing events, such as divorce that occurred several years earlier.

Response: We have given careful consideration to these comments but decided not to expand the list of significant life-changing events to include decreases in dividend income and loss of income from financial securities. The current list of significant life-changing events includes major events that have a direct and potentially permanent effect on an individual's income. Reductions in income that are

unrelated to major life-changing events are not contemplated in the statute. Decreases in dividend income and loss of income from financial securities are not "events" but rather fluctuations in the financial markets and should not be considered as part of the list of events with a potentially permanent effect on income. Similarly, making the list more flexible would run counter to the statutory requirement that major life-changing events be "specified in regulations."

When you have experienced a significant life-changing event, we will provide assistance to you when documentation is needed as we routinely do for Social Security claimants and beneficiaries. To the extent possible, when you need a document such as a divorce decree and do not know how to obtain it, we will provide the appropriate address and associated information so that you can secure it. Further, it is unlikely that a divorce that occurred several years ago will have caused a significant reduction in income in a more recent tax year.

Determinations and the Administrative Review Process

Comment: One commenter expressed concern about the process that we will use to make corrections of amounts of Part B premiums charged after we have decided that use of a more recent taxable year is appropriate when there has been a significant reduction in income because of a major life-changing event.

Response: The commenter asked about the process for making premium adjustments. When a beneficiary reports a major life-changing event and new information about his income in a more recent tax year that we use to make a new initial determination of the income-related monthly adjustment amount, we will follow current processing procedures to refund excess Medicare Part B premiums that have been paid. If a Medicare beneficiary pays premiums through another Federal agency, we will convey the information that agency needs to process an appropriate correction for the beneficiary.

Comment: One commenter asked for clarification of what is not subject to appeal, and when our rules and HHS rules will apply. The commenter also expressed concerns about the complexity of the administrative review process which spans two Federal agencies.

Response: We are responsible for reconsiderations of initial determinations made by us. Reconsiderations are the first step in the appeal process, and our rules are used

for reconsiderations. When an individual is dissatisfied with our reconsideration determination, he may request a hearing before an ALJ. Section 931 of the MMA transferred responsibility for the functions of the ALJs responsible for hearing cases under title XVIII of the Act to HHS. HHS established regulations for Medicare appeals in 42 CFR part 405. Hearings related to income-related monthly adjustment amounts are hearings under title XVIII and are the responsibility of HHS. We have clarified this information in the regulations. Our regulations also explain what is and is not an initial determination for purposes of administrative review.

We agree with the concern that the commenter expressed about the complexity of the administrative review process for these cases. We have simplified our process for requesting a reconsidered determination of our decision about an income-related monthly adjustment amount. If you want us to reconsider our determination about your income-related monthly Medicare Part B premium adjustment, you will be able to request a reconsideration without requesting it in writing.

Comment: A commenter suggested that we should give beneficiaries more than 60 days after receipt of the notice of our initial determination to seek a reconsideration or a new determination because of likely confusion in the initial year or two of implementation.

Response: Our experience in administering the title II program has been that a 60-day period to file an appeal is reasonable. If you request your reconsideration later, we will follow our current rules in 20 CFR 404.911 to evaluate whether you have a good reason for us to extend the 60-day period, such as illness or a death in your immediate family.

A request for a new initial determination is not an appeal and is not tied to the 60-day period to file an appeal. A major life-changing event such as death of a spouse or divorce can happen any time during a year and may result in a significant reduction in income for that year or a subsequent year. If you have experienced a significant reduction in income because of a major life-changing event, you may request a new determination at any time during the year that the significant reduction in income has occurred. Further, if that reduction follows a major life-changing event in the last 3 months of the year, you may report the event and request a new initial determination within the first 3 months of the next year and we will determine

if premiums should be adjusted for the preceding year.

In the proposed rule, we established a 60-day time limit for requesting a new initial determination based on a beneficiary correction of IRS information that we used to make an initial determination about the income-related monthly adjustment amount. After considering this comment, we eliminated the requirement that a beneficiary make a request for a new initial determination within 60 days following receipt of our notice of an income-related monthly adjustment amount when he believes that the IRS information we used is incorrect. Section 418.1310(a)(3) of the final rule states that an individual who believes that the IRS information we used in making an initial determination of the income-related monthly adjustment amount is incorrect may request a new initial determination at any time after he receives a notice from us about the determination.

Other Changes

In response to these comments and our further review of the structure and format of the proposed rule, we have restructured these regulations slightly. In this final rule, we have moved some sections and added new sections. We provide explanations below of the changes that were not explained under the "Public Comments" section of the preamble. These changes are consistent with the policies outlined in the proposed regulations and are intended to clarify and further explain the procedures that we will apply to compute the amount of any income-related monthly adjustment to the Medicare Part B premium.

In § 418.1010(a), we have added definitions for the Medicare Appeals Council (MAC), the Office of Medicare Hearings and Appeals (OMHA), and the Department of Health and Human Services (HHS). We added a definition of the term "Tax Year" to § 418.1010(b). In § 418.1205(c), we clarified that a marriage may end either through divorce or annulment.

We also added sections clarifying that we will apply our rules for the reconsideration of initial determinations that we have made, and HHS rules will apply for administrative review by the OMHA and the MAC. We have added language clarifying the process we will follow when a beneficiary who filed a Federal income tax return as Married Filing Separately informs us that the spouses lived apart throughout the year. In a new paragraph (e) in § 418.1140, we explain that if you request that we review your income-related premium

adjustment for this reason, we will require you to attest that you lived apart from your spouse throughout the tax year we are using to set your premium, and to provide address information for your spouse and yourself for that year.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for an “economically significant” regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258. In addition, these are major rules under the Congressional Review Act in 5 U.S.C. 801–808.

These final rules provide the implementing rules for the income-related premium calculation enacted as part of MMA. The legislative provision is expected to result in an overall savings to the Medicare Part B account in the SMI Trust Fund of roughly \$7.7 billion over the period of fiscal years 2007–2011. The changes in this final rule from the notice of proposed rulemaking (NPRM) are not expected to affect the cost/savings projections for this rule. The following chart shows the estimated total savings in millions for each program year.

Fiscal year	Total savings
2007	\$490
2008	1,180
2009	1,860
2010	2,060
2011	2,150
Total 2007–2011	7,740

In addition, the process of determining the additional premiums will result in an increase in administrative expenses incurred by us in the amount of \$200 million over that same 5-year period.

Accounting Statement

As required by OMB Circular A–4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in the following table (Table 1) we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final rules. This table provides our best estimate of the increase in premium payments as a result of the changes to

the Part B program presented in these final rules. All expenditures are classified as transfers to the SMI Trust Fund.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers.	\$1,370.
From Whom to Whom?.	Certain High-Income Medicare Part B Beneficiaries to the Medicare SMI Trust Fund.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required for these final rules.

Paperwork Reduction Act

These final rules contain information collection requirements that require Office of Management and Budget clearance under the Paperwork Reduction Act of 1995 (PRA). As per PRA stipulations, we have submitted a clearance request to OMB for approval. Upon approval from OMB, we will publish a **Federal Register** notice indicating the OMB number and expiration date.

We published an NPRM on March 3, 2006 at 71 FR 10926. In the NPRM, we solicited comments under the PRA on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology.

Of the multiple comments the public submitted on these rules, only one pertained to the issues listed above. Specifically, one commenter expressed concerns about the burden of documenting life-changing events. However, the MMA states that when beneficiaries request that we use their income information about a more recent tax year, the reduction in modified adjusted gross income must be caused by a verifiable life-changing event. Therefore, we must ask Medicare beneficiaries to provide proof of the event.

One section containing a public reporting requirement, § 418.1140(e), is

included in these final rules but was not included in the NPRM. This section states that spouses who have been living in separate homes for the past year must provide written certification, or attestation, that they have been living separately. This requirement was included here and not in the NPRM because at the time we published the NPRM, we were still investigating ways that we could confirm this living arrangement from agency data. However, this section will not impact the public burden reported in the NPRM, since the only additional requirement for respondents is to certify that their address is separate from their spouse’s, and certifications are not generally covered by the PRA as per OMB rules in 5 CFR 1320.3(h)(1).

(Catalog of Federal Domestic Assistance Program Nos. 93.773, Medicare—Hospital Insurance and 93.774, Medicare—Supplementary Medical Insurance Program)

List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Dated: October 13, 2006.

Jo Anne B. Barnhart,
Commissioner of Social Security.

■ For the reasons set out in the preamble, we are adding a new subpart B to part 418 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 418—[AMENDED]

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount Introduction, General Provisions, and Definitions

- Sec.
418.1001 What is this subpart about?
418.1005 Purpose and administration.
418.1010 Definitions.

Determination of the Income-Related Monthly Adjustment Amount

- 418.1101 What is the income-related monthly adjustment amount?
418.1105 What is the threshold?
418.1110 What is the effective date of our initial determination about your income-related monthly adjustment amount?
418.1115 What are the modified adjusted gross income ranges?
418.1120 How do we determine your income-related monthly adjustment amount?
418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?
418.1130 How will we phase in the income-related monthly adjustment amount?

- 418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?
- 418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?
- 418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?
- 418.1150 When will we use your amended tax return filed with IRS?

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

- 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?
- 418.1205 What is a major life-changing event?
- 418.1210 What is not a major life-changing event?
- 418.1215 What is a significant reduction in your income?
- 418.1220 What is not a significant reduction in your income?
- 418.1225 Which more recent tax year will we use?
- 418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?
- 418.1235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?
- 418.1240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?
- 418.1245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?
- 418.1250 What evidence will you need to support your request that we use a more recent tax year?
- 418.1255 What kind of major life-changing event evidence will you need to support your request for us to use a more recent tax year?
- 418.1260 What major life-changing event evidence will we not accept?
- 418.1265 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?
- 418.1270 What modified adjusted gross income evidence will we not accept?

Determinations and the Administrative Review Process

- 418.1301 What is an initial determination regarding your income-related monthly adjustment amount?
- 418.1305 What is not an initial determination regarding your income-related monthly adjustment amount?

- 418.1310 When may you request that we make a new initial determination?
- 418.1315 How will we notify you and what information will we provide about our initial determination?
- 418.1320 What is the effect of an initial determination?
- 418.1325 When may you request a reconsideration?
- 418.1330 Can you request a reconsideration when you believe the IRS information we used is incorrect?
- 418.1335 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?
- 418.1340 What are the rules for our administrative review process?
- 418.1345 Is reopening of an initial or reconsidered determination made by us ever appropriate?
- 418.1350 What are the rules for review of a reconsidered determination or administrative law judge decision?
- 418.1355 What are the rules for reopening a decision by an administrative law judge of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

Subpart B—Medicare Part B Income-Related Monthly Adjustment Amount

Authority: Secs. 702(a)(5) and 1839(i) of the Social Security Act (42 U.S.C. 902(a)(5) and 1395r(i)).

Introduction, General Provisions, and Definitions

§ 418.1001 What is this subpart about?

This subpart relates to section 1839(i) of the Social Security Act (the Act), as added by section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). Section 1839(i) establishes an income-related monthly adjustment to the Medicare Part B premium. Beneficiaries enrolled in Medicare Part B who have modified adjusted gross income over a threshold amount established in the statute will pay an income-related monthly adjustment amount in addition to the Medicare Part B standard monthly premium and any applicable premium increases as described in 42 CFR 408.20. The regulations in this subpart explain how we decide whether you are required to pay an income-related monthly adjustment amount, and if you are, the amount of your adjustment. The rules are divided into the following groups of sections:

(a) Sections 418.1001 through 418.1010 contain the introduction, a statement of the general purpose of the income-related monthly adjustment amount, general provisions that apply to the income-related monthly adjustment amount, and definitions of terms that we use in this subpart.

(b) Sections 418.1101 through 418.1150 describe what information about your modified adjusted gross income we will use to determine if you are required to pay an income-related monthly adjustment amount. In these sections, we also describe how the income-related monthly adjustment amount will affect your total Medicare Part B premium. These sections also explain how the income-related monthly adjustment amount will be phased in from calendar year 2007 through calendar year 2009.

(c) Sections 418.1201 through 418.1270 contain an explanation of the standards that you must meet for us to grant your request to use modified adjusted gross income information that you provide for a more recent tax year rather than the information described in paragraph (b) of this section. These sections explain when we may consider such a request, and the evidence that you will be required to provide. These sections also explain when income-related monthly adjustment amount determinations based on information you provide will be effective, and how long they will remain in effect.

Additionally, these sections describe how retroactive adjustments of the income-related monthly adjustment amount will be made based on information you provide, updated information you provide, and information we later receive from the Internal Revenue Service (IRS).

(d) Sections 418.1301 through 418.1355 contain the rules that we will apply when you disagree with our determination regarding your income-related monthly adjustment amount. These sections explain your appeal rights and the circumstances under which you may request that we make a new initial determination of your income-related monthly adjustment amount.

§ 418.1005 Purpose and administration.

(a) The purpose of the income-related monthly adjustment amount is to reduce the Federal subsidy of the Medicare Part B program for beneficiaries with modified adjusted gross income above an established threshold. These beneficiaries will pay a greater share of actual program costs. Medicare Part B premiums paid by beneficiaries cover approximately 25 percent of total Medicare Part B program costs and the remaining 75 percent of program costs are subsidized by the Federal Government's contributions to the Federal Supplementary Medical Insurance Trust Fund. The reduction in the Medicare Part B premium subsidy results in an increase in the total

amount that affected beneficiaries pay for Medicare Part B coverage. A beneficiary with modified adjusted gross income above the threshold amount will pay:

(1) The Medicare Part B standard monthly premium; plus

(2) Any applicable increase in the standard monthly premium for late enrollment or reenrollment; plus

(3) An income-related monthly adjustment amount.

(b) The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services (HHS) publishes the Medicare Part B standard monthly premium each year. CMS also establishes rules for entitlement to a nonstandard premium, as well as premium penalties for late enrollment or reenrollment (42 CFR 408.20 through 408.27).

(c) We use information that we get from IRS to determine if beneficiaries who are enrolled in Medicare Part B are required to pay an income-related monthly adjustment amount. We also change income-related monthly adjustment amount determinations using information provided by a beneficiary under certain circumstances. In addition, we notify beneficiaries when the social security benefit amounts they receive will change based on our income-related monthly adjustment amount determination.

§ 418.1010 Definitions.

(a) *Terms relating to the Act and regulations.* For the purposes of this subpart:

(1) *Administrator* means the Administrator of the Centers for Medicare & Medicaid Services (CMS) in HHS.

(2) *CMS* means the Centers for Medicare & Medicaid Services in HHS.

(3) *Commissioner* means the Commissioner of Social Security.

(4) *HHS* means the Department of Health and Human Services which oversees the Centers for Medicare & Medicaid Services, the Office of Medicare Hearings and Appeals (OMHA) and the Medicare Appeals Council (MAC).

(5) *IRS* means the Internal Revenue Service in the Department of the Treasury.

(6) *MAC* means the Medicare Appeals Council in HHS.

(7) *OMHA* means the Office of Medicare Hearings and Appeals in HHS.

(8) *Section* means a section of the regulations in this part unless the context indicates otherwise.

(9) *The Act* means the Social Security Act, as amended.

(10) *Title* means a title of the Act.

(11) *We, our, or us* means the Social Security Administration (SSA).

(b) *Miscellaneous.* For the purposes of this subpart:

(1) *Amended tax return* means a Federal income tax return for which an amended tax return using the required IRS form(s) has been filed by an individual or couple and accepted by IRS.

(2) *Effective year* means the calendar year for which we make an income-related monthly adjustment amount determination.

(3) *Federal premium subsidy* is the portion of the full cost of providing Medicare Part B coverage that is paid by the Federal Government through transfers into the Federal Supplementary Medical Insurance Trust Fund.

(4) *Income-related monthly adjustment amount* is an additional amount of premium that you will pay for Medicare Part B coverage if you have income above the threshold. The amount of your income-related monthly adjustment amount is based on your modified adjusted gross income.

(5) *Medicare Part B standard monthly premium* means the monthly Medicare Part B premium amount which is set annually by CMS, according to regulations in 42 CFR 408.20 through 408.27.

(6) *Modified adjusted gross income* is your adjusted gross income as defined by the Internal Revenue Code, plus the following forms of tax-exempt income:

(i) Tax-exempt interest income;

(ii) Income from United States savings bonds used to pay higher education tuition and fees;

(iii) Foreign earned income;

(iv) Income derived from sources within Guam, American Samoa, or the Northern Mariana Islands; and

(v) Income from sources within Puerto Rico.

(7) *Modified adjusted gross income ranges* are the groupings of modified adjusted gross income above the threshold. There are four ranges for most individuals, based on their tax filing status. There are two ranges for those with a tax filing status of married, filing separately, who also lived with their spouse for part of the year. The dollar amounts of the modified adjusted gross income ranges are specified in § 418.1115.

(8) *Non-standard premium* means a Medicare Part B premium that some beneficiaries pay for Medicare Part B, rather than the standard premium. The rules for applying a non-standard premium are in 42 CFR 408.20(e). The non-standard premium does not apply to beneficiaries who must pay an

income-related monthly adjustment amount.

(9) *Premium* is a payment that an enrolled beneficiary pays for Medicare Part B coverage. The rules that CMS uses to annually establish the premium amount are found in 42 CFR 408.20 through 408.27.

(10) *Representative* means, for the purposes of the initial determination and reconsidered determination, an individual as defined in § 404.1703 of this chapter, and for purposes of an ALJ hearing or review by the MAC, an individual as defined in 42 CFR 405.910.

(11) *Tax filing status* means the filing status shown on your individual income tax return. It may be single, married filing jointly, married filing separately, head of household, or qualifying widow(er) with dependent child.

(12) *Tax year* means the year for which your Federal income tax return has been filed or will be filed with the IRS.

(13) *Threshold* means a modified adjusted gross income amount above which the beneficiary will have to pay an income-related monthly adjustment amount described in paragraph (b)(4) of this section. The dollar amount of the threshold is specified in § 418.1105.

(14) *You or your* means the person or representative of the person who is subject to the income-related monthly adjustment amount.

Determination of the Income-Related Monthly Adjustment Amount

§ 418.1101 What is the income-related monthly adjustment amount?

(a) The income-related monthly adjustment amount is an amount that you will pay in addition to the Medicare Part B standard monthly premium plus any applicable increase in that premium as described in 42 CFR 408.22 for your Medicare Part B coverage when your modified adjusted gross income is above the threshold described in § 418.1105.

(b) Your income-related monthly adjustment amount is based on your applicable modified adjusted gross income as described in § 418.1115 and your tax filing status.

(c) We will determine your income-related monthly adjustment amount using the method described in §§ 418.1120 and 418.1130.

§ 418.1105 What is the threshold?

(a) The threshold is a level of modified adjusted gross income above which the beneficiary will have to pay the income-related monthly adjustment amount.

(b) In 2007, the modified adjusted gross income threshold is \$80,000 for

individuals with a Federal income tax filing status of single, married filing separately, head of household, and qualifying widow(er) with dependent child. The threshold is \$160,000 for individuals with a Federal income tax filing status of married filing jointly.

(c) Starting at the end of calendar year 2007 and each year thereafter, the threshold amounts for the following year will be set by CMS by increasing the preceding year's threshold amount by the percentage increase in the Consumer Price Index rounded to the nearest \$1,000. CMS will publish the threshold amounts annually in September in the **Federal Register**. Published threshold amounts will be effective January 1 of the next calendar year, for the full calendar year.

§ 418.1110 What is the effective date of our initial determination about your income-related monthly adjustment amount?

(a) Generally, an income-related monthly adjustment amount will be effective for all months that you are enrolled in Medicare Part B during the year for which we determine you must pay an income-related monthly adjustment amount. We will follow the rules in 42 CFR part 408, subpart C, regarding premium collections to withhold your income-related monthly adjustment amount from a benefit payment or to determine if you will be billed directly.

(b) When we have used modified adjusted gross income information from IRS for the tax year 3 years prior to the effective year to determine your income-related monthly adjustment amount and modified adjusted gross income information for the tax year 2 years prior later becomes available from IRS, we will review the new information to determine if we should revise our initial determination. If we revise our initial determination, the effective date of the new initial determination will be January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(c) When we use your amended tax return, as described in § 418.1150, the effective date will be January 1 of the year(s) that is affected, or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

Example: You are enrolled in Medicare Part B throughout 2011. We use your 2009 modified adjusted gross income as reported to us by IRS to determine your 2011 income-related monthly adjustment amount. In 2012 you submit to us a copy of your 2009 amended tax return that you filed with IRS. The modified adjusted gross income reported

on your 2009 amended tax return is significantly less than originally reported to IRS. We use the modified adjusted gross income that was reported on your 2009 amended tax return to determine your income-related monthly adjustment amount. That income-related monthly adjustment amount is effective January 1, 2011. We will retroactively adjust for any differences between the amount paid in 2011 and the amount that should have been paid based on the amended tax return.

(d) When we use evidence that you provide which proves that the IRS modified adjusted gross income information we used is incorrect, as described in § 418.1335, the effective date will be January of the year(s) that is affected or the first month in that year that you were enrolled or reenrolled in Medicare Part B if later than January.

(e) When we use information from a more recent tax year that you provide due to a major life-changing event, as described in § 418.1201, the effective date is described in § 418.1230.

§ 418.1115 What are the modified adjusted gross income ranges?

(a) The 2007 modified adjusted gross income ranges for each Federal tax filing category are listed in paragraphs (b), (c) and (d) of this section. We will use your modified adjusted gross income amount together with your tax filing status to determine the amount of your income-related monthly adjustment.

(b) In 2007, the modified adjusted gross income ranges for individuals with a Federal tax filing status of single, head of household, qualifying widow(er) with dependent child, and married filing separately when the individual has lived apart from his/her spouse for the entire tax year for the year we use to make our income-related monthly adjustment amount determination are as follows:

(1) Greater than \$80,000 and less than or equal to \$100,000;

(2) Greater than \$100,000 and less than or equal to \$150,000;

(3) Greater than \$150,000 and less than or equal to \$200,000; and

(4) Greater than \$200,000.

(c) In 2007, the modified adjusted gross income ranges for individuals who are married and filed a joint tax return for the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than \$160,000 and less than or equal to \$200,000;

(2) Greater than \$200,000 and less than or equal to \$300,000;

(3) Greater than \$300,000 and less than or equal to \$400,000; and

(4) Greater than \$400,000.

(d) In 2007, the modified adjusted gross income ranges for married

individuals who file a separate return and have lived with their spouse at any time during the tax year we use to make the income-related monthly adjustment amount determination are as follows:

(1) Greater than \$80,000 and less than or equal to \$120,000; and

(2) Greater than \$120,000.

(e) CMS will annually revise the modified adjusted gross income ranges and publish them in the **Federal Register** starting in September of 2007 for 2008. Each year thereafter, all modified adjusted gross income range amounts will be set by CMS by increasing the preceding year's modified adjusted gross income range amounts by any percentage increase in the Consumer Price Index rounded to the nearest \$1,000, and CMS will publish the amounts for the following year in September of each year.

§ 418.1120 How do we determine your income-related monthly adjustment amount?

(a) We will determine your income-related monthly adjustment amount using your tax filing status and modified adjusted gross income.

(b) *Tables of applicable percentage.* The tables in paragraphs (b)(1) through (b)(3) of this section contain the modified adjusted gross income ranges for 2007 in the column on the left in each table. The middle column in each table shows the percentage of the unsubsidized Medicare Part B premium that will be paid by individuals with modified adjusted gross income that falls within each of the ranges. The column on the right in each table shows the percentage of the Medicare Part B premium that will be subsidized by contributions from the Federal Government. Based on your tax filing status for the tax year we use to make a determination about your income-related monthly adjustment amount, we will determine which table is applicable to you. We will use your modified adjusted gross income to determine which income-related monthly adjustment amount to apply to you. The dollar amount of income-related monthly adjustment for each range will be set annually as described in paragraph (c) of this section. The modified adjusted gross income ranges will be adjusted annually as described in § 418.1115(e).

(1) *General table of applicable percentages.* If your filing status for your Federal income taxes for the tax year we use is single; head of household; qualifying widow(er) with dependent child; or married filing separately and you lived apart from your spouse for the entire tax year, we will use the general

table of applicable percentages. When your modified adjusted gross income for the year we use is in the range listed in the left column in the following table,

then the Federal Government's Part B premium subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount

based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$80,000 but less than or equal to \$100,000	35	65
More than \$100,000 but less than or equal to \$150,000	50	50
More than \$150,000 but less than or equal to \$200,000	65	35
More than \$200,000	80	20

(2) *Table of applicable percentages for joint returns.* If your Federal tax filing status is married filing jointly for the tax year we use and your modified adjusted

gross income for that tax year is in the range listed in the left column in the following table, then the Federal Government's Part B premium subsidy

of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$160,000 but less than or equal to \$200,000	35	65
More than \$200,000 but less than or equal to \$300,000	50	50
More than \$300,000 but less than or equal to \$400,000	65	35
More than \$400,000	80	20

(3) *Table of applicable percentages for married individuals filing separate returns.* If your Federal tax filing status for the tax year we use is married filing separately and you lived with your

spouse at some time during that tax year, and your modified adjusted gross income is in the range listed in the left column in the following table, then the Federal Government's Part B premium

subsidy of 75 percent is reduced to the percentage listed in the right column. You will pay an amount based on the percentage listed in the center column.

Modified adjusted gross income effective in 2007	Beneficiary premium (percent)	Federal premium subsidy (percent)
More than \$80,000 but less than or equal to \$120,000	65	35
More than \$120,000	80	20

(c) CMS will annually publish in the **Federal Register** the dollar amounts for the income-related monthly adjustment amount described in paragraph (b) of this section.

§ 418.1125 How will the income-related monthly adjustment amount affect your total Medicare Part B premium?

(a) If you must pay an income-related monthly adjustment amount, your total Medicare Part B premium will be the sum of:

- (1) The Medicare Part B standard monthly premium, determined using the rules in 42 CFR 408.20; plus
- (2) Any applicable increase in the Medicare Part B standard monthly premium as described in 42 CFR 408.22; plus
- (3) Your income-related monthly adjustment amount.

(b) In 2007 and 2008, your income-related monthly adjustment amount you must pay will be adjusted as described in § 418.1130.

(c) The nonstandard Medicare Part B premium amount described in 42 CFR 408.20 does not apply to individuals who must pay an income-related monthly adjustment amount. Such individuals must pay the full Medicare Part B standard monthly premium plus any applicable penalties for late enrollment or reenrollment plus the income-related adjustment.

§ 418.1130 How will we phase in the income-related monthly adjustment amount?

(a) In 2007 and 2008, we will phase in the full amount of the income-related monthly adjustment amount. For the year in the left column you will pay the percentage of the income-related monthly adjustment amount specified in the right column.

Year	Percentage of the income-related monthly adjustment amount that you will pay
2007	33
2008	67

(b) Phase-in of the subsidy reduction will be complete in 2009.

§ 418.1135 What modified adjusted gross income information will we use to determine your income-related monthly adjustment amount?

(a) In general, we will use your modified adjusted gross income provided by IRS for the tax year 2 years prior to the effective year of the income-related monthly adjustment amount determination. Modified adjusted gross income is based on information you provide to IRS when you file your Federal income tax return.

(b) We will use your modified adjusted gross income for the tax year 3

years prior to the effective year of the income-related monthly adjustment amount determination when IRS does not provide the information specified in paragraph (a) of this section. If IRS can provide modified adjusted gross income for the tax year 3 years prior to the income-related monthly adjustment amount effective year, we will temporarily use that information to determine your income-related monthly adjustment amount and make adjustments as described in § 418.1110(b) to all affected income-related monthly adjustment amounts when information for the year specified in paragraph (a) of this section is provided by IRS.

(c) When we have used the information in paragraph (b) of this section, you may provide us with evidence of your modified adjusted gross income for the year in paragraph (a) of this section. You must provide a retained copy of your signed Federal income tax return for that year, if available. If you filed a return for that year, but did not retain a copy, you must request a transcript or a copy of your return from IRS and provide it to us. When we use this evidence, we will later confirm this information with IRS records.

(d) When you meet the conditions specified in § 418.1150 because you have amended your Federal income tax return, or when you believe we have used information provided by IRS which is incorrect, as described in § 418.1335, we will use information that you provide directly to us regarding your modified adjusted gross income.

(e) We may use information that you give us about your modified adjusted gross income for a more recent tax year than those discussed in paragraphs (a) or (b) of this section as described in §§ 418.1201 through 418.1270.

(f) If you fail to file an income tax return for any year after 2004 and IRS informs us that you had modified adjusted gross income above the threshold applicable 2 years after the tax year when you failed to file an income tax return, we will impose the highest income-related adjustment percentage applicable to your income filing status for the effective year. If we later determine that the amount of the income-related monthly adjustment amount imposed was inconsistent with your modified adjusted gross income, we will correct it. The rules in 42 CFR 408.40 through 408.92 will apply to the collection of any retroactive premiums due.

§ 418.1140 What will happen if the modified adjusted gross income information from IRS is different from the modified adjusted gross income information we used to determine your income-related monthly adjustment amount?

In general, we will use modified adjusted gross income information from IRS to determine your income-related monthly adjustment. We will make retroactive adjustments to your income-related monthly adjustment amount as described in paragraphs (a), (b), and (d) of this section.

(a) When we have used modified adjusted gross income from the tax year 3 years prior to the effective year as described in § 418.1135(b), and IRS provides modified adjusted gross income information from the tax year 2 years prior to the effective year, we will use the new information to make an initial determination for the effective year. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(b) When we have used the modified adjusted gross income information that you provided for the tax year 2 years prior to the effective year and the modified adjusted gross income information we receive from IRS for that same year is different from the information you provided, we will use the modified adjusted gross income information provided to us by IRS to make a new initial determination. We will make retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled or reenrolled in Medicare Part B if later than January.

(c) When we have used information from your amended Federal tax return that you provide, as explained in § 418.1150, or you provide proof that the information IRS provided to us is incorrect as described in § 418.1335, we will not make any adjustments to your income-related monthly adjustment amount for the effective year or years based on IRS information we receive later from IRS.

(d) When we use modified adjusted gross income information that you provided due to a qualifying life-changing event and we receive different information from IRS, we will use the IRS information to make retroactive corrections to all months in the effective year(s) during which you were enrolled in Medicare Part B, except when paragraph (c) of this section applies.

(e) When we used the table in § 418.1120(b)(3) to determine your income-related monthly adjustment

amount, and you lived apart from your spouse throughout that year, we will ask you for a signed statement or attestation that you lived apart from your spouse throughout that year. We will also ask you to provide information about the addresses of you and your spouse during that year. If you provide a signed statement or attestation that you lived apart from your spouse throughout that year, and information about your respective addresses that year, we will use the table in § 418.1120(b)(1) to determine your income-related monthly adjustment amount.

§ 418.1145 How do we determine your income-related monthly adjustment amount if IRS does not provide information about your modified adjusted gross income?

In general, if we do not receive any information for you from IRS showing that you had modified adjusted gross income above the threshold in the tax year we request, we will not make an income-related monthly adjustment amount determination.

§ 418.1150 When will we use your amended tax return filed with IRS?

You may provide your amended tax return for a tax year we used within 3 calendar years following the close of the tax year for which you filed the amended tax return. You must provide us with your retained copy of your amended U.S. Individual Income Tax Return on the required IRS form and a copy of the IRS letter confirming the amended tax return was filed or a transcript from IRS if they did not send a letter. If you cannot provide your retained copy of the amended tax return, you must obtain a copy of the return from IRS. We will then make any necessary retroactive corrections as defined in § 418.1110(c) to your income-related monthly adjustment amount.

Determinations Using a More Recent Tax Year's Modified Adjusted Gross Income

§ 418.1201 When will we determine your income-related monthly adjustment amount based on the modified adjusted gross income information that you provide for a more recent tax year?

We will use a more recent tax year than the years described in § 418.1135(a) or (b) to reduce or eliminate your income-related monthly adjustment amount when all of the following occur:

(a) You experience a major life-changing event as defined in § 418.1205; and

(b) That major life-changing event results in a significant reduction in your modified adjusted gross income for the year which you request we use and the

next year, if applicable. For purposes of this section, a significant reduction in your modified adjusted gross income is one that results in the decrease or elimination of your income-related monthly adjustment amount; and

(c) You request that we use a more recent tax year's modified adjusted gross income; and

(d) You provide evidence as described in §§ 418.1255 and 418.1265.

§ 418.1205 What is a major life-changing event?

For the purposes of this subpart, we will consider the following to be major life-changing events:

- (a) Your spouse dies;
- (b) You marry;
- (c) Your marriage ends through divorce or annulment;
- (d) You or your spouse stop working or reduce the hours you work;
- (e) You or your spouse experience a reduction in your income due to a loss of income-producing property, provided that the loss is not at your direction (e.g., due to the sale or transfer of the property). Examples of the type of property loss include, but are not limited to, loss of income from real property within a Presidentially or Gubernatorially-declared disaster area, destruction of livestock or crops by natural disaster or disease, or loss of income from real property due to arson;
- (f) You or your spouse experience a reduction in or loss of income from an insured pension plan due to termination or reorganization of the pension plan or a scheduled cessation of pension.

§ 418.1210 What is not a major life-changing event?

We will not consider events other than those described in § 418.1205 to be major life-changing events. Certain types of events are not considered major life-changing events for the purposes of this subpart, such as:

- (a) Events that affect your expenses, but not your income; or
- (b) Events that result in the loss of dividend income.

§ 418.1215 What is a significant reduction in your income?

For purposes of this subpart, we will consider a reduction in your income to be significant if your modified adjusted gross income decreases; and

- (a) The decrease reduces the percentage of the income-related monthly adjustment amount you must pay according to the Table of Applicable Percentages in § 418.1120; or
- (b) The decrease reduces your modified adjusted gross income to an amount below the threshold described in § 418.1105 and eliminates any

income-related monthly adjustment amount you must pay.

§ 418.1220 What is not a significant reduction in your income?

For purposes of this subpart, we will not consider a reduction in your income to be significant unless the reduction affects the amount of income-related monthly adjustment you must pay.

§ 418.1225 Which more recent tax year will we use?

We will consider evidence of your modified adjusted gross income that you provide for a tax year that is more recent than the year described in § 418.1135 (a) or (b) when you meet all of the requirements described in § 418.1201. We will always ask you for your retained copy of your filed Federal income tax return for the more recent year you request that we use and will use that information to make an initial determination. If you have not filed your Federal income tax return for the more recent year you request that we use, you must provide us with evidence that is equivalent to a copy of a filed Federal income tax return. Evidence that is equivalent to a copy of a filed Federal income tax return is defined in § 418.1265(c).

§ 418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?

(a) When you make your request prior to January 1, 2007, our initial determination is effective on January 1, 2007.

(b) Subject to paragraph (c) of this section, when you make your request during or after 2007 and your modified adjusted gross income for the more recent tax year is significantly reduced as a result of a major life-changing event, our initial determination is generally effective on January 1 of the year in which you make your request. If your first month of enrollment or reenrollment in Medicare Part B is after January of the year for which you make your request, our initial determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(c) We will make a determination about your income-related monthly adjustment amount for the year preceding the year that you make your request in the limited circumstances explained in § 418.1310(a)(4). When we make a determination for the preceding year, our initial determination is generally effective on January 1 of that year. If your first month of enrollment or reenrollment in Medicare Part B is after January of that year, our initial

determination is effective on the first day of your Medicare Part B enrollment or reenrollment.

(d) When you make your request during or after 2007 and your modified adjusted gross income is significantly reduced beginning in the year following the year in which you make your request as a result of one or more of the events described in § 418.1205(a) through (f), our initial determination is effective on January 1 of the next year.

§ 418.1235 When will we stop using your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount?

We will use your more recent tax year's modified adjusted gross income to determine your income-related monthly adjustment amount effective with the month and year described in § 418.1230 and for each year thereafter until one of the following occurs:

(a) We receive your modified adjusted gross income from IRS for the more recent tax year we used or a later tax year;

(b) Your more recent tax year modified adjusted gross income that we used is for a tax year more than 3 years prior to the income-related monthly adjustment amount effective year;

(c) You request we use a more recent tax year based on another major life-changing event as described in § 418.1201; or

(d) You notify us of a change in your modified adjusted gross income for the more recent tax year we used as described in § 418.1240.

§ 418.1240 Should you notify us if the information you gave us about your modified adjusted gross income for the more recent tax year changes?

If you know that the information you provided to us about the more recent tax year that we used has changed, you should tell us so that we can determine if your income-related monthly adjustment amount should be eliminated or adjusted. We will accept new modified adjusted gross income information at any time after your request until the end of the calendar year following the more recent tax year(s) that we used. For us to make a new initial determination using your new modified adjusted gross income information, you must provide evidence as described in § 418.1265 to support the reduction or increase in your modified adjusted gross income. If you amend your Federal income tax return for the more recent tax year we used, we will use the rules in § 418.1150.

§ 418.1245 What will happen if you notify us that your modified adjusted gross income for the more recent tax year changes?

(a) If you notify us that your modified adjusted gross income for the more recent tax year has changed from what is in our records, we may make a new initial determination for each effective year involved. To make a new initial determination(s) we will take into account:

(1) The new modified adjusted gross income information for the more recent tax year you provide; and

(2) Any modified adjusted gross income information from IRS, as described in § 418.1135, that we have available for each effective year; and

(3) Any modified adjusted gross income information from you, as described in § 418.1135, that we have available for each effective year.

(b) For each new initial determination that results in a change in your income-related monthly adjustment amount, we will make retroactive adjustments that will apply to all enrolled months of the effective year.

(c) We will continue to use a new initial determination described in paragraph (a) of this section to determine additional yearly income-related monthly adjustment amount(s) until an event described in § 418.1235 occurs.

(d) We will make a new determination about your income-related monthly adjustment amount when we receive modified adjusted gross income for the effective year from IRS, as described in § 418.1140(d).

§ 418.1250 What evidence will you need to support your request that we use a more recent tax year?

When you request that we use a more recent tax year to determine your income-related monthly adjustment amount, we will ask for evidence of the major life-changing event and how the event significantly reduced your modified adjusted gross income as described in §§ 418.1255 and 418.1265. Unless we have information in our records that raises a doubt about the evidence, additional evidence documenting the major life-changing event(s) will not be needed.

§ 418.1255 What kind of major life-changing event evidence will you need to support your request for us to use a more recent tax year?

(a) If your spouse died and we do not have evidence of the death in our records, we will require proof of death as described in § 404.720(b) or (c) or § 404.721 of this chapter.

(b) If you marry and we do not have evidence of the marriage in our records, we will require proof of marriage as described in §§ 404.725 through 404.727 of this chapter.

(c) If your marriage ends and we do not have evidence that the marriage has ended in our records, we will require proof that the marriage has ended as described in § 404.728(b) or (c) of this chapter.

(d) If you or your spouse stop working or reduce your work hours, we will require evidence documenting the change in work activity. Examples of acceptable documentation include, but are not limited to, documents we can corroborate such as a signed statement from your employer, proof of the transfer of your business, or your signed statement under penalty of perjury, describing your work separation or a reduction in hours.

(e) If you or your spouse experience a loss of income from income-producing property we will require evidence documenting the loss. Examples of the type of evidence include, but are not limited to, insurance claims or an insurance adjuster's statement.

(f) If you or your spouse experience a reduction in or loss of pension income, we will require evidence documenting the reduction or loss. Examples include, but are not limited to, a statement from the Pension Benefit Guaranty Corporation or your pension fund administrator that explains the reduction or termination of your benefits.

§ 418.1260 What major life-changing event evidence will we not accept?

(a) We will not accept evidence of death that fails to meet the requirements in §§ 404.720 through 404.721 of this chapter.

(b) We will not accept evidence of marriage that fails to meet the requirements in §§ 404.725 through 404.727 of this chapter.

(c) We will not accept evidence that your marriage has ended if the evidence fails to meet the requirements in § 404.728 of this chapter.

(d) We will not accept documents supporting loss of income from income-producing property, or failure of or loss from a defined benefit pension plan unless the documents are original documents or copies from the original source.

(e) We will not accept evidence of work reduction or work stoppage that cannot be substantiated.

§ 418.1265 What kind of significant modified adjusted gross income reduction evidence will you need to support your request?

(a) You must provide evidence that one or more of the major life-changing events described in § 418.1205 resulted in a significant reduction in your modified adjusted gross income for the tax year you request we use.

(b) The preferred evidence is your retained copy of your filed Federal income tax return, your retained copy of your amended tax return with an IRS letter of receipt of the amended tax return, your copy of proof of a correction of the IRS information we used or a copy of your return or amended or proof of a correction of tax return information that you obtain from IRS for the more recent tax year you request we use.

(c) When a copy of your filed Federal income tax return is not available for the more recent tax year in which your modified adjusted gross income was significantly reduced, we will accept equivalent evidence. Equivalent evidence is the appropriate proof(s) in paragraphs (c)(1), (2) and (3) of this section, plus your signed statement under penalty of perjury that the information you provide is true and correct. When the major life-changing event changes your tax filing status, or the income-related monthly adjustment amount determination could be affected by your tax filing status, you will also be required to sign a statement regarding your intended income tax filing status for the tax year you request we use.

(1) If you experience one or more of the events described in § 418.1205(a), (b), or (c), you must provide evidence as to how the event(s) significantly reduced your modified adjusted gross income. Examples of the type of evidence include, but are not limited to, evidence of your spouse's modified adjusted gross income and/or your modified adjusted gross income for the tax year we use.

(2) If you experienced one or more of the events described in § 418.1205(d), (e) or (f), you must provide evidence of how the event(s) significantly reduced your modified adjusted gross income, such as a statement explaining any modified adjusted gross income changes for the tax year we used, and a copy of your filed Federal income tax return (if you have filed one).

(3) If your spouse experiences one or more of the events described in § 418.1205(d), (e), or (f), you must provide evidence of the resulting significant reduction in your modified adjusted gross income. The evidence

requirements are described in paragraph (c)(2) of this section.

(d) When we use information described in paragraph (c) of this section, we will request that you provide your retained copy of your Federal income tax return for the year we used when you file your taxes. We will use that information to make timely adjustments to your Medicare premium, if necessary. We will later verify the information you provide when we receive information about that tax year from IRS, as described in § 418.1140(d).

§ 418.1270 What modified adjusted gross income evidence will we not accept?

We will not accept a correction or amendment of your income tax return without a letter from IRS acknowledging the change. We will also not accept illegible or unsigned copies of income tax returns or attestations or other statements of income unless they are provided under penalty of perjury.

Determinations and the Administrative Review Process

§ 418.1301 What is an initial determination regarding your income-related monthly adjustment amount?

An initial determination is the determination we make about your income-related monthly adjustment amount that is subject to administrative review. For the purposes of administering the income-related monthly adjustment amount, initial determinations include but are not limited to determinations about:

(a) The amount of your income-related monthly adjustment amount based on information provided by IRS; and

(b) Any change in your income-related monthly adjustment amount based on one of the circumstances listed in § 418.1310(a)(1) through (a)(4).

§ 418.1305 What is not an initial determination regarding your income-related monthly adjustment amount?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process as provided by §§ 418.1320 through 418.1325 and §§ 418.1340 through 418.1355, and they are not subject to judicial review. These actions include, but are not limited to, our dismissal of a request for reconsideration as described in § 418.1330 and our dismissal of a request for a new initial determination as described in § 418.1310(d).

§ 418.1310 When may you request that we make a new initial determination?

(a) You may request that we make a new initial determination in the following circumstances:

(1) You provide a copy of your filed Federal income tax return for the tax year 2 years prior to the effective year when IRS has provided information for the tax year 3 years prior to the effective year. You may request a new initial determination beginning with the date you receive a notice from us regarding your income-related monthly adjustment amount until the end of the effective year, with one exception. If you receive the notice during the last 3 months of a calendar year, you may request a new initial determination beginning with the date you receive the notice until March 31 of the following year. We will follow the rules and procedures in §§ 418.1110(b) and 418.1140(b) to make a new initial determination and any necessary retroactive adjustments back to January 1 of the effective year, or the first month you were enrolled in Medicare Part B in the effective year if later than January.

(2) You provide a copy of an amended tax return filed with IRS, as defined in § 418.1010(b)(1). We will use your amended tax return for the same tax year as the year used to determine your income-related monthly adjustment amount. You must request the new initial determination within the timeframe described in § 418.1150.

(3) You provide proof that the tax return information about your modified adjusted gross income or tax filing status IRS gave us is incorrect. We will use proof that you obtain from IRS of a correction of your tax return information for the same tax year instead of the information that was provided to us by IRS, as explained in § 418.1335(a). You may request a new initial determination at any time after you receive a notice from us regarding your income-related monthly adjustment amount if you have such proof. We will use the rules and procedures in § 418.1335.

(4) You have a major life-changing event. You may request a new initial determination based on a major life-changing event when you meet all the requirements described in § 418.1201. You may make such a request at any time during the calendar year in which you experience a significant reduction in your modified adjusted gross income caused by a major life-changing event. When you have a major life-changing event that occurs in the last 3 months of a calendar year and your modified adjusted gross income for that year is significantly reduced as a result of the

event, you may request that we make a new initial determination based on your major life-changing event from the date of the event until March 31 of the next year. We will follow the rules in § 418.1230 when we make a new initial determination based on your major life-changing event.

(b) If a request for a new initial determination based on any of the circumstances in paragraph (a) of this section is made after the time frame provided for each type of listed circumstance, we will review the request under the rules in § 404.911 of this chapter to determine if there is good cause for a late request.

(c) We will notify you of the new initial determination as described in § 418.1315.

(d) We will dismiss your request to make a new initial determination if it does not meet one of the circumstances specified in paragraphs (a)(1) through (a)(4) of this section. Our dismissal of your request for a new initial determination is not an initial determination subject to further administrative or judicial review.

§ 418.1315 How will we notify you and what information will we provide about our initial determination?

(a) We will mail a written notice of all initial determinations to you. The notice of the initial determination will state the important facts and give the reasons for our conclusions. Generally, we will not send a notice if your income-related monthly adjustment amount stops because of your death.

(b) The written notice that we send will tell you:

- (1) What our initial determination is;
- (2) What modified adjusted gross income information we used to make our determination;
- (3) The reason for our determination;
- (4) The effect of the initial determination; and
- (5) Your right to a reconsideration or a new initial determination.

§ 418.1320 What is the effect of an initial determination?

An initial determination is binding unless you request a reconsideration within the time period described in §§ 404.909 and 404.911 of this chapter or we revise the initial determination or issue a new initial determination.

§ 418.1325 When may you request a reconsideration?

If you are dissatisfied with our initial determination about your income-related monthly adjustment amount, you may request that we reconsider it. In addition, a person who shows that his or her rights may be adversely

affected by the initial determination may request a reconsideration. We may accept requests for reconsideration that are filed by electronic or other means that we determine to be appropriate. Subject to the provisions of this section and § 418.1330, when you request a reconsideration, we will use the rules in §§ 404.907 through 404.922 of this chapter.

§ 418.1330 Can you request a reconsideration when you believe that the IRS information we used is incorrect?

If you request a reconsideration solely because you believe that the information that IRS gave us is incorrect, we will dismiss your request for a reconsideration and notify you to obtain proof of a correction from IRS and request a new initial determination (§ 418.1335).

Our dismissal of your request for reconsideration is not an initial determination subject to further administrative or judicial review.

§ 418.1335 What should you do if our initial determination is based on modified adjusted gross income information you believe to be incorrect?

If you believe that IRS or you provided incorrect modified adjusted gross income information to us that we used to determine your income-related monthly adjustment amount, you can request information from us on how to contact IRS regarding the information we used.

(a) If IRS determines that the information it provided is not correct, IRS will provide you with documentation of the error, such as a copy of your Federal income tax return. If you would like us to use the revised or corrected information to determine your income-related monthly adjustment amount, you will need to request that we use that information and provide us with the IRS documentation confirming the error. We will make any necessary retroactive corrections as described in § 418.1110(d) to your income-related monthly adjustment amount.

(b) If you provided information to us about your modified adjusted gross income that we used to determine your income-related monthly adjustment amount, and that information is not correct, you may provide revised or corrected information. We will use the revised or corrected information if it reduces or eliminates your income-related monthly adjustment amount. We will make any necessary retroactive corrections as described in § 418.1110 to your income-related monthly adjustment amount. If you are providing corrected information about a more

recent tax year's modified adjusted gross income that we used due to your major life-changing event, as described in § 418.1240, we will use the rules in § 418.1245 to determine how it will affect your income-related monthly adjustment amount.

§ 418.1340 What are the rules for our administrative review process?

To the extent that they are not inconsistent with the rules in this subpart for making initial determinations and reconsidered determinations, we will use the same rules for the administrative review process that we use for determinations and decisions about your rights regarding non-medical issues under title II of the Act, as described in subpart J of part 404 of this chapter. We will accept oral requests as well as the written requests required in subpart J of part 404 of this chapter for requesting administrative review of our determination. If you are dissatisfied with our reconsidered determination, you may request review in accordance with § 418.1350 for this subpart. A request for a new initial determination, described in § 418.1310, is not the same as a request for reconsideration or further administrative review.

§ 418.1345 Is reopening of an initial or reconsidered determination made by us ever appropriate?

We may reopen an initial or reconsidered determination made by us when the conditions for reopening are met as described in § 404.988 of this chapter. We will use the rules in §§ 404.987 through 404.991a of this chapter when we reopen determinations made by us.

§ 418.1350 What are the rules for review of a reconsidered determination or an administrative law judge decision?

You may request a hearing before an OMHA administrative law judge consistent with HHS' regulations at 42 CFR part 405. You may seek further review of the administrative law judge's decision by requesting MAC review and judicial review in accordance with HHS' regulations. For the purpose of your request for an administrative law judge hearing or MAC review, you will be required to provide your consent for us to release your relevant tax return information to OMHA or the MAC for the purposes of adjudicating any appeal of the amount of an income-related adjustment to the Part B premium subsidy and for any judicial review of that appeal.

§ 418.1355 What are the rules for reopening a decision by an administrative law judge of the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (MAC)?

The rules in 42 CFR 405.980 through 405.986 govern reopenings of decisions by an administrative law judge of the OMHA and decisions by the MAC. A decision by an administrative law judge of the OMHA may be reopened by the administrative law judge or by the MAC. A decision by the MAC may be reopened only by the MAC.

[FR Doc. E6-17690 Filed 10-26-06; 8:45 am]
BILLING CODE 4191-02-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD-2006-OS-0106]

32 CFR Part 286

DoD Freedom of Information Act Program Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes Subpart D, "For Official Use Only" (FOUO) from 32 CFR part 286, "DoD Freedom of Information Act Program Regulations" and reserves that subpart for future use. Removing this from 32 CFR part 286 will eliminate confusion of the authoritative FOUO guidance and who is the authority on FOUO. This removal will alleviate any further uncertainty, avoid duplication of FOUO guidance, and is considered an administrative action.

DATES: *Effective Date:* November 27, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Fisher, 703-696-4697.

SUPPLEMENTARY INFORMATION: The Under Secretary of Defense (Intelligence) (USD(I)) is responsible for FOUO guidance. This guidance (FOUO) is included in Appendix 3 of DoD 5200.1-R¹ which is the current FOUO guidance for the Department of Defense.

List of Subjects in 32 CFR Part 286

Freedom of information.

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATIONS

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 286 is amended as follows:

¹ Copies may be obtained at http://www.dtic.mil/whs/directives/corres/pdf/52001r_0197/p52001r.pdf.

■ 1. The authority citation for 32 CFR part 286 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 2. 32 CFR part 286 is amended by removing and reserving subpart D.

Dated: October 23, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06-8908 Filed 10-26-06; 8:45 am]

BILLING CODE 5001-06-M

Proposed Rules

Federal Register

Vol. 71, No. 208

Friday, October 27, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AH80

Incorporation by Reference of American Society of Mechanical Engineers Boiler and Pressure Vessel Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference the latest revisions of two previously incorporated regulatory guides (RGs) that approve Code cases published by the American Society of Mechanical Engineers (ASME). These RGs are 1.84, "Design and Fabrication Code Case Acceptability, ASME Section III," Revision 34 and RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," Revision 15. This proposed action would allow licensees to use the Code Cases listed in the regulatory guides as alternatives to requirements in the ASME BPV Code regarding the construction and inservice inspection of nuclear power plant components.

DATES: Submit comments on the rule by January 10, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH80 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail CAG@nrc.gov. Comments can also be submitted via the Federal Rulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays. (Telephone (301) 415-1966)

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Copies of the draft regulatory guides specified in this rulemaking and other publicly available documents related to this proposed rule, including public comments received, can be viewed electronically on public computers in the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland Room O-1 F21, and open to the public on Federal workdays from 7:45 a.m. until 4:15 p.m. The PDR reproduction contractor will make copies of documents for a fee. Selected documents, including public comments on the proposed rule, can be viewed and downloaded electronically via the NRC's rulemaking Web site at <http://ruleform.llnl.gov>.

Publicly available NRC documents created or received in connection with this rulemaking are also available electronically via the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to PDR@nrc.gov.

Further information about obtaining documents relevant to this rulemaking,

including a list of ADAMS accession numbers, can be found in the "Availability of Documents" Section under the **SUPPLEMENTARY INFORMATION** heading.

FOR FURTHER INFORMATION CONTACT: Lee Banic, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-2771, e-mail mjb@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The American Society of Mechanical Engineers (ASME) develops and publishes the Boiler and Pressure Vessel Code (BPV Code), which contains the Code requirements for the design, construction, and inservice inspection (ISI) of nuclear power plant components, and the Code for Operation and Maintenance of Nuclear Power Plants (OM Code), which contains Code requirements for inservice testing (IST) of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops Code Cases which provide alternatives to BPV and OM Code requirements under special circumstances.

Discussion

The NRC staff reviews ASME BPV and OM Code Cases, rules upon the acceptability of each Code Case, and publishes its findings in regulatory guides. The regulatory guides are revised periodically as new Code Cases are published by the ASME. The NRC incorporates by reference the regulatory guides listing acceptable and conditionally acceptable ASME Code Cases in 10 CFR 50.55a. Currently, NRC Regulatory Guide 1.84, Revision 33, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," NRC Regulatory Guide 1.147, Revisions 0 through 14, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," and NRC Regulatory Guide 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code" are incorporated into NRC's regulations, specifically 10 CFR 50.55a, "Codes and Standards."

This proposed rule would incorporate by reference the latest revisions of the NRC regulatory guides that list acceptable and conditionally acceptable ASME BPV Code Cases. Draft Regulatory Guide (RG) 1.84, Revision 34

[temporarily designated DG–1133] would supersede the incorporation by reference of Revision 33 and Draft RG 1.147, Revision 15 [temporarily designated DG–1134] would supersede the incorporation by reference of Revisions 0 through 14. Revision 15 of Regulatory Guide 1.147 supersedes all previous revisions of the RG. To make Regulatory Guide 1.147 easier to use, there was an effort to ensure that the tables of annulled Code Cases in Revision 15 were all inclusive. The result should be that licensees will no longer have to refer to multiple versions of this regulatory guide in managing Code Case usage in their ISI programs. RG 1.192, Operation and Maintenance Code Case Acceptability, ASME OM Code (June 2003), has not been revised because no new OM Code Cases have been published by the ASME since the last NRC staff review.

The ASME recently changed its policy with regard to the effective period for Code Cases. Previously, a Code Case was approved with a 3-year expiration date. With the policy change, a Code Case is approved without an expiration date and is effective until the ASME takes action. Some of the Code Cases listed in the regulatory guides were reviewed by the NRC prior to implementation of the new policy (*i.e.*, Code Case reaffirmation dates appear in some tables). Subsequent revisions of the regulatory guides will reflect the discontinuance of expiration dates.

The endorsement of a Code Case in NRC RGs constitutes acceptance of its technical position for applications not precluded by regulatory or other requirements or by the recommendations in these or other regulatory guides. The licensee is responsible for ensuring that use of the Code Case does not conflict with regulatory requirements or licensee commitments. The Code Cases listed in the RGs are acceptable for use within the limits specified in the Code Case.

Code Cases may be revised for many reasons, for example to incorporate operational examination and testing experience and to update material requirements based on research results. On occasion, an inaccuracy in an equation is discovered or an examination as practiced is found not to be adequate to detect a newly discovered degradation mechanism. Hence, when a licensee initially implements a Code Case, 10 CFR 50.55a requires that the licensee implement the most recent version of that Code Case as listed in the RGs incorporated by reference. Code Cases superseded by revision are no longer acceptable for

initial application unless otherwise indicated.

Section III applies only to new construction (*i.e.*, the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the licensee). Hence, if a Section III Code Case is implemented by a licensee and a later version of the Code Case is incorporated by reference into § 50.55a and listed in the RGs, the licensee may use either version of the Code Case (subject, however, to whatever change requirements apply to its licensing basis, *e.g.*, 10 CFR 50.59).

Section XI ISI and OM IST programs are updated every 10 years to the latest edition and addenda of Section XI that was incorporated by reference into § 50.55a and in effect 12 months before the start of the next inspection and testing interval. Licensees who were using a Code Case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month ISI or IST interval. This relieves licensees of the burden of having to update their ISI or IST program each time a Code Case is revised by the ASME and approved for use by the NRC. Since Code Cases are applicable to specific editions and addenda, and since Code Cases may be revised because they are no longer accurate or adequate, licensees choosing to continue using a Code Case during the subsequent ISI interval must implement the latest version incorporated by reference into § 50.55a and listed in the RGs.

The ASME may annul Code Cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the BPV or OM Code. If a licensee applied a Code Case before it was listed as annulled or expired, the licensee may continue to use the Code Case until the licensee updates its construction Code of Record or until the licensee's 120-month ISI/IST update interval expires, after which the continued use of the Code Case is prohibited unless NRC approval is granted under § 50.55a(a)(3).

Concurrent with this action, the NRC is publishing notices of availability of these draft regulatory guides listing acceptable ASME BPV Code Cases for public comment. Interested parties may submit comments to the NRC on the draft guides in accordance with the instructions published in the **Federal Register** notices announcing their availability.

Paragraph-by-Paragraph Discussion

This proposed rule would amend 10 CFR 50.55a to incorporate by reference RG 1.84 Revision 34, in place of Revision 33, and RG 1.147 Revision 15, in place of Revisions 0 through 14.

1. Paragraph 50.55a(b)

In § 50.55a(b), (b)(4), and (b)(5) the reference to the revision number for Regulatory Guide 1.84 would be changed from “Revision 33” to “Revision 34” and the reference to the revision numbers for Regulatory Guide 1.147 would be changed from “through Revision 14” to “Revision 15.”

2. Paragraphs 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(I), (g)(3)(ii), (g)(4)(I), and (g)(4)(ii)

In these paragraphs, the phrase indicating that revisions of Regulatory Guide 1.147 “through Revision 14” are the versions that are incorporated by reference in § 50.55a(b) would be modified to read “Revision 15”. Incorporation by reference of Revision 15 of Regulatory Guide 1.147 would supersede the incorporation by reference of all previous revisions. Revision 15 of Regulatory Guide 1.147 supersedes all previous revisions of the RG. The tables of annulled and superseded Code Cases have been reviewed to ensure that the lists are all inclusive.

Plain Language

The Presidential memorandum entitled “Plain Language in Government Writing” (63 FR 31883; June 10, 1998) directed that the Government’s writing be in plain language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent using one of the methods detailed under the **ADDRESSES** heading of the preamble to this proposed rule.

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Public File Area O–1 F21, Rockville, Maryland. Rulemaking Web site (Web). The NRC’s interactive rulemaking Web site is located at <http://ruleforum.llnl.gov>. Selected documents may be viewed and downloaded electronically via this Web site.

The NRC’s Public Electronic Reading Room (PERR). The NRC’s Public

Electronic Reading Room is located at <http://www.nrc.gov/reading-rm.html>.

Document	PDR	Web	e-Reading room
Proposed Rule—Draft Regulatory Analysis	X	X	ML053430094
Proposed Regulatory Guide 1.84, Rev. 34 (DG-1133)	X	X	ML061210377
Proposed Regulatory Guide 1.147, Rev. 15 (DG-1134)	X	X	ML061210404
Proposed Regulatory Guide 1.193, Rev 1	X	X	ML050270345

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. In this action, the NRC would amend its regulations to incorporate by reference regulatory guides that list ASME BPV Code cases approved by the NRC. ASME Code cases, which are ASME-approved alternatives to the provisions of ASME Code editions and addenda, are national consensus standards, as defined in Public Law 104-113 and OMB Circular A-119. They are developed by bodies whose members (including the NRC and utilities) have broad and varied interests.

The NRC reviews each Section III and Section XI Code Case published by the ASME to ascertain whether it is consistent with the safe operation of nuclear power plants. Those Code cases found to be generically acceptable are listed in the regulatory guides that are incorporated by reference in § 50.55a(b). Those that are found to be unacceptable are listed in Regulatory Guide 1.193, entitled Code Cases not Approved for Use; but licensees may still seek NRC’s approval to apply these Code cases through the relief request process permitted in § 50.55a(a)(3). Other Code cases, which the NRC finds to be conditionally acceptable are also listed in the RGs that are incorporated by reference along with the modifications and limitations under which they may be applied. If the NRC did not conditionally accept ASME Code Cases, it would disapprove these Code cases entirely. The effect would be that licensees would need to submit a larger number of relief requests which would be an unnecessary additional burden for both the licensee and the NRC. The NRC believes that this situation fits the definition of “impractical” under Public Law 104-113. For these reasons, the treatment of ASME BPV Code cases, and modifications and conditions placed on them, in this proposed rule does not

conflict with any policy on agency use of consensus standards specified in OMB Circular A-119.

Finding of No Significant Environmental Impact: Environmental Assessment

In accordance with 10 CFR 51.30, this environmental assessment is provided. It discusses the need for the proposed action; alternatives as required by the National Environmental Policy Act, NEPA; the environmental impacts of the proposed action and alternatives as appropriate; and a list of agencies and persons consulted and identification of sources used.

1. Need for the Proposed Action

This proposed action stems from the Commission’s practice of incorporating by reference the Regulatory Guides listing the most current set of NRC-approved ASME Code Cases. The purpose of this proposed action is to allow licensees to use the Code Cases listed in the regulatory guides as alternatives to requirements in the ASME BPV Code for the construction and inservice inspection of nuclear power plant components. This proposed action is intended to advance the NRC’s strategic goals of protecting the public health, safety, and the environment, ensuring openness in the regulatory process, and promoting regulatory effectiveness and efficiency. It also demonstrates the agency’s commitment to participate in the national consensus standards process under the national Technology Transfer and Advancement Act of 1995, Public Law 104-113.

2. Alternatives as Required by NEPA

NEPA requires Federal government agencies to study the impacts of their “major Federal actions significantly affecting the quality of the human environment” and prepare detailed statements on the environmental impacts of the proposed action and alternatives to the proposed action (United States Code, Vol. 42, Section 4332(C) [42 U.S.C. 4332(C)]; NEPA section 102(C)).

The Commission has determined under NEPA, as amended, and the Commission’s regulations in subpart A

of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is given below.

3. Environmental Impacts of the Proposed Action

As alternatives to the ASME Code, NRC-approved Code Cases provide an equivalent level of safety. Therefore the probability or consequences of accidents is not changed. There are also no significant non-radiological impacts associated with the proposed action because no changes would be made affecting non-radiological plant effluents nor in activities that would adversely affect the environment.

4. List of Agencies and Persons Consulted and Sources Used

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation on this assessment. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading of this **Federal Register** notice.

The NRC is sending a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requesting their comments on the environmental assessment.

Sources relevant to this rulemaking are the ASME BPV Code and RGs 1.84 Revision 34 and 1.147, Revision 15.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

Public Protection Notification

NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an

information collection unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The ASME Code cases listed in the regulatory guides to be incorporated by reference provide voluntary alternatives to the provisions in the ASME BPV Code for design, construction, and inservice inspection (ISI) of specific structures, systems, and components used in nuclear power plants. Implementation of these Code cases is not required. Licensees use NRC-approved ASME Code cases to reduce unnecessary regulatory burden or gain additional operational flexibility. It would be difficult for the NRC to provide these advantages independently of the ASME Code case publication process without expending considerable additional resources. The NRC has prepared a draft regulatory analysis addressing the qualitative benefits of the alternatives considered in this proposed rulemaking and comparing the costs associated with each alternative. The draft regulatory analysis is available for inspection on public computers in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O-1 F21. Copies of the draft regulatory analysis are also available to the public as indicated under the Availability of Documents heading in this preamble. Its ADAMS number is ML053430094.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this proposed rule would not impose a significant economical impact on a substantial number of small entities. This proposed rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants are not "small entities" as defined in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The provisions in this proposed rulemaking would permit, but would not require, licensees to apply NRC-approved Code cases, sometimes with modifications or conditions. Therefore, the implementation of an approved Code case would be voluntary and would not constitute a backfit. Thus, the Commission finds that this proposed rule would not involve any provisions that constitute a backfit as defined in 10 CFR 50.109(a)(1), that the backfit rule would not apply to this proposed rule,

and that a backfit analysis is not required.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 is as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).
Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).
Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332).
Sections 50.13, 50.54(d), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).
Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235).
Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332).
Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844).
Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239).
Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).
Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).
Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended revising the introductory text of paragraphs (b), (b)(4), and (b)(5), and paragraphs (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i) and (g)(4)(ii) to read as follows:

§ 50.55a Codes and standards.

(b) The ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants, which are referenced in paragraphs (b)(1), (b)(2), and (b)(3) of

this section, were approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. NRC Regulatory Guide 1.84, Revision 34, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III" [temporarily designated DG-1133]; NRC Regulatory Guide 1.147, Revision 15, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1" [temporarily designated DG-1134]; and Regulatory Guide 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code," (June 2003), have been approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. These regulatory guides list ASME Code cases which the NRC has approved in accordance with the requirements in paragraphs (b)(4), (b)(5), and (b)(6). Copies of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016. Single copies of NRC Regulatory Guides 1.84, Revision 34; 1.147, Revision 15; and 1.192 may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by fax to 301-415-2289; or by e-mail to DISTRIBUTION@nrc.gov. Copies of the ASME Codes and NRC Regulatory Guides incorporated by reference in this section may be inspected at the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852-2738, 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.

* * * * *
(4) *Design, Fabrication, and Materials Code Cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in NRC Regulatory Guide 1.84, Revision 34, without prior NRC approval subject to the following:
* * * * *

(5) *Inservice Inspection Code Cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in Regulatory Guide 1.147, Revision 15, without prior NRC approval subject to the following:
* * * * *

(f) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, or 1.192 that are incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this Code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, or 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications listed therein.

(3) * * *

(iii) * * *

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, or 1.192 that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(iv) * * *

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel

Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(4) * * *

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, or 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

* * * * *

(g) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section) in effect six months before the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions and addenda of this Code which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section), subject to the applicable limitations and modifications.

(3) * * *

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of

these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

* * * * *

(4) * * *

(i) Inservice examination of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month inspection interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 15, that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

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Dated at Rockville, Maryland, this 5th day of September, 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E6-18023 Filed 10-26-06; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AH80

Incorporation by Reference of American Society of Mechanical Engineers Boiler and Pressure Vessel Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance and Availability of Proposed Regulatory Guides.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference the latest revisions of two previously incorporated regulatory guides (RGs) that approve Code Cases published by the American Society of Mechanical Engineers (ASME). Specifically, these are Revision 34 of RG 1.84, "Design and Fabrication Code Case Acceptability, ASME Section III" (temporarily designated as Draft Regulatory Guide DG-1133), and Revision 15 of RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1" (temporarily designated as Draft Regulatory Guide DG-1134). This proposed action would allow licensees to use the Code Cases listed in the regulatory guides as alternatives to requirements in the ASME Boiler and Pressure Vessel (BPV) Code regarding the construction and inservice inspection of nuclear power plant components.

Toward that end, the NRC has issued for public comment drafts of the two revised guides in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

DATES: Submit comments on the guides by January 2, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of

comments received on or before this date.

ADDRESSES: The NRC staff is soliciting comments on Draft Regulatory Guides DG-1133 and DG-1134. Comments may be accompanied by relevant information or supporting data. Please mention the draft guide number (DG-1133 or DG-1134) in the subject line of your comments. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

E-mail comments to: NRCREP@nrc.gov. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415-5905; e-mail CAG@nrc.gov.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415-5144.

Copies of the draft regulatory guides specified in this rulemaking and other publicly available documents related to the proposed rule incorporating these regulatory guides, including public comments received, can be viewed electronically on public computers in the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland Room O-1 F21, and open to the public on Federal workdays from 7:45 a.m. until 4:15 p.m. The PDR reproduction contractor will make copies of documents for a fee. Selected documents, including public comments on the proposed rule, can be viewed and downloaded electronically via the NRC's rulemaking Web site at <http://ruleform.llnl.gov>. In addition, the draft regulatory guides can be viewed and downloaded electronically on the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>.

www.nrc.gov/reading-rm/doc-collections/.

Publicly available NRC documents created or received in connection with the rulemaking (including the draft regulatory guides) are also available electronically via the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to PDR@nrc.gov.

Further information about obtaining the draft regulatory guides and other rulemaking-related documents, including a list of ADAMS accession numbers, can be found in the "Availability of Documents" Section under the **SUPPLEMENTARY INFORMATION** heading.

FOR FURTHER INFORMATION CONTACT: Wallace E. Norris, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6796, e-mail WEN@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The American Society of Mechanical Engineers (ASME) develops and publishes the Boiler and Pressure Vessel Code (BPV Code), which contains the Code requirements for the design, construction, and inservice inspection (ISI) of nuclear power plant components, and the Code for Operation and Maintenance of Nuclear Power Plants (OM Code), which contains Code requirements for inservice testing (IST) of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops Code Cases which provide alternatives to BPV and OM Code requirements under special circumstances.

Discussion

The NRC staff reviews ASME BPV and OM Code Cases, determines the acceptability of each Code Case, and publishes its findings in regulatory guides. These regulatory guides are revised periodically as new Code Cases are published by the ASME. The NRC incorporates by reference the regulatory guides listing acceptable and conditionally acceptable ASME Code Cases in 10 CFR 50.55a.

The NRC is proposing to incorporate by reference Revision 34 of RG 1.84, "Design and Fabrication Code Case Acceptability, ASME Section III" (temporarily designated as Draft Regulatory Guide DG-1133), and Revision 15 of RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1" (temporarily designated as Draft Regulatory Guide DG-1134). Revision 34 of RG 1.84 would supersede the incorporation by reference of Revision 33 and Revision 15 of RG 1.147 would supersede the incorporation by reference of all previous revisions of the guide (Revisions 0 through 14). To make Regulatory Guide 1.147 easier to use, the staff made an effort to ensure that the tables of annulled Code Cases in Revision 15 were all inclusive. The result should be that licensees will no longer have to refer to multiple versions of this regulatory guide in managing Code Case usage in their ISI programs. RG 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code" (June 2003), has not been revised because the ASME has not published any new OM Code Cases since the last NRC staff review.

Concurrent with this action, the NRC is publishing a notice of availability of the proposed rulemaking, which incorporates these draft regulatory guides by reference. Interested parties may submit comments to the NRC on the proposed rulemaking in accordance with the instructions published in the **Federal Register** notice announcing its availability.

Code Cases N-659 and N-460

The NRC staff is currently considering a proposed licensee action to use Code Case N-659, "Use of Ultrasonic Examination in Lieu of Radiography for Weld Examination, Section III, Division 1," and Code Case N-460, "Alternative Examination Coverage for Class 1 and Class 2 Welds, Section XI, Division 1," in an unanticipated manner. Because the proposed licensee action was received after Draft Regulatory Guides DG-1133 and DG-1134 had been published but prior to their release, the NRC is proposing to add conditions to the use of these Code Cases in the final guides, unless public comments are received that indicate that the staff's proposed technical bases for the conditions are not applicable, incorrect, unnecessary to provide reasonable assurance of adequate protection to public health and safety and common defense and security, or otherwise not justified in light of the increase in protection to public health and safety or common defense and security that

would be provided by imposition of the conditions.

Code Case N-659

Originally, concerns had been raised relative to the calibration block requirements in the Code Case, and two conditions had been developed for inclusion in the proposed Draft Regulatory Guide DG-1133. The proposed licensee action, however, has raised three new concerns that relate to the licensee's intended use of the Code Case and the capabilities of UT and RT as test methods. Currently, Section III requires that radiographic testing (RT) examinations be performed after the fabrication of certain Class 1, Class 2, and Class 3 welds. The ASME approved Code Case N-659 as an alternative to the requirements of Section III that would permit manufacturers of nuclear power plant components to use ultrasonic testing (UT) examinations in lieu of RT. However, depending on flaw type (*i.e.*, volumetric or planar) and orientation, RT and UT are not equally effective for flaw detection and characterization. RT is effective in detecting volumetric type flaws (*i.e.*, slag and porosity), and in detecting planar type flaws with large openings (*i.e.*, lack of fusion and large cracks in high stressed areas), and which are oriented in a plane parallel to the x-ray beam. RT is effective in all materials common to the nuclear industry in detecting the type of flaws generated during construction. Thus, RT is a good tool to detect workmanship type defects (construction flaws) and ensures an acceptable level of weld quality and safety. In contrast, UT is effective in detecting and sizing planar type flaws in ferritic steels and to a lesser extent in wrought austenitic steels. With specific technique development and personnel training on construction flaws, UT can also be used to detect volumetric type flaws such as slag or porosity. UT is of limited value in detecting flaws in cast stainless steels. Finally, UT requires more surface scanning area than RT to perform examinations.

During the NRC staff's assessment of the proposed licensee action, concerns were raised relative to the capability of UT, as it would be employed, to detect workmanship type defects and ensure an acceptable level of weld quality. The first concern is with regard to the option provided by the Code Case to use either Section V, Article 5, with two additional construction flaws, or Section XI, Appendix VIII, with a blind add-on demonstration to existing configuration specific qualifications that contains at least three construction type flaws. The addition of only two or three

construction flaws to a demonstration is not sufficient to capture the variety of flaws common to construction or to statistically evaluate procedure effectiveness and personnel skills. Section V prescriptive-based requirements are less effective in detecting flaws than performance-based Appendix VIII requirements. Section V qualifications are based on identifying known machined reflectors that display good acoustic responses, which do not address inspection reliability. Performance-based qualifications require blind demonstrations on mockups having flaws with realistic UT responses and a statistically sufficient number of representative flaws and non flawed volumes to establish procedure effectiveness and personnel skill. The statistical approach to qualification has been shown to improve the reliability of inspections and probability of detection, and to reduce the number of false calls.

The second concern is the provision of the Code Case to use the second leg of the ultrasound metal path (V-path) to achieve two direction scanning from only one side of the weld. Single side examinations of the welds have been successfully performance demonstrated on planar flaws in ferritic carbon steel but have not been reliably demonstrated for planar flaws in austenitic stainless steel and nickel alloys. Single side examinations have not been demonstrated for construction flaws for any material.

The third concern is the requirement in the Code Case to only examine half of the through-wall thickness ($\frac{1}{2}t$) from each side of the weld to verify that the welding process did not compromise the integrity of the base material surrounding the weld. For thin-walled parts and components, $\frac{1}{2}t$ may not be sufficient to capture any degradation associated with the welding process.

To address the three new concerns discussed above, the NRC proposes to place additional conditions on the use of Code Case N-659 in the final guide. In Paragraph (a) of Code Case N-659, the greater of $\frac{1}{2}t$ or $\frac{1}{2}$ -inch from the widest portion of the weld shall be used, and any use of the second leg of the ultrasonic metal path shall be qualified by a performance-based demonstration. In lieu of Paragraphs (b) and (d), the following shall be used: Procedures and personnel shall be qualified with blind performance demonstrations on representative mockups in terms of material, wall-thickness, diameter, surface roughness, and configuration of the weldment being examined. A minimum of 10 construction type flaws are required for a personnel qualification and the

equivalent of three personnel qualifications required for a procedure qualification.

At least 70% of the flaws shall be located along the base metal-to-weld fusion zone on both sides of the weld. The flaws shall be randomly distributed

throughout the weld thickness. Each flawed and unflawed volume shall be defined in independent grading units. The flaws shall be representative of the variety of construction flaws common to the welding process and material being examined. The demonstration must

show the capability to detect flaws having a minimum 2% through-wall depth and within the flaw length acceptance of NB-2553(c). The demonstration detection acceptance criteria shall be:

Detection test acceptance criteria		False call test acceptance criteria	
Number of flawed grading units	Minimum detection criteria	Number of unflawed grading units	Maximum number of false calls
10	8	15	2
11	9	17	3
12	9	18	3
13	10	20	3
14	10	21	3
15	11	23	3
16	12	24	4
17	12	26	4

Flaws shall be detected and located within 1.0-inch of true length and width location and within 10% of true through-wall depth location or within 10% of the sound beam metal path, whichever is greater. All other reported flaws within false call grading units shall be false calls.

A minimum of 10 flaws shall be used for sizing with a random distribution of lengths greater than and less than the applicable NB-2553(c) acceptance standard. The maximum flaw length shall not exceed 200% of the acceptance standard. For qualification, all flaws shall be correctly identified as acceptable or unacceptable.

Procedures shall identify the equipment and essential variable settings used for the qualification. An essential variable is any variable that has an effect on the results of an examination. The procedure shall be requalified when an essential variable is changed outside the demonstrated range.

Code Case N-460

Code Case N-460 provides alternative requirements for the inservice examination of Class 1 welds (Section XI, IWB-2500) and Class 2 welds (Section XI, IWC-2500) when the entire examination volume cannot be examined due to interference by another component or part geometry. The licensee proposed to apply this Code Case in conjunction with Code Case N-659 in those instances when the entire examination volume or area cannot be examined following fabrication, repair or replacement. The NRC does not believe that it is appropriate to use Code Case N-460 for repair and replacement during construction and replacement (fabrication) activities because a

construction or replacement weld should be designed for complete access for examination. Thus, the NRC proposes to condition the use of Code Case N-460 in the final guide such that the Code Case can only be applied when performing inservice examinations in accordance with a Section XI inservice inspection program.

Evaluation of Code Cases

1 Purpose and Structure of This Evaluation

This evaluation lists the Code Cases and explains NRC's rationale for any limitations. The evaluation also explains the ASME and regulatory processes concerning Code Cases. The evaluation addresses Proposed Revision 34 to Regulatory Guide 1.84 (DG-1133), "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," and Proposed Revision 15 to Regulatory Guide 1.147 (DG-1134), "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1." For these revisions, the NRC staff reviewed the Code Cases in Supplement 7 through Supplement 12 to the 2001 Edition and Supplement 1 to the 2004 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code). The regulatory guides do not address Code Cases pertaining to high-temperature gas-cooled reactors; certain requirements in Section III, Division 2, that are not endorsed by the NRC; liquid metal; and submerged spent fuel waste casks. The proposed disposition of each Code Case is listed below. For Code Cases determined to be conditionally acceptable, the basis for the determination is summarized to afford users of the ASME Code an

opportunity to comment on the proposed disposition and basis.

2 Discussion of ASME Process

Code Cases provide alternatives, developed and approved by ASME, to the applicable provisions of the ASME BPV Code. For the purposes of this evaluation, Code Cases can be categorized as one of three types: new, revised, or reaffirmed (it should be noted that after the review of the supplements addressed in this evaluation, the ASME made a determination to end the use of three-year terms for Code Cases and therefore, the latest supplements do not contain reaffirmed Code Cases). A new Code Case addresses for the first time a specific need. Existing Code Cases may be revised (modified) to address, for example, technological advancements in examination techniques, or to address NRC limitations and modifications. Code Cases still in use but not requiring revision may be reaffirmed (approved) without change by the ASME. As noted above, subsequent to the NRC review of the Code Cases in the subject supplements, the ASME made a determination to eliminate expiration dates for Code Cases. Thus in the future, Code Cases will no longer require reaffirmation (i.e., new 3-year terms). This change is not expected to affect the NRC Code Case review process, nor result in significant modification of the regulatory guides.

With regard to Code Cases conditioned by the NRC, it should be noted that the Subcommittee on Nuclear Power (Section III) and the Subcommittee on Nuclear Inservice Inspection (Section XI) have instructed working groups to review these Code Cases, and determine whether changes

to the Code Cases are appropriate. For example, Code Case N-613 was not approved for use by the NRC because certain provisions conflicted with requirements in 10 CFR 50.55a. Section XI revised the Code Case in a manner acceptable to the NRC and Code Case N-613-1 was approved in Revision 14 of Regulatory Guide 1.147. Revisions to other Code Cases are expected to be published by the ASME in the near future with the expectation that many of them can be unconditionally approved by the NRC.

3 Discussion of Regulatory Process

New Code Cases that are determined to be acceptable by the NRC are approved as published by the ASME and may be used in the design, construction, and ISI of components and their supports for water-cooled nuclear power plants. When a determination is made that the provisions of a new Code Case need to be augmented, that Code Case is conditionally approved. These Code Cases are acceptable to the NRC

within the limitations and modifications described in the relevant regulatory guide. Unless otherwise stated, limitations recommended by the NRC staff are in addition to the conditions specified in the Code Case. A discussion of the basis for the limitation or modification is provided, and the NRC invites public comment on these conditions. A determination may be made that a new Code Case is unacceptable for use by licensees. Code Cases determined to be unacceptable are listed in Proposed Revision 2 of Regulatory Guide 1.193, "ASME Code Cases Not Approved for Use." A summary of the basis for the determination is provided in the regulatory guide, and the NRC invites public comment on the basis for the disapproval. Revised Code Cases were modified by the ASME, and the NRC compares the revised Code Case to the original Code Case (that has become part of the regulations through the incorporation by reference process), and

a determination is made whether the revised Code Case is acceptable, conditionally acceptable, or unacceptable. Reaffirmed in the context of the regulatory guides means that a Code Case was approved in a previous version of a regulatory guide. The status of a revised Code Case remains unchanged in the regulatory guide unless additional information becomes available (e.g., emerging issue) indicating that a regulatory change in position is warranted.

4 List of Code Cases and Summary of Bases

4.1 Acceptable Code Cases: The Code Cases in Supplement 7 through Supplement 12 to the 2001 Edition and Supplement 1 to the 2004 Edition listed below are acceptable to the NRC. The supplement in which a Code Case appears is listed in brackets behind the Code Case Number (e.g., [S7] means Supplement 7).

4.2 Section III Code Cases.

CODE CASE

Number	Type	Title
N-7-1 [S7]	Reaffirmed	High Yield Strength Steel, Section III, Division 1, Class 1.
N-60-5 [S12]	Reaffirmed	Material for Core Support Structures, Section III, Division 1.
N-122-2 [S7]	Reaffirmed	Procedure for Evaluation of the Design of Rectangular Cross Section Attachments on Class 1 Piping, Section III, Division 1.
N-131-1 [S7]	Reaffirmed	Material for Internal Pressure Retaining Items for Pressure Relief Valves, Section III, Division 1, Class 1, 2, and 3.
N-133-3 [S7]	Reaffirmed	Use of SB-148 Alloys 952 and 954, Section III, Division 1, Class 3.
N-154-1 [S7]	Reaffirmed	Projection Resistance Welding of Valve Seats, Section III, Classes 1, 2, and 3.
N-160-1 [S7]	Reaffirmed	Finned Tubing for Construction, Section III, Division 1.
N-208-1 [S8/9]	Reinstated	Fatigue Analysis for Precipitation Hardening Nickel Alloy Bolting Material to Specification SB-637 N07718 for Section III Division 1, Class 1 Construction.
N-243 [S7]	Reaffirmed	Boundaries Within Castings Used for Core Support Structures, Section III, Division 1.
N-315 [S7]	Reaffirmed	Repair of Bellows, Section III, Division 1.
N-318-5 [S7]	Reaffirmed	Procedure for Evaluation of the Design of Rectangular Cross Section Attachments on Class 2 or 3 Piping, Section III, Division 1.
N-319-3 [S7]	Reaffirmed	Alternate Procedure for Evaluation of Stresses in Butt Welding Elbows in Class 1 Piping, Section III, Division 1.
N-369 [S8/9]	Reaffirmed	Resistance Welding of Bellows, Section III, Division 1.
N-373-2 [S1]	Reaffirmed	Alternative PWHT Time at Temperature for P-No. 5 Material, Section III, Division 1, Classes 1, 2, and 3.
N-391-2 [S1]	Reaffirmed	Procedure for Evaluation of the Design of Hollow Circular Cross Section Welded Attachments on Class 1 Piping, Section III, Division 1.
N-392-3 [S1]	Reaffirmed	Procedure for Evaluation of the Design of Hollow Circular Cross Section Welded Attachments on Classes 2 and 3 Piping, Section III, Division 1.
N-405-1 [S12]	Reaffirmed	Socket Welds, Section III, Division 1.
N-452 [S8/9]	Reaffirmed	Specialized Subcontracted Welding Process (Electron Beam Welding), Section III, Division 1.
N-454-1 [S10]	Reaffirmed	Nickel-Chromium-Molybdenum-Copper Stainless Steel (UNS N08925 and N08926) Wrought Fittings for Class 1 and 3 Construction, Section III, Division 1.
N-455-1 [S10]	Reaffirmed	Nickel-Chromium-Molybdenum-Copper Stainless Steel (UNS N08925 and N08926) Forged Flanges and Fittings for Class 1 and 3 Construction, Section III, Division 1.
N-469-1 [S7]	Reaffirmed	Martensitic Stainless Steel for Class 1, 2, and 3 Components, Section III, Division 1.
N-500-2 [S1]	Revised	Alternative Rules for Standard Supports for Classes 1, 2, 3 and MC, Section III, Division 1.
N-505 [S1]	Reaffirmed	Alternative Rules for the Examination of Butt Welds Used as Closure Welds for Electrical Penetration Assemblies in Containment Structures, Section III, Division 1.
N-511 [S1]	Reaffirmed	Design Temperature for Atmospheric and 0-15 psi Storage Tanks, Section III, Division 1.
N-520-1 [S8/9]	Reaffirmed	Alternative Rules for Renewal of N-type Certificates for Plants Not in Active Construction, Section III, Division 1.
N-539 [S12]	Reaffirmed	UNS N08367 in Class 2 and 3 Valves, Section III, Division 1.
N-564-2 [S7]	Reaffirmed	UNS J93380, Alloy DC3MWCuN, Class 2 and 3 Construction, Section III, Division 1.
N-579 [S7]	Reaffirmed	Use of Nonstandard Nuts, Class 1, 2, and 3, MC, CS Components and Supports Construction, Section III, Division 1.

CODE CASE—Continued

Number	Type	Title
N-607 [S1]	Reaffirmed	Transfer of Welder, Welding Operator, Brazer, and Brazing Operator Qualifications Between Owners, Section XI, Division 1.
N-610 [S1]	Reaffirmed	Alternative Reference Stress Intensity Factor (K_{IR}) Curve for Class Components, Section III, Division 1.
N-611 [S12]	Reaffirmed	Use of Stress Limits as an Alternate to Pressure Limits Subsection NC/ND-3500, Section III, Division 1.
N-620 [S1]	Reaffirmed	Rules for Class 1 Type M Pumps, Section III, Division 1.
N-621 [S1]	Reaffirmed	Ni-Cr-Mo Alloy (UNS N06022) Welded Construction to 800°F, Section III, Division 1.
N-625-1 [S12]	Reaffirmed	Ni-Cr-Mo Alloy (UNS N06059) Welded Construction to 800°F, Section III, Division 1.
N-632 [S7]	Reaffirmed	Use of ASTM A572, Grades 50 and 65 for Structural Attachments to Class CC Containment Liners, Section III, Division 1.
N-635-1 [S8/9]	Revised	Use of 22Cr-5Ni-3Mo-N (Alloy UNS S31803) Forgings, Plate, Bar, Welded and Seamless Pipe, and/or Tube, Fittings, and Fusion Welded Pipe With Addition of Filler Metal, Classes 2 and 3, Section III, Division 1.
N-642 [S7]	Reaffirmed	Alternative Rules for Progressive Liquid Penetrant Examination of Groove Welds in P-No. 8 Materials 3/16 in. (5mm) Thick and Less Made by Autogenous Machine or Automatic Welding, Section III, Division 1.
N-644-1 [S8/9]	Revised	Weld Procedure Qualification for Procedures Exempt From PWHT in Classes 1, 2, and 3 Construction, Section III, Division 1.
N-646 [S10/12]	Reaffirmed	Alternative Stress Intensification Factors in Circumferential Fillet Welded or Socket Welded Joints for Class 2 or 3 Piping, Section III, Division 1.
N-650 [S12]	Reaffirmed	Use of SA-537, Class 2 Plate Material in Non-pressure Boundary Application Service 700°F to 850°F, Class 1 or CS, Section III, Division 1.
N-692 [S10]	New	Use of Standard Welding Procedures, Section III, Divisions 1 and 2.
N-698 [S11]	New	Design Stress Intensities and Yield Strength for UNS N06690 With a Minimum Specified Yield Strength of 35 ksi (240Mpa), Class 1 Components, Section III, Division 1.
N-703 [S1]	New	Use of Strain Hardened Austenitic Material at Lower Design Stress Values for Class 1 Valves, Section III, Division 1.
N-710 [S1]	New	Use of Zirconium Alloy UNS R60702, Bars, Forgings, Plate, Seamless and Welded Fittings, Seamless and Welded Tubing, and Seamless and Welded Pipe, for Class 3 Construction, Section III, Division 1.

4.3 Section XI Code Cases.

CODE CASE

Number	Type	Title
N-307-3 [S1]	Reaffirmed	Revised Ultrasonic Examination Volume for Class 1 Bolting, Table IWB-2500-1, Examination Category B-G-1, When the Examinations Are Conducted from the End of the Bolt or Stud or from the Center-Drilled Hole, Section XI, Division 1.
N-334 [S8/9]	Reaffirmed	Examination Requirements for Integrally Welded or Forged Attachments to Class 2 Piping at Containment Penetrations, Section XI, Division 1.
N-416-3 [S1]	Reaffirmed	Alternative Pressure Test Requirement for Welded Repairs or Installation of Replacement Items by Welding, Class 1, 2, and 3, Section XI, Division 1.
N-432-1 [S1]	Reaffirmed	Repair Welding Using Automatic or Machine Gas Tungsten-Arc Welding (GTAW) Temper Bead Technique, Section XI, Division 1.
N-460 [S8/9]	Reaffirmed	Alternative Examination Coverage for Class 1 and Class 2 Welds, Section XI, Division 1.
N-491-2 [S8/9]	Reaffirmed	Rules for Examination of Class 1, 2, 3, and MC Component Supports of Light-Water Cooled Power Plants, Section XI, Division 1.
N-508-3 [S11]	Revised	Rotation of Serviced Snubbers and Pressure Relief Valves for the Purpose of Testing, Section XI, Division 1.
N-513-2 [S1]	Revised	Evaluation Criteria for Temporary Acceptance of Flaws in Moderate Energy Class 2 or 3 Piping, Section XI, Division 1.
N-534 [S8/9]	Reaffirmed	Alternative Requirements for Pneumatic Pressure Testing, Section XI, Division 1.
N-537 [S1]	Reaffirmed	Location of Ultrasonic Depth-Sizing Flaws, Section XI, Division 1.
N-545 [S1]	Reaffirmed	Alternative Requirements for Conduct of Performance Demonstration Detection Test of Reactor Vessel, Section XI, Division 1.
N-553-1 [S1]	Reaffirmed	Inservice Eddy Current Surface Examination of Pressure Retaining Pipe Welds and Nozzle-to-Safe End Welds, Section XI, Division 1.
N-566-2 [S1]	Reaffirmed	Corrective Action for Leakage Identified at Bolted Connections, Section XI, Division 1.
N-573 [S8/9]	Reaffirmed	Transfer of Procedure Qualification Records Between Owners, Section XI, Division 1.
N-586-1 [S1]	Revised	Alternative Additional Examination Requirements for Classes 1, 2, and 3 Piping, Components, and Supports, Section XI, Division 1.
N-600 [S1]	Reaffirmed	Transfer of Welder, Welding Operator, Brazer, and Brazing Operator Qualifications Between Owners, Section XI, Division 1.
N-609 [S1]	Reaffirmed	Alternative Requirements to Stress-Based Selection Criteria for Category B-J Welds, Section XI, Division 1.
N-641 [S7]	Reaffirmed	Alternative Pressure-Temperature Relationship and Low Temperature Overpressure Protection System Requirements, Section XI, Division 1.

CODE CASE—Continued

Number	Type	Title
N-643-2 [S1]	Revised	Fatigue Crack Growth Rate Curves for Ferritic Steels in PWR Water Environment, Section XI, Division 1.
N-649 [S1]	Reaffirmed	Alternative Requirements for IWE-5240 Visual Examination, Section XI, Division 1.
N-651 [S1]	Reaffirmed	Ferritic and Dissimilar Metal Welding Using SMAW Temper Bead Technique Without Removing the Weld Bead Crown for the First Layer, Section XI, Division 1.
N-652-1 [S12]	Revised	Alternative Requirements to Categorize B-G-1, B-G-2, and C-D Bolting Examination Methods and Selection Criteria, Section XI, Division 1.
N-665 [S8/9]	New	Alternative Requirements for Beam Angle Measurements Using Refracted Longitudinal Wave Search Units, Section XI, Division 1.
N-683 [S8/9]	New	Method for Determining Maximum Allowable False Calls When Performing Single-Sided Access Performance Demonstration in Accordance With, Appendix VIII, Supplements 4 and 6, Section XI, Division 1.
N-685 [S8/9]	New	Lighting Requirements for Surface Examination, Section XI, Division 1.
N-686 [S8/9]	New	Alternative Requirements for Visual Examinations, VT-1, VT-2, and VT-3, Section XI, Division 1.
N-695 [S10]	New	Qualification Requirements for Dissimilar Metal Piping Welds, Section XI, Division 1 (Note: N-695 was approved in Revision 14 to Regulatory Guide 1.147).
N-696 [S10]	New	Qualification Requirements for Appendix VIII Piping Examinations Conducted From the Inside Surface, Section XI, Division 1.
N-697 [S11]	New	Pressurized Water Reactor (PWR) Examination and Alternative Examination Requirements for Pressure Retaining Welds in Control Rod Drive and Instrument Nozzle Housings, Section XI, Division 1.
N-700 [S11]	New	Alternative Rules for Selection of Classes 1, 2, and 3 Vessel Welded Attachments for Examination, Section XI, Division 1.

4.4 Conditionally Acceptable Code Cases: The Code Cases listed below are acceptable to the NRC subject to the limitations and modifications listed. Notations have been made to indicate the conditions duplicated from previous versions of the regulatory guides.

4.5 Section III.

- Code Case N-62-7 [S7].

Type: Reaffirmed.

Title: Internal and External Valve Items, Section III, Division 1, Classes 1, 2, and 3.

Code Case N-62-7 was conditionally approved in Revisions 32 and 33 to RG 1.84. This Code Case was reaffirmed by the ASME. No changes have been made to the conditions in proposed Revision 34 to the guide.

- Code Case N-71-18 [S8/9].

Type: Reaffirmed.

Title: Additional Materials for Subsection NF, Class 1, 2, 3, and MC Component Supports Fabricated by Welding, Section III, Division 1.

Code Case N-71-18 was conditionally approved in Revision 33 to RG 1.84. This Code Case was reaffirmed by the ASME. No changes have been made to the conditions in proposed Revision 34 to the guide.

- Code Case N-155-2 [S7].

Type: Reaffirmed.

Title: Fiberglass Reinforced Thermosetting Resin Pipe, Section III, Division 1.

Code Case N-155-2 was conditionally approved in Revisions 32 and 33 to RG 1.84. This Code Case was reaffirmed by the ASME. No changes have been made to the conditions in proposed Revision 34 to the guide.

- Code Case N-249-14 [S10/12].

Type: Reaffirmed.

Title: Additional Materials for Subsection NF, Class 1, 2, 3, and MC Component Supports Fabricated Without Welding, Section III, Division 1.

Code Case N-249-14 was conditionally approved in Revision 33 to RG 1.84. This Code Case was reaffirmed by the ASME. No changes have been made to the conditions in proposed Revision 34 to the guide.

4.6 Section XI.

- Code Case N-504-2 [S8/9].

Type: Reaffirmed.

Title: Alternative Rules for Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping, Section XI, Division 1.

Section XI, Nonmandatory Appendix Q, "Weld Overlay Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping Weldments," addresses the repair of Class 1, 2, and 3 austenitic stainless steel pipe weldments that have experienced stress corrosion cracking through the deposition of weld overlay reinforcements on the outside of the pipe, and provides examination requirements for such overlays. Comments provided by NRC staff representatives to the ASME Code were incorporated into Nonmandatory Appendix Q, and the NRC committee representatives ultimately approved this appendix. Code Case N-504 has a similar scope to that of nonmandatory Appendix Q, *i.e.*, reducing a flaw to an acceptable size by increasing the pipe wall thickness through the deposition of a weld overlay on the outside of the pipe. Nonmandatory Appendix Q specifies the NDE methods and acceptance criteria to be used when

making such weld overlays.

Additionally, requirements have been specified for the extent and frequency of ISI, and for sample expansion. These requirements have been adopted in Code Case -504-3 (to be considered in the next RG revision). Thus, the same requirements should be used for the use of Code Case N-504-2. Thus, Code Case N-504-2 has been conditioned to require that the provisions in the nonmandatory appendix also be met. The appendix is available on the ASME Web site at <http://cstools.asme.org/cconnect/CommitteePages.cfm?Committee=O1000000>.

- Code Case N-517-1 [S1].

Type: Reaffirmed.

Title: Quality Assurance Program Requirements for Owners, Section XI, Division 1.

Code Case N-517-1 was conditionally approved in Revisions 13 and 14 to RG 1.147. This Code Case was reaffirmed by the ASME. No changes to the conditions have been made in proposed Revision 15 to the guide.

- Code Case N-532-3 [S12].

Type: Revised.

Title: Alternative Requirements to Repair and Replacement Documentation Requirements and Inservice Summary Report Preparation and Submission as Required by IWA-4000 and IWA-6000, Section XI, Division 1.

Code Case N-532-1 was conditionally approved in Revisions 13 and 14 of Regulatory Guide 1.147. Revision 2 of the Code Case was not approved for use, however, because of a publishing error and the need for a clarification. Revision 3 of the Code Case corrects the error. The publishing error was that the Code

Case referenced new ASME Code Paragraph IWA-6350 which was not yet in print when the Code Case was published. The clarification reconciled Footnote 1 and Table 4 of the Code Case regarding the applicable edition and addenda. The revisions are acceptable to the NRC staff.

The NRC's concern with N-532-1 regarding the timeliness of submittal of inspection findings to the regulatory authority is applicable to subsequent revisions of the Code Case and is being considered by the ASME. The ASME Code requires that inspection findings be submitted to the regulatory authority within 90 calendar days of the completion of each refueling outage. The Code Case relaxes this requirement, potentially up to 3 years. The Code Case time frame for submittal should be the same as that for the ASME Code, especially since the burden associated with generating the report would be much less under the Code Case. The NRC supports the reduction in report size but cannot support the time frame relaxation. Thus, the condition for N-532-1 in Revisions 13 and 14 of the guide is retained for N-532-3 in proposed Revision 15.

- Code Case N-554-3 [S8/9].

Type: Revised.

Title: Alternative Requirements for Reconciliation of Replacement Items and Addition of New Systems, Section XI, Division 1.

Code Case N-554-2 was conditionally approved in Revisions 13 and 14 to RG 1.147. The NRC staff was concerned that the Code Case would permit licensees to purchase material for use in safety-related applications that did not meet the requirements of Appendix B to 10 CFR part 50. The NRC staff had similar concerns with the provisions of Section XI, Paragraph IWA-4200. The ASME made changes to IWA-4200 that the NRC staff initially determined to be acceptable. The ASME then modified Code Case N-554-2 (resulting in Revision 3) to make it consistent with IWA-4200 in the belief that this would satisfy the NRC's concerns. During the NRC staff review of the revised Code Case (N-554-3) relative to the NRC's previous concerns, questions were raised whether the new language of IWA-4200 and hence N-554-3, adequately addressed the NRC's concerns. The NRC staff and the cognizant ASME committees are actively engaged to resolve the questions. Thus for this revision to the guide, N-554-3 is approved subject to the same condition as that for N-554-2.

- Code Case N-583 [S8/9].

Type: Reaffirmed.

Title: Annual Training Alternative, Section XI, Division 1.

Code Case N-583 was conditionally approved in Revisions 13 and 14 to RG 1.147. This Code Case was reaffirmed by the ASME. No changes to the conditions have been made in proposed Revision 15 to the guide.

- Code Case N-593 [S8/9].

Type: Reaffirmed.

Title: Alternative Examination Requirements for Steam Generator Nozzle to Vessel Welds, Section XI, Division 1.

Code Case N-593 was conditionally approved in Revisions 13 and 14 to RG 1.147. This Code Case was reaffirmed by the ASME. No changes to the conditions have been made in proposed Revision 15 to the guide.

- Code Case N-597-2 [S11].

Type: Revised.

Title: Requirements for Analytical Evaluation of Pipe Wall Thinning, Section XI, Division 1.

Code Case N-597-1 was conditionally approved in Revision 13 to RG 1.147. Users of the Code Case discovered several errors in the formulas. It was determined that the errors resulted from formatting/publishing difficulties. Revision 2 to the Code Case corrects these publishing errors, but the cognizant ASME working group is still considering the NRC's concerns that resulted in the conditional acceptance of N-597-1.

These concerns are: (1) The Electric Power Research Institute (EPRI) developed Report 202L-R2, April 1999, "Recommendations for an Effective Flow Accelerated Corrosion Program," for developing the inspection requirements, the method of predicting the rate of wall thickness loss, and the value of the predicted remaining wall thickness. The Code Case which should contain such guidance/requirements does not; (2) the Code Case is not clear relative to the allowable minimum wall thickness; (3) the Code Case lacks adequate evaluation criteria for Class 1 piping that does not meet the ASME Code; and (4) the Code Case lacks adequate criteria addressing the rate of wall thickness loss to be used to determine a suitable inspection frequency when immediate repair or replacement is not required so that repair or replacement occurs prior to reaching allowable minimum wall thickness, t_{min} .

The cognizant ASME working group is still considering these concerns. Hence, no changes have been made to the particular Code Case provisions in question in Code Case N-597-2. Thus, the conditions will be retained in proposed Revision 15.

- Code Case N-638-1 [S8/9].

Type: Revised.

Title: Similar and Dissimilar Metal Welding Using Ambient Temperature Machine GTAW Temper Bead Technique, Section XI, Division 1.

- Code Case N-647 [S11].

Type: Reaffirmed.

Title: Alternative to Augmented Examination Requirements of IWE-2500, Section XI, Division 1.

Code Case N-647 was conditionally approved in Revisions 13 and 14 to RG 1.147. This Code Case was reaffirmed by the ASME. No changes to the conditions have been made in proposed Revision 15 to the guide.

- Code Case N-648-1 [S1].

Type: Reaffirmed.

Title: Alternative Requirements for Inner Radius Examination of Class 1 Reactor Vessel Nozzles, Section XI Division 1.

- Code Case N-659 [S7].

Type: New.

Title: Use of Ultrasonic Examination in Lieu of Radiography for Weld Examination, Section III, Division 1.

The Code Case requires demonstration of the ultrasonic examination procedure on a qualification block or specimen. For piping, if material of the same product form and specification is not available, the Code Case permits the use of a calibration block of similar chemical analysis, tensile properties, and metallurgical structure. Additional guidance is not provided, however, to fully define "similar chemical analysis." This raises a concern that the calibration block material may not be truly representative of the material to be ultrasonically examined; the calibration block material could be easier to examine. Hence, two conditions would be added to ensure that the calibration block material is within the range of chemical composition of the component and has similar insonification and examination characteristics to the component to be examined. These conditions are being added to ensure that the procedure qualification is adequately demonstrated.

- Code Case N-694-1 [S1].

Type: Revised.

Title: Evaluation Procedure and Acceptance Criteria for PWR Reactor Vessel Upper Head Penetration, Section XI, Division 1.

Code Case N-694-1 provides acceptance criteria and fracture evaluation methods (crack-growth rate calculations) to disposition flaws in PWR reactor pressure vessel Alloy 600 control rod drive mechanism (CRDM) nozzles and bottom mounted instrumentation penetrations (BMIs).

Because of the safety significance of cracking in these penetrations, the NRC had an independent review of the Code Case performed. The review, which was performed by Engineering Mechanics Corporation of Columbus (Emc²), and documented in its report dated April 30, 2004, "Predicting Axial Crack Growth in Control Rod Drive Mechanism Tubes," [ML060060548], determined that the crack-growth rates calculations specified in the Code Case were not conservative enough and underpredict crack growth. The report states that, "Credible crack-growth predictions rely highly on an accurate determination of the crack-driving force." To develop the data needed for its review of the Code

Case, Emc² performed parametric finite element studies on axial cracks in CRDM J-groove weld residual stress fields and determined that under certain applications, published K-solutions, used in Code Case N-694-1, would under predict crack growth, so much so, that cracks could grow through-wall prior to the performance of the next inspection.

The cognizant ASME working group is currently reviewing the report. On the basis of the report, the NRC proposes to condition Code Case N-694-1 to require more accurate crack-growth rate calculations to ensure that the frequency of examination is appropriate for these penetrations.

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following means:

The NRC Public Document Room (PDR) is located at 11555 Rockville Pike, Public File Area O-1 F21, Rockville, Maryland.

The NRC's interactive rulemaking Web site is located at <http://ruleforum.llnl.gov>. Selected documents may be viewed and downloaded electronically via this Web site.

The NRC's Public Electronic Reading Room is located at <http://www.nrc.gov/reading-rm.html>.

Document	PDR	Web	e-Reading room
Proposed Regulatory Guide 1.84, Rev. 34 (DG-1133)	X	X	ML061210377
Proposed Regulatory Guide 1.147, Rev. 15 (DG-1134)	X	X	ML061210404

* * * * *

Dated at Rockville, Maryland, this 30th day of June, 2006.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E6-18024 Filed 10-26-06; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2006-25922; Airspace Docket No. 06-AWP-17]

RIN 2120-AA66

Proposed Establishment of Class E Airspace; Santa Cruz, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Santa Cruz, CA. The establishment of a Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 227 Departure Procedure serving Dominic Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain helicopters executing the Special

COPTER RNAV (GPS) 040 Point In Space SIAP and Special COPTER RNAV (GPS) 227 Departure Procedure to Dominican Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Dominican Hospital Heliport, Santa Cruz, CA.

DATES: Comments must be received on or before December 11, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2006-25922/Airspace Docket No. 06-AWP-17 at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725-6502.

FOR FURTHER INFORMATION CONTACT: Francie Hope, Western Terminal Service Area, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale,

California 90261; telephone (310) 725-6502.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2006-25922/Airspace Docket No. 06-AWP-17." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation

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

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing the Class E airspace area at Santa Cruz, CA. The establishment of a Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 227 Departure Procedure serving Dominican Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain helicopters executing Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 227 Departure Procedure serving Dominican Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for helicopters executing Special COPTER Area Navigation (RNAV) Global Positioning System (GPS) 040 Point In Space Standard Instrument Approach Procedure (SIAP) and a Special COPTER RNAV (GPS) 227 Departure Procedure serving Dominican Hospital Heliport, Santa Cruz, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Proposed Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREA; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective, September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA 35 Santa Cruz, CA [New]

Dominican Hospital Heliport Point in Space Coordinates

(Lat. 36°58'26" N, long. 121°59'38" W)

That airspace extending upward from 700 feet above the surface and within a 6.5-mile radius of the Point in Space serving the Dominican Hospital Heliport.

* * * * *

Issued in Los Angeles, California, on October 5, 2006.

Leonard A. Mobley,

Acting Area Director, Western Terminal Operations.

[FR Doc. 06-8891 Filed 10-26-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13-06-048]

RIN 1625-AA09

Drawbridge Operation Regulations; Youngs Bay and Lewis and Clark River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations for the New Youngs Bay, Old Youngs Bay, and the Lewis and Clark River Drawbridges near Astoria, Oregon. This change is requested by the Oregon Department of Transportation (ODOT), owner of the bridges, due to reduced demand for draw openings.

DATES: Comments and related material must reach the Coast Guard on or before November 27, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpw), 13th Coast Guard District, 915 Second Avenue, Seattle, WA 98174-1067 where the public docket for this rulemaking is maintained. 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 Aids to Navigation and Waterways Management Branch between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief Bridge Section, (206)220-7282.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD13-06-048], 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 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 Aids to Navigation and Waterways Management 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 vertical lift of the New Youngs Bay Bridge, mile 0.7, when closed, provides 39.4 feet of vertical clearance above mean high water and 74.4 feet when open. The Old Youngs Bay bascule span, mile 2.4, provides 20 feet when closed and unlimited vertical clearance when open. The Lewis and Clark River Bridge, mile 1.0, provides 25 feet of clearance when closed and unlimited when open. The operating regulations currently in effect for these drawbridges at 33 Code of Federal Regulations 117.899 provide that the spans shall open for the passage of vessels from 6 a.m. to 6 p.m. Monday through Friday, and 8 a.m. to 4 p.m. Saturday and Sunday, if notice is given at least one half-hour in advance. At all other times, at least four hours advance notice must be given. The proposed rule would enable the bridge owner to reduce the shifts for staffing the drawbridges.

Discussion of Proposed Rule

The proposed rule would change the period on Monday through Friday during which notice must be given at least one half-hour in advance to 7 a.m. to 5 p.m. The requirement for at least one-half hour advance notice from 8 a.m. to 4 p.m. on Saturdays and Sundays would not be changed. Additionally, on all Federal holidays except Columbus Day, notice will be required at least two hours in advance. At all other times, notice will be required at least two hours in advance, instead of the currently required four hours advance notice.

Most of the vessels which require openings of the New Youngs Bay Bridge and the Lewis and Clark River Bridge are clients of Astoria Marine Construction, a company which repairs vessels. Generally, the arrival and departure of these vessels has not been hindered by the requirement to provide notice for openings.

The proposed rule would effectively reduce the half-hour notice period on Monday through Friday by two hours. Only a small percentage of the total openings of the three drawbridges

occurred during these periods (Monday through Friday 6–7 a.m. and 5–6 p.m.). Less than 10 percent of the total number of openings by these three bridges occurred during those hours. Records from 2002 through 2005 showed that openings during those hours varied from a low of 6 percent of total opening to a high of 9 percent. The annual total number of openings at these particular hours ranged from 64 in 2002 to 47 in 2005. Openings on Federal holidays comprised only 1 to 2 percent of the total annual openings from 2002 to 2005.

Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The single commercial boat yard, which is the destination for most vessels that pass through the bridges, has indicated that they can tolerate the proposed changes.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect few vessel operators will be inconvenienced by the proposed operating schedule as it quite similar to operating regulations that have been in effect without complaint for several years.

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 Austin Pratt, Chief, Bridge Section, at (206) 220–7282.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule will not result in such 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 Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed 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 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.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe this proposed rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph 32(e) of the Instruction, an "Environmental Analysis Checklist" and a "Categorical Exclusion Determination" are not required for this rule. However, comments on this section will be considered before the final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 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. Revise § 177.899 to read as follows:

§ 117.899 Youngs Bay and Lewis and Clark River.

(a) The draw of the US101 (New Youngs Bay) highway bridge, mile 0.7 across Youngs Bay at Smith Point shall open on signal for the passage of vessels if notice is given at least one half-hour in advance to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday and from 8 a.m. to 4 p.m. on Saturday and Sunday. At all other times, including all federal holidays except Columbus Day, notice is required by telephone at least two hours in advance. The opening signal shall be two prolonged blasts followed by one short blast.

(b) The draw of the Oregon State (Old Youngs Bay) highway bridge, mile 2.4, across Youngs Bay at the foot of Fifth Street, shall open on signal for the

passage of vessels if notice is given at least one half-hour in advance to the drawtender at the Lewis and Clark River Bridge by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday and from 8 a.m. to 4 p.m. Saturday and Sunday. At all other times, including all federal holidays except Columbus Day, notice is required by telephone at least two hours in advance. The opening signal is two prolonged blasts followed by one short blast.

(c) The draw of the Oregon State (Lewis and Clark River) highway bridge, mile 1.0, across the Lewis and Clark River, shall open on signal for the passage of vessels if notice is given at least one half-hour in advance by marine radio, telephone, or other suitable means from 7 a.m. to 5 p.m. Monday through Friday and from 8 a.m. to 4 p.m. on Saturday and Sunday. At all other times, including all federal holidays except Columbus Day, notice is required by telephone at least two hours in advance. The opening signal is one prolonged blast followed by four short blasts.

Dated: October 13, 2006.

R.R. Houck,

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

[FR Doc. E6–17971 Filed 10–26–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 483

[CMS–3191–P]

RIN 0938–AN79

Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require all long term care facilities to be equipped with sprinkler systems. This proposed rule especially requests public comments on the duration of a phase-in period to allow long term care facilities to install such systems.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 26, 2006.

ADDRESSES: In commenting, please refer to file code CMS-3191-P. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3191-P, P.O. Box 8012, Baltimore, MD 21244-8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3191-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 1244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's

paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Danielle Shearer, (410) 786-6617; James Merrill, (410) 786-6998; Jeannie Miller, (410) 786-3164; or Rachael Weinstein, (410) 786-6775.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-3191-P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

[If you choose to comment on issues in this section, please indicate the caption "Background" at the beginning of your comment.]

The Life Safety Code (LSC), published by the National Fire Protection Association (NFPA), a private, nonprofit organization dedicated to reducing loss of life due to fire, is a compilation of fire safety requirements. The LSC contains fire safety requirements for both new and existing buildings. It is updated through a consensus process and generally published every 3 years. Sections 1819(d)(2) and 1919(d)(2) of the Social Security Act (the Act) require

that long term care facilities participating in the Medicare and Medicaid programs meet the provisions of the edition of the LSC that is adopted by the Secretary.

Beginning with the adoption of the 1967 edition of the LSC in 1971, Medicare and Medicaid regulations have historically incorporated the LSC requirements by reference for all long term care facilities as well as other providers, while providing the opportunity for a Secretarial waiver of a requirement under certain circumstances. The statutory basis for incorporating NFPA's LSC for our other providers is under the Secretary's general rulemaking authority at sections 1102 and 1871 of the Act, and under provider-specific provisions of title XVIII that permit us to issue regulations to protect the health and safety of participants in Medicare and Medicaid. We adopted the LSC to ensure that patients and residents are consistently protected from fire, regardless of the location in which they receive care. Since adopting and enforcing the 1967 and subsequent editions of the LSC, there has been a significant decline in the number of multiple death fires, indicating that the LSC has been effective in improving fire safety in health care facilities.

On October 26, 2001, we published a proposed rule (66 FR 54179), and on January 10, 2003, we published a final rule in the **Federal Register**, entitled "Fire Safety Requirements for Certain Health Care Facilities" (68 FR 1374). In that final rule, we adopted the 2000 edition of the LSC provisions as the standard governing Medicare and Medicaid health care facilities, including long term care facilities. The final rule required all existing long term care facilities to comply with the 2000 edition of the LSC.

The 2000 edition of the LSC required all newly constructed buildings containing health care facilities to have an automatic sprinkler system installed throughout the building. However, like all previous editions, the LSC did not require existing buildings to install automatic sprinkler systems throughout if they met certain construction standards, ranging from the size of the buildings to the types of material used in their construction.

In accordance with the 2000 edition of the LSC, an existing building that meets the above-mentioned construction standards must install sprinklers if it undergoes a major renovation. However, in such cases, it is only required to install sprinklers in the renovated section(s). Therefore, a building may only be sprinklered on one floor or one

wing. We did not receive any timely public comments in response to the October 2001 proposed rule that addressed the issue of installing automatic sprinkler systems in buildings not undergoing major renovations. That is to say, no public comments supported, questioned or challenged our proposal to incorporate this LSC provision by reference.

[If you choose to comment on issues in this section, please include the caption "GAO Report" at the beginning of your comments.]

A recent Government Accountability Office (GAO) report entitled "Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight" (GAO-04-660, July 16, 2004, <http://www.gao.gov/new.items/d04660.pdf>) examined two long term care facility fires (Hartford and Nashville) in 2003 that resulted in 31 total resident deaths. The report examined Federal fire safety standards and enforcement procedures, as well as results from the fire investigations of these two incidents. The report recommended that fire safety standards for unsprinklered facilities be strengthened and cited sprinklers as the single most effective fire protection feature for long term care facilities.

In response to a recommendation made in the GAO report, on March 25, 2005, we published an interim final rule with comment period in the **Federal Register** entitled, "Fire Safety Requirements for Certain Health Care Facilities; Amendment" (70 FR 15229). This interim final rule added paragraph (a)(7) to § 483.70, to require long term care facilities, at minimum, to install battery-operated smoke detectors in resident sleeping rooms and public areas, unless they have a hard-wired smoke detector system in resident rooms and public areas or a sprinkler system installed throughout the facility. Numerous public comments regarding this regulation indicated that the proper term for the fire safety device we described is "smoke alarms" rather than "smoke detectors." Therefore, we will refer to these fire safety devices as "smoke alarms." The final rule "Fire Safety Requirements for Certain Health Care Facilities; Amendment" also will reflect this terminology change.

Paragraph (a)(7) would be rendered moot by this proposed rule because all facilities would be required to have sprinklers throughout their buildings and would thus fall under one of the two exceptions noted above. For this reason, we are proposing to add a sunset provision to paragraph (a)(7). The sunset date for proposed paragraph (a)(7)(iv) in § 483.70 would correspond to the phase-

in date of the sprinkler requirement. For example, if all facilities were required to have sprinklers installed throughout their buildings by March 25, 2016, then the sunset date of the smoke alarms requirement in paragraph (a)(7)(iv) would be March 25, 2016. We believe this would reduce burden and confusion for long term care providers.

[If you choose to comment on issues in this section, please include the caption "Current Fire Safety Status" at the beginning of your comments.]

Structural fires in long term care facilities are relatively common events. From 1994 to 1999, an average of 2,300 long term care facilities reported a structural fire each year (2004 GAO Report). Although there were approximately 2,300 fires in long term care facilities per year, those fires only resulted in an average of 5 fatalities nationwide per year (2004 GAO Report). The likelihood of a fatality occurring due to a long term care facility fire was quite low.

The likelihood of a high number of fatalities occurring due to a long term care facility fire was even lower. From 1990 to 2002, there were no major long term care facility fires that resulted in a high number of fatalities. The long term care facility fires that did occur during this time period either did not result in fatalities or resulted in one or two fatalities. For 12 years, there simply were no major fires in long term care facilities that could begin to compare to the loss of life caused by the Hartford and Nashville fires.

We believe that the low number of fire-related fatalities each year is attributable to the increasing use of automatic sprinkler systems in long term care facilities as a fire protection method. State and local jurisdictions often adopt new editions of the LSC when they are published. Therefore, a building constructed in 1991 likely met the requirements of the 1991 edition of the LSC. Beginning with the 1991 edition of the LSC, all newly built facilities were required to have automatic sprinkler systems. In addition, beginning with the 1991 edition of the LSC, all facilities undergoing major renovations were also required by the LSC to install automatic sprinkler systems at least in those renovated areas. Therefore, as new facilities have replaced old facilities, and as facilities have been renovated, the number of residents protected by automatic sprinkler systems has increased. The increase in the number of automatic sprinkler systems and the number of residents residing in sprinklered buildings significantly has

decreased the likelihood of a fatality occurring due to fire.

According to NFPA data cited in the 2004 GAO report, there is an 82 percent reduction in the chance of death occurring in a sprinklered building when compared to the chance of death occurring in an unsprinklered building. In addition, we note that there has never been a multiple death fire in a long term care facility that had an automatic sprinkler system installed throughout the facility.

Automatic sprinkler systems are effective in reducing the risk of fatalities due to fire because they limit the size of a developing fire and prevent the fire from growing and spreading beyond the area where the fire ignited. Limiting the size of a fire and preventing it from growing and spreading results in a smaller number of individuals who are threatened by the fire. In addition, impeding the fire's growth gives the facility staff and residents and the local fire department more time to respond to the situation.

Automatic fire suppression through sprinklers also alleviates some of the current heavy reliance on facility staff to implement the facility's emergency plan. Fires often occur at night, as both the Hartford and Tennessee fires did, when staffing levels are lowest. Investigators of the Hartford fire determined that the facility's staff did not fully implement the facility's emergency plan, and that may have contributed to the number of fatalities in that fire. The 2004 GAO report concluded that, "reliance on staff response as a key component of fire protection may not always be realistic, particularly in an unsprinklered facility." Limiting the area of a building affected by a fire may result in less of a need to evacuate or relocate residents, thus eliminating some of the heavy reliance on facility staff response.

The effectiveness of automatic sprinkler systems has prompted some States, including Virginia, Connecticut, and Tennessee, to require that all long term care facilities have sprinklers. The NFPA also requires all long term care facilities to have automatic sprinkler systems as part of the 2006 edition of the LSC. The American Health Care Association (AHCA), one of the largest long term care facility provider organizations, supports installing sprinkler systems in all long term care facilities, and worked with the NFPA on the provisions of the 2006 LSC.

[If you choose to comment on issues in this section, please include the caption "CMS Action" at the beginning of your comments.]

We support the NFPA in its decision to include an automatic sprinkler system requirement for all long term care facilities in the 2006 edition of the LSC. We have decided to proceed with this rule, without adopting the NFPA 2006 edition of the LSC, because we want to avoid further delay in requiring an automatic sprinkler system in long term care facilities. As the 2003 fires demonstrated, there is a significant need to improve fire safety in long term care facilities in a timely manner. To adopt the 2006 edition of the LSC, we are required to go through notice and comment rulemaking. In addition to the time that it takes to carefully analyze the LSC in its entirety, the rulemaking process itself is a time-consuming process that, even in the best case scenario, takes 18 months to complete. Given the large scope of the LSC, it is probable that it would take even longer to complete the full rulemaking process. Therefore, it is probable that we would not be able to adopt and enforce compliance with the 2006 edition of the LSC until 2008 or 2009. In addition, the 2008 or 2009 publication date of a final rule would simply begin a probable phase-in period, which could be anywhere from 3 to 10 additional years. We believe that delaying the rulemaking process would be a disservice to all long term care facility residents who reside in buildings that do not have sprinklers. Therefore, we have decided at this time to proceed with rulemaking that does not include adoption of the NFPA 2006 LSC.

We will continue to work with the NFPA to revise and refine each edition of the LSC. We are currently examining the 2006 edition of the LSC in its entirety and exploring the possibility of adopting it for all Medicare and Medicaid participating health care facilities. We are soliciting public comment about our decision to proceed with rulemaking separate from the 2006 LSC. In addition, we may make changes to this sprinkler rule according to public comments that we receive that are related to the sprinkler requirements in the NFPA 2006 edition of the LSC.

We are also soliciting public comment regarding our decision to regulate the installation of automatic sprinkler systems through Federal rulemaking rather than deferring to State and local jurisdictions. There has been discussion within the larger long term care community about the advantages and disadvantages of Federal, State and local regulation in this area. In particular, we would like public comments regarding the necessity, advantages, and disadvantages of this Federal regulation requiring sprinklers. We would also like

public comments regarding the necessity, advantages, and disadvantages of deferring to State and local jurisdictions.

II. Provisions of the Proposed Regulations

For the reasons described in section I of this preamble, we are proposing a rule with three main components. First, the regulation proposes to add a sunset provision to paragraph (a)(7) in § 484.70 that would correspond to the phase-in date of the sprinkler requirement. This sunset provision would provide that, as of the phase-in date, we would no longer enforce the requirement that facilities have and maintain at least battery-operated smoke alarms. Second, this regulation proposes to require every long term care facility to install an approved, supervised automatic sprinkler system in accordance with the 1999 edition of NFPA 13, *Standard for the Installation of Sprinkler Systems*, throughout the facility if it does not have such a system already. Third, the regulation proposes to require every long term care facility to test, inspect, and maintain an approved, supervised automatic sprinkler system in accordance with the 1998 edition of NFPA 25, *Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems*.

The proposed requirements of this regulation include three technical terms: “approved,” “automatic,” and “supervised.” These terms are terms of art in the fire safety community and are included in NFPA 101, *Life Safety Code*, with which long term care facilities must already comply. There may be, however, individuals who are not familiar with the terms. Their definitions are as follows:

- *Approved* means acceptable to the authority having jurisdiction.
- *Automatic* means that which provides a function without the necessity of human intervention.
- *Supervised* means that the system and particular components of the system are monitored by a device with auditory and visual signals that are capable of alerting facility staff should the system or one of its components become inoperable for any reason.

The following section describes each of the main components.

A. Sunset Provision

[If you choose to comment on issues in this section, please include the caption “Sunset Provision” at the beginning of your comments.]

We are proposing in § 483.70(a)(7)(iv) to add a sunset provision for smoke alarms that would correspond to the

phase-in date of the sprinkler installation requirement. We are proposing to add this provision because otherwise paragraph (a)(7) would be rendered moot by this proposed rule. Paragraph (a)(7) requires long term care facilities to have at least battery-operated smoke alarms in resident rooms and common areas. Facilities that are fully sprinklered in accordance with NFPA 13 are exempt from the smoke alarm requirement. Once all facilities install sprinkler systems in accordance with the 1999 edition of NFPA 13, as we are proposing to require, all facilities would be exempt from the requirements of paragraph (a)(7). We believe that it is proper to state, in regulation, that the smoke alarm requirement would cease to be effective upon the phase-in date of the sprinkler requirement. Therefore, we propose to add a sunset provision to the smoke alarm requirement.

B. Installation

[If you choose to comment on issues in this section, please include the caption “Installation” at the beginning of your comments.]

We are proposing in § 483.70(a)(8)(i) to require long term care facilities to install approved, supervised automatic sprinkler systems throughout their facilities in accordance with NFPA 13, *Standard for the Installation of Sprinkler Systems* (which we would incorporate by reference). If a long term care facility was part of another building, such as a hospital, then the building would be required only to have sprinklers in the long term care facility section. The NFPA 13 specifies how to properly design and install sprinkler systems using the proper components. The standards of NFPA 13 cover a wide variety of factors that are involved in designing and installing sprinkler systems. The NFPA 13 is divided into 10 main chapters governing the design and installation phases of automatic sprinkler systems. They are as follows:

- General Information.
- Classification of Occupancies and Commodities.
- System Components and Hardware.
- System Requirements.
- Installation Requirements.
- Hanging, Bracing, and Restraint of System Piping.
- Design Approaches.
- Plans and Calculations.
- Water Supplies.
- System Acceptance.

The NFPA 13 is a very detailed document, with a wide variety of standards and exceptions to those standards. The document provides many options for the design and installation of sprinkler systems so that

each system may be tailored to the building in which it is installed. It is not practical to discuss each and every standard of NFPA 13 in this proposed rule. The technical standards of NFPA 13, along with helpful background and explanatory text, are in the *Automatic Sprinkler System Handbook*, published by the National Fire Protection Association (8th edition. Puchovsky, Milosh T., Ed.; 1999, Quincy, MA). The *Automatic Sprinkler System Handbook* contains more than 1,000 pages of information and provides far more information than this proposed rule. Therefore, the following section will only briefly discuss the general content of each design and installation-related chapter of NFPA 13, to provide an overview of the factors that facilities would be required to address when designing and installing an automatic sprinkler system.

Chapter 1, General Information, discusses four separate areas. First, it describes the scope of NFPA 13. According to the *Automatic Sprinkler System Handbook*, NFPA 13 provides the minimum requirements for sprinkler systems to operate during a fire. These requirements focus on the design and installation of sprinkler systems that use automatic or open sprinklers that discharge water to suppress or control a fire.

Second, chapter 1 describes the purpose of NFPA 13. The NFPA 13 focuses on the technical aspects of the design and installation of sprinkler systems in order to standardize these areas "based on sound engineering principles, test data, and field experience." The purpose of NFPA 13 is to ensure through standardization that sprinkler systems, when designed and installed in buildings, are designed, assembled, and installed in a safe and effective manner using the correct materials (for instance, pipes) and information (for instance, system diagrams).

Third, chapter 1 defines important terms that are used throughout the document. Frequently, the terms used in NFPA 13 are specific to sprinkler systems, and their definitions may not be available in other resources. To avoid any possible confusion, NFPA 13 provides an inclusive list of terms and their definitions as they apply to sprinkler systems. This list is one way in which NFPA 13 standardizes sprinkler system requirements.

Finally, chapter 1 addresses the level of protection that sprinkler systems are expected to provide. Chapter 1-6.1 states that, "[a] building, where protected by an automatic sprinkler system installation, shall be provided

with sprinklers in all areas." The success of a sprinkler system depends, in large part, on how large a fire is when it first begins and the initial sprinklers are activated. If a fire begins in a sprinklered area, then the sprinklers would quickly be activated, spraying water on the fire and surrounding areas. These procedures would prevent the fire from expanding and would therefore protect the occupants of the building. Conversely, if a fire begins in one part of a building where there are no sprinklers, then it would be allowed to grow due to the lack of sprinklers. Once the fire reached an area with sprinklers, the fire would likely be too large for the sprinklers to control. Sprinkler systems are not intended to prevent a fire in an unsprinklered area from spreading to a sprinklered area. Therefore, NFPA 13 requires that sprinklers be installed throughout a building. If there is a 2-hour fire wall separating the section of a building that contains a long term care facility from the rest of the building, then the long term care facility section is considered to be its own building. This means that we require only the long term care facility section to have sprinklers installed throughout. If there is no 2-hour fire wall separating the long term care facility from the rest of the building, then the long term care facility could choose to install a 2-hour fire wall separation or sprinkler the entire building.

Chapter 2, Classification of Occupancies and Commodities, is divided into two sections, one for occupancies and the other for commodities. Sprinkler systems are designed using a variety of methods and components within the requirements of NFPA 13. The choice of design method and components is based on how the building is used. Chapter 2 identifies the general occupancies and their fire risk levels. It also identifies the many different types of items that are stored in buildings. These broad classifications of occupancies and commodities enable sprinkler system designers to tailor the systems to the particular fire safety needs of each building. The classifications also help ensure that all buildings, regardless of their differences, are fully protected by appropriate sprinkler systems.

Chapter 3, System Components and Hardware, contains the general requirements for the pieces that are used to create a sprinkler system. First and foremost, NFPA 13 requires that the system components be listed. This provision requires that the components used to build a sprinkler system be on a list published by an organization that periodically inspects the products on

the list. The list states that the component meets appropriate designated standards or has been tested and found suitable for a specific purpose. Using listed components helps ensure that the components, and thus the system, are effective and reliable in the event of a fire.

This chapter also covers the basic requirements for sprinkler system components. It requires that sprinklers have certain specified discharge and temperature characteristics. The chapter also requires that facilities maintain a sufficient number of replacement sprinklers for each type of sprinkler used in the facility. In addition to being properly maintained, sprinklers may need to be replaced. It is important that a facility have enough sprinklers in its possession in order to replace any sprinklers immediately, so as not to compromise the effectiveness and reliability of the entire system in the event of a fire.

Chapter 3 also contains requirements for escutcheon plates, guards, shields, aboveground pipes and tubes, underground pipes, fittings, joinings, hangers, valves, fire department connections, waterflow alarms, and any coatings that are on system components. All of the requirements included in chapter 3 of NFPA 13 exist to ensure that the components used to construct sprinkler systems will operate as needed in the event of a fire. Some of the above listed components, such as pipes, are also addressed in other chapters of NFPA 13.

Chapter 4, System Requirements, is divided into requirements for the different types of sprinkler systems that may be used in a facility. The two main categories of sprinkler systems are wet and dry pipe systems. Wet pipe systems are, in the most general terms, systems in which the pipes contain water. When the heat from a fire triggers the sprinklers, the water is immediately discharged. Dry pipe systems are filled with air or nitrogen, rather than water. When the air or nitrogen is released, the water flows into the pipes and out through the sprinklers. Within these two broad sprinkler system categories, each of which provides an equal level of fire protection, NFPA 13 addressed many variations that sprinkler system designers may use to address the needs of a particular building. The NFPA 13 leaves the choice of which system type and variation to use for each building to the sprinkler system designer. This flexibility helps ensure that the sprinkler system fully addresses the unique needs of the building and its occupants, thereby ensuring that the

building is optimally protected by its sprinkler system.

Chapter 5, Installation Requirements, contains the requirements for the normal arrangement of sprinkler system components. The actual layout of a specific sprinkler system may differ from the normal layout described in this chapter of NFPA 13 based on the available water supply, type of sprinkler, building construction features, and other considerations. However, the basic layout principles of this chapter, such as the position and location of sprinklers and valves, would still apply. Chapter 5 helps ensure that facilities are adequately protected by providing the minimum and maximum limits for sprinkler system components. Within this minimum-maximum range, system designers have the flexibility to address the fire-safety needs of each facility.

This chapter includes the specific requirements for the many different types of sprinklers. It covers sprinklers ranging from standard pendent and upright spray sprinklers to early suppression fast-response sprinklers. Each sprinkler type has advantages and disadvantages depending on the circumstances under which it is used. The sprinkler type that may be appropriate for one facility may not be appropriate for another. Therefore, NFPA 13 includes requirements for all sprinkler types so that sprinkler system designers have the flexibility to properly utilize the right sprinkler type for the job.

This chapter also includes requirements for specialized facilities, such as those that store flammable and combustible materials. These requirements would not pertain to long term care facilities because health care occupancies are considered to be light hazards. As described in chapter 5, light hazard buildings are not included in the specialized facilities.

Chapter 6, Hanging, Bracing, and Restraint of System Piping, contains the requirements for the structural issues that are related to installing sprinkler piping systems. It identifies acceptable types of hangers, how those hangers are installed, how fire main joints are restrained, and how pipes are protected in areas where earthquakes occur. It is important to ensure that sprinkler system components are properly hung. If they are improperly hung, then they may randomly fall down and injure someone. In addition, improperly hung components may fall under the pressure of water flowing through them during a fire situation, thus disabling the sprinkler system and allowing the fire to grow.

Chapter 7, Design Approaches, addresses the minimum amount of water necessary to effectively control or suppress a fire. This chapter requires that water demands will be determined using the occupancy hazard fire control approach and permits special design approaches to allow for the use of non-standard components such as early suppression fast-response sprinklers. Facilities are required to ensure that there is a sufficient amount of water to control or suppress a fire.

Chapter 8, Plans and Calculations, is an extension of chapter 7 that focuses on the specific methodologies that can be used to calculate and verify a sprinkler system's hydraulic demand and its available water supply. Properly calculating these values is a crucial step in ensuring that the system has adequate pressure and water to control or suppress a fire. If a value is not properly calculated and, for example, there is not enough water available for a sprinkler system to fully control a fire, then the fire would be allowed to grow and spread to other areas. The growth of the fire would jeopardize the safety of the building's occupants.

This chapter also requires that preliminary sprinkler system plans be submitted for review to the authority having jurisdiction for several reasons. First, submitting the plans before construction begins would help ensure that the plans meet all requirements, thus avoiding changes at a later date. Also, submitting the plans for review may help ensure that there are no errors. A person who is not familiar with the plan brings a fresh perspective and may be able to more easily spot errors. Finally, submitting plans early helps to avoid misunderstandings. It is often difficult to verbally describe how a system would be constructed and how it would function. A visual layout, which is already required by most authorities having jurisdiction, would aid in communication and understanding between all parties, including the designer, the authority having jurisdiction, and the construction personnel.

Chapter 9, Water Supplies, further expands on the areas that are related to ensuring that a sprinkler system has adequate water to control or suppress a fire. It addresses situations where a facility may not have an adequate municipal water supply. Facilities may need to install a pump to increase water pressure and a tank to store extra water to compensate for an inadequate municipal supply. This chapter includes the requirements that these additional components would need to

meet and addresses their proper use in a sprinkler system.

Chapter 10, Systems Acceptance, requires that sprinkler systems, once constructed, be tested. System testing is done in order to verify that the basic requirements of all of the previous chapters of NFPA 13 are satisfied, that the construction of the system is satisfactory, and that the system performs as intended. During a system test, facilities are required to examine pipes, pipe joints, alarms, and other components to ensure that they are properly installed and that they are in working order.

We would require that all long term care facilities that do not already have an automatic sprinkler system installed throughout the building install such a system in accordance with all of the requirements NFPA 13, including but not exclusive to those described above.

C. Phase-In

[If you choose to comment on issues in this section, please include the caption "Phase-in" at the beginning of your comments.]

We are soliciting public comment regarding an appropriate phase-in timeframe for the installation of an automatic sprinkler system. Such a timeframe should provide for this additional fire protection feature as quickly as possible without undue burden on long term care facilities.

We are soliciting public comment regarding a phase-in period for this requirement because we believe that it would require a substantial amount of time for a facility to plan and install an automatic sprinkler system. A facility would likely decide to use the services of a fire safety consultant to design a system that met its needs. Simply securing these services could be a time-consuming process. In addition, a facility would probably need to reallocate its resources and possibly secure additional capital resources to implement this requirement. This part of the preparation would also take a substantial amount of time to complete. After preparing for the installation, a facility would actually have to install the system. Installation may require removing ceilings, cutting walls, and numerous other construction tasks. Installation may also require temporarily relocating residents, either within the facility or to another facility, while the sprinkler system was being installed. We believe that most facilities would choose to install sprinklers in their existing facility, and would therefore go through this preparation and implementation process.

However, there may be some facilities that choose to relocate to a building that already has a sprinkler system installed throughout the building. These facilities may have planned to relocate to another building for reasons unrelated to the proposed sprinkler requirement. The decision to move, however, may be prompted by the proposed requirements. For some facilities it may be easier to move rather than to install such a system in their current location. Locating, purchasing or constructing, and moving a facility would be a lengthy process. A phase-in period, we believe, would allow facilities that choose to relocate to a sprinklered building the chance to do so instead of installing sprinklers in an existing building.

Given these considerations, we believe that requiring a long term care facility to install an automatic sprinkler system throughout its building requires a phase-in period. We would encourage facilities that were able to install an automatic sprinkler system to do so as soon as possible, rather than delay the project until the effective date of a phase-in period drew near.

D. Maintenance

[If you choose to comment on issues in this section, please include the caption "Maintenance" at the beginning of your comments.]

We are proposing in § 483.70(a)(8)(ii) to require that all long term care facilities test, inspect, and maintain an approved, supervised automatic sprinkler system in accordance with the 1998 edition of NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*, which we propose to incorporate by reference. Proper inspections, tests, and maintenance of sprinkler systems are critical to ensuring that sprinkler systems function properly on a continuous basis. Fires are, by nature, unpredictable, and sprinkler systems must be operable at all times to ensure that buildings are protected whenever and wherever fires occur.

National Fire Protection Association 25 covers a wide variety of testing, inspection, and maintenance requirements for the numerous types of sprinkler systems that facilities may install and the auxiliary equipment that may be necessary for some facilities. The general contents of the chapters of NFPA 25 are as follows: Chapter 1, General Information, describes the scope of the document; describes and defines key ideas and terms; requires that facilities maintain records of inspections, tests, and maintenance activities; establishes who is responsible

for ensuring that all inspection, testing, and maintenance duties are performed; and requires that all inspection, testing, and maintenance activities be conducted in a safe manner.

- Chapters 2, Sprinkler Systems; 3, Standpipe and Hose Systems; 7, Water Spray Fixed Systems; and 8, Foam-Water Sprinkler Systems, address the specific inspection, testing, and maintenance requirements for the different types of sprinkler systems that facilities may use, based upon their needs and circumstances.

- Chapter 9, Valves, Valve Components, and Trim, focuses on the inspection, testing, and maintenance of the valves, valve components, and trim that are used to construct these systems.

- Chapters 4, Private Fire Service Mains; 5, Fire Pumps, and 6, Water Storage Tanks, address the inspection, testing, and maintenance requirements for auxiliary equipment that may be necessary for a particular facility.

- Chapter 10, Obstruction Investigation, provides the minimum requirements for conducting investigations of possible sources of materials that can block pipes and prevent them from operating properly.

- Chapter 11, Impairments, assures that adequate measures are taken when a sprinkler system is wholly or partially shutdown, either on an emergency or preplanned basis, to ensure that increased fire safety risks are minimized and that the shutdown is as short in duration as possible.

- Chapter 12, Referenced Publications, provides a list of other NFPA publications that are referred to within NFPA 25.

Facilities would be required by this proposed rule to comply with all applicable chapters of NFPA 25 once they had installed their sprinkler systems in accordance with the requirements of NFPA 13.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.

- The accuracy of our estimate of the information collection burden.

- The quality, utility, and clarity of the information to be collected.

- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

In summary, § 483.70(a)(8)(ii) requires that all long term care facilities test, inspect, and maintain an approved, supervised automatic sprinkler system in accordance with the 1998 edition of NFPA 25, *Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems*. This section states that facilities would be required by this proposed rule to comply with all applicable chapters of NFPA 25 once they have installed their sprinkler systems in accordance with the requirements of NFPA 13.

We believe that facilities would utilize the services of a contractor for all inspection, testing, and maintenance activities, including documentation of those activities. Therefore, no burden would be associated with the development of the documentation. There would, however, be a burden associated with the time and effort required by facilities to maintain documentation of inspections, tests, and maintenance activities in accordance with the standards outlined in the NFPA 25. This burden would be the time it takes to file the documentation.

The burden associated with these requirements is estimated to be 1 hour per long term care facility. Therefore, we estimate it would take 2,462 total annual hours (1 hour × 2,462 estimated affected long term care facilities) to satisfy this burden.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Bill Parham, CMS-3191-P, Room C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, CMS-3191-P, Carolyn_Lovett@omb.eop.gov fax (202) 395-6974.

IV. Regulatory Impact Statement

[If you choose to comment on issues in this section, please indicate the caption "Regulatory Impact Statement" at the beginning of your comment.]

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). We have examined the impact of this proposed rule, and we have determined that this rule would not meet the criteria to be considered economically significant, and it would not meet the criteria for a major rule.

This determination is based on a variety of cost factors and phase-in lengths. As a brief summary, we estimate that this proposed rule would cost \$47.8 to \$69.9 million, \$73.5 to \$107.5 million, and \$107.7 to \$157.6 million annually, based on phase-in periods of 10 years, 7 years, and 5 years, respectively.

The estimated cost range for installing a sprinkler system throughout an existing building for an average size unsprinklered facility (50,000 square feet) would be \$205,000 to \$307,500, depending on the cost per square foot. The projected installation cost of this proposed requirement would account for approximately 0.4 to 0.6 percent of an average facility's actual revenue over a 10-year period, 0.6 to 0.9 percent over a 7-year period, and 0.8 to 1.2 percent over a 5-year period.

The estimated cost range for installing a sprinkler system throughout an existing building for an average size partially sprinklered facility (37,500 square feet) would be \$153,750 to \$230,625, depending on the cost per square foot. The projected installation cost of this proposed requirement would account for approximately 0.3 to 0.5

percent of an average facility's actual revenue over a 10-year period, 0.4 to 0.7 percent over a 7-year period, and 0.6 to 0.9 percent over a 5-year period.

The basis for these estimates is fully described in section IV.B.2 of this proposed rule. In that section, we estimate that 1,947 partially sprinklered facilities would, over a 10 year phase-in period, install sprinklers throughout their buildings in accordance with this proposed rule, at a cost of \$75,338 to \$416,250 per facility, based on size and installation cost variables. The average yearly installation cost for all partially sprinklered facilities would be \$37.2 million to \$54.1 million. This determination is further based on the estimate that 515 unsprinklered facilities would install sprinklers, at a cost of \$100,450 to \$615,000 per facility. The average yearly installation cost for all unsprinklered facilities would be \$10.5 million to \$15.8 million. The average yearly installation cost estimates are based on an example of a 10-year phase-in period.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. For purposes of the RFA, most entities affected by this proposed rule are considered small businesses according to the Small Business Administration's size standards, with total revenues of \$29 million or less in any 1 year (for detail, see 65 FR 69432). Individuals and States are not included in the definition of a small entity.

According to our statistics, long term care facilities, all of which would be required to have sprinkler systems throughout their buildings, earned a total of \$89.6 billion in 1999 (<http://www.cms.hhs.gov/statistics/nhe/historical/t7.asp>). According to the National Nursing Home Survey: 1999 Summary (http://www.cdc.gov/nchs/data/series/sr_13/sr13_152.pdf), there were 18,000 nursing facilities in operation at that time.

(Note: In the following paragraph the terms "average facility" and "small facility" are strictly based on a revenue metric. That is, the terms only describe the amount of revenue that facilities would have.)

Long term care facilities vary in a number of ways, ranging from the number of residents to the predominant source of payment for those residences. For the purposes of our general analysis,

we chose to assess the financial impact of this proposed rule on an average (median) facility and a much smaller facility (50 percent below the median). An average facility had approximately \$4,977,778 in revenue in 1999. A facility with revenue 50 percent below this average earned \$2,488,889. For example, over a 5-year, 7-year, and 10-year period, an average facility would earn \$24,888,890, \$34,844,446, and \$49,777,780, respectively. The small facility would earn \$12,444,445, \$17,422,223, and \$24,888,890 over those same time periods.

The projected cost of this proposed requirement would account for 0.8 to 1.2 percent of a typical small facility's actual revenue over the 5-year example period, 0.5 to 0.9 percent of such facility's actual revenue over the 7-year example period, or 0.4 to 0.7 percent of such facility's actual revenue over the 10-year example period. We are assuming that a small facility's square footage was 50 percent less than an average facility's square footage because there is a strong correlation between the size of a facility, as reflected by the number of resident beds it has, and the facility's revenue level. We believe that, given these estimates, this proposed rule would not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

We know that 8.41 percent of long term care facilities, 1,514 nationwide, are located in hospitals, but we do not know how many of those hospitals are small rural hospitals. As described in section IV.B.2 of this proposed rule, 75.89 percent of long term care facilities nationwide report that they are fully sprinklered. An additional 15.2 percent report that they are partially sprinklered, 4.14 percent report that they are not sprinklered, and 4.77 percent did not report any information about sprinklers. From this information, we estimate that, of the 1,514 long term care facilities located in hospitals, 1,204 are fully sprinklered, 241 are partially sprinklered, and 69 are not sprinklered. We assume that long term care facilities that are located in small rural hospitals are small as well.

For a small unsprinklered facility with less than 50 resident beds, we

estimate that purchasing and installing sprinklers would cost \$100,450 (at \$4.10 per square foot), \$134,750 (at \$5.50 per square foot), or \$150,675 (at \$6.15 per square foot). If the small unsprinklered facility met the revenue criteria for a smaller facility as described above, then the projected cost of this proposed requirement would account for 0.8 to 1.2 percent of the facility's revenue over the 5-year example period, 0.5 to 0.9 percent of the facility's revenue over the 7-year example period, or 0.4 to 0.7 percent of the facility's revenue over the 10-year example period.

For a small partially sprinklered facility with less than 50 resident beds, we estimate that purchasing and installing sprinklers would cost \$75,338 (at \$4.10 per square foot), \$101,063 (at \$5.50 per square foot), or \$113,006 (at \$6.15 per square foot). If the small partially sprinklered facility met the revenue criteria for a smaller facility as described above, then the projected cost of this proposed requirement would account for 0.7 to 0.9 percent of the facility's revenue over the 5-year example period, 0.4 to 0.6 percent of the facility's revenue over the 7-year example period, or 0.3 to 0.5 percent of the facility's revenue over the 10-year example period.

Therefore, we believe that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This proposed rule would not have an effect on State, local, or tribal governments because we do not propose to require State, local, or tribal governments to take any action. Based on our example of a 10-year phase-in period, we estimate that the private sector costs of this proposed regulation would be \$47.8 million to \$69.9 million in any 1 year for installation and an additional \$1,019 per facility for maintenance. After the initial installation period, we estimate that the private sector costs of this proposed regulation would \$2,508,778 annually for maintenance. This estimate would not approach the \$110 million threshold; therefore, this section does not assess the anticipated costs and benefits as required by section 202 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed regulation would not have any Federalism implications.

B. Anticipated Effects

1. Benefits

Decreasing Loss of Life

We believe that installing an approved, supervised automatic sprinkler system in accordance with NFPA 13, *Standard for the Installation of Sprinkler Systems*, throughout a long term care facility would have a positive impact on resident safety. According to the July 2004 GAO report discussed above, installing sprinklers decreases the chances of fire-related deaths by 82 percent. In unsprinklered facilities, there are 10.8 deaths per 1,000 fires. In sprinklered facilities, there are 1.9 deaths per 1,000 fires.

The 2003 fires in Hartford and Nashville resulted in more fire related deaths (31) than there were for several previous years combined. Both of these fires occurred in unsprinklered buildings. If sprinklers had been installed in these facilities, and if they were properly maintained, we estimate that 82 percent of those fire-related deaths may have been prevented, based on an 82 percent reduction in the chances of death occurring in a sprinklered facility. We estimate that, based on this reduction, 25 (82 percent of 31 deaths = 25) lives could have been saved by sprinklers in these two fires, or 13 lives in the Hartford fire and 12 lives in the Nashville fire.

In 1997, the average age at admission for long term care facility residents was 82.6 years, and 51 percent of long term care facility residents were 85 years of age or older (*The Changing Profile of Nursing Home Residents: 1985-1997*. Sahyoun NR, Pratt LA, Lentzner H, Dey A, Robinson KN. Aging Trends; No. 4. National Center for Health Statistics. Hyattsville, MD; 2001). These numbers reflect the overall demographic trend in long term care facilities toward an older patient population. For the purposes of our analysis, we assume that the average age of long term care facility residents is 85. Also in 1997, the life expectancy for an individual at age 85 was 6.3 years (*Older Americans 2000: Key Indicators of Well-Being*. Federal Interagency Forum on Aging-Related Statistics. <http://www.agingstats.gov/>

chartbook2000/tables-healthstatus.html). This means that an 85-year-old long term care facility resident could expect to live an average of 6.3 more years.

Based on the assumption that the average age of long term care facility residents is 85 with a life expectancy at age 85 of 6.3 years, we estimate that sprinklers in these two fires would have added 157.5 life years (25 lives saved × 6.3 life years per life saved).

While the number of deaths in these two fires is not typical of the number of fire-related deaths in long term care facilities as a whole, we believe that they should still be taken into consideration when discussing the impact on the general long term care facility resident population.

In a typical year from 1994 through 1999, about 2,300 long term care facilities report structural fires (July 2004 GAO report). For the purposes of our analysis, we estimate that 3,688 long term care facilities currently do not have sprinklers installed throughout the buildings. (See section IV.B.2. of this proposed rule).

We estimate that 25 percent (575) of the 2,300 facilities that reported fires did not have sprinklers installed throughout their buildings. This estimate is based on the results of the 2004 GAO report and a nationwide survey of long term care facilities as described in section IV.B.2 of this proposed rule.

Based on the rate of 10.8 deaths per 1,000 unsprinklered facility fires, we estimate that 6 deaths occurred in 575 fires in unsprinklered facilities annually. (575 facilities = 57.5 percent of 1,000 facilities; 57.5 percent of 10.8 deaths = 6 deaths). This estimate differs slightly from the average number of deaths (5) that occurred due to long term care facility fires, as presented in the July 2004 GAO report, because this estimate predicts the number of deaths that should statistically occur, based on established percentages, rather than the average number of deaths that occurred annually in the past. This estimate is prospective, whereas the 2004 GAO figure is retrospective.

If these unsprinklered or partially sprinklered facilities install sprinklers throughout their buildings and those sprinklers are properly maintained, then we estimate that there would be 1 death (57.5 percent × 1.9 deaths per 1,000 sprinklered facility fires = 1) in those same 575 facilities. Installing sprinklers in unsprinklered buildings would, based on these estimates, save 5 lives annually.

TABLE 1.—ESTIMATED ANNUAL FIRE DEATHS

Number of estimated annual fire-related deaths in unsprinklered long term care facilities	Number of estimated annual fire-related deaths if those facilities were sprinklered	Number of estimated annual lives saved by sprinklers
6	1	5

Given the estimate described above that installing and maintaining sprinkler systems in existing long term care facilities would save 5 lives annually, we estimate that sprinklers would save 31.5 life years annually (5 lives saved × 6.3 years gained per life).

TABLE 2.—LIFE YEARS

Number of life years gained per life saved	Number of life years gained annually
6.3	31.5

There are a wide variety of estimates regarding the statistical value of a quality-adjusted life year. That is, there are numerous studies that attempt to quantify how much individuals and society are willing to pay to gain a single, quality year of life, known as a quality-adjusted life year. These studies, using one or more of four different methodologies, have estimated that individuals and society are willing to pay between \$50,000 and \$450,000 for a quality-adjusted life year. Due to the fact that there is no widely accepted standard value, we have refrained from estimating the statistical value of each life year that would be gained as a result of a final rule requiring sprinklers in all long term care facilities.

Decreasing Loss of Property

As a result of installing and properly maintaining sprinklers, we anticipate that facilities that experience fires would lose less property. While the amount of property damage and loss that would be prevented by installing and maintaining sprinklers is not readily quantifiable, we believe that the amount of damage prevented would be substantial and that this prevention would benefit affected long term care facilities.

Decreasing Fire Recovery Disruption and Time

In addition to losing less property due to fire, we anticipate that long term care facilities that experience fires would be able to recover more quickly with fewer disturbances to residents. Because sprinkler heads generally activate only in the area immediately near the fire source, the area that would be damaged by a fire would likely be much smaller in a sprinklered building than it would

be in a building without sprinklers, thus reducing recovery costs. In addition, by limiting the area affected by the fire, there would be fewer disturbances to residents during the recovery time. While we cannot quantify these benefits to long term care facilities and their residents, we believe that they are substantial and worth considering.

2. Costs

This proposed rule would require a long term care facility to install an approved, supervised automatic sprinkler system in accordance with NFPA 13, *Standard for the Installation of Sprinkler Systems*, throughout the building. This proposed rule would also allow long term care facilities to install automatic sprinkler systems within a phase-in period to be determined based on public comments. As described in section IV.B.2 of this proposed rule, we set forth the various contingencies, assumptions, and data sources that we used to develop our estimates. In addition, in section IV.B.2, we present our final estimates based on those contingencies, assumptions, and data sources.

Phase-In Period

We are soliciting public comment regarding the length of a phase-in period to allow long term care facilities to install sprinklers. The cost of installing sprinklers is substantial, and we do not expect long term care facilities to have \$75,000 to \$615,000, depending on the size of the area requiring sprinklers and the cost of installing sprinklers, immediately available to purchase and install sprinklers. We believe that a phase-in period would mitigate the cost of installing sprinklers by allowing facilities time to reprioritize and redistribute resources. At this time, we do not know what would be the exact length of the phase-in period.

For illustrative purposes only, we have estimated the annual costs of this proposed rule for 5-year, 7-year, and 10-year phase-in periods. While we would encourage all facilities to immediately begin the process of purchasing and installing sprinklers, we understand that some facilities would choose to wait until the very end of a phase-in period to begin this process. Therefore, we expect that the full cost of this proposed

rule would be distributed over a period of several years as facilities nationwide would likely stagger their installation schedules to meet their individual needs and circumstances.

Number and Size of Affected Facilities

We estimate that the installation provision of this proposed regulation would, over a 10-year phase-in period, impact 1,947 partially sprinklered and 515 unsprinklered long term care facilities. We based this estimate on several elements.

The July 2004 GAO report on long term care facility fire safety estimated that 20 to 30 percent of long term care facilities do not have sprinklers throughout the facility and would therefore be subject to the provisions of this regulation.

We conducted a survey of all 18,005 long term care facilities. Facilities in 46 States and the District of Columbia responded to the survey. Results from the four States that did not respond have been extrapolated based on the pattern of responses from other States. The survey found that 75.89 percent of long term care facilities are fully sprinklered. In addition, 15.2 percent of long term care facilities were partially sprinklered, and 4.14 percent did not have any sprinklers. An additional 4.77 percent of facilities is unknown. The 4.77 percent of unknown facilities has been distributed, based on the previously cited percentages, into the categories for fully, partially, and non-sprinklered.

Of the 18,005 long term care facilities, we estimate that 14,317 are fully sprinklered. In addition, we estimate that there are 2,867 partially sprinklered facilities and 782 non-sprinklered facilities (results of survey + extrapolated results for non-responding States + extrapolated unknown results).

Distributing numbers based on percentages requires rounding, and can result in facilities not being fully accounted for. The above results do not account for 39 facilities. For purposes of our analysis, we assume that these 39 facilities are non-sprinklered, for a total of 821 non-sprinklered facilities.

Therefore, we estimate that 14,317 facilities would not be impacted by this proposed rule because they already have sprinklers installed throughout their

buildings. We estimate that 3,688 facilities could potentially be impacted by this proposed rule because they do not have sprinklers installed throughout their buildings.

We estimate that, of those 3,688 facilities without sprinklers throughout, 435 partially sprinklered facilities, and 170 non-sprinklered facilities are located either in States that have their own long term care sprinkler requirements (3) or in States that would adopt the 2006 edition of the NFPA 101, *Life Safety Code* (LSC) (12).

The NFPA included a requirement that all existing long term care facilities install sprinklers throughout their buildings in the 2006 edition of the LSC. The NFPA already requires that sprinkler systems that are installed in all buildings be maintained according to NFPA 25.

Although Federal regulations require the 2000 edition of the LSC, 12 States have independently updated their requirements to adopt the 2003 edition of the LSC. We assume that these States would continue to adopt the most recent version of the LSC.

The 2006 edition has already been released to the public, ahead of any final CMS rule requiring sprinklers in all long term care facilities. In adopting the 2006 edition of the LSC, those States would require the long term care facilities within their jurisdictions to install and maintain sprinklers absent this proposed rule. Therefore, facilities in those States would not be impacted by this proposed rule.

In addition, we assume that 2 percent of existing long term care facilities would be replaced or fully renovated each year as part of the natural cycle of facilities upgrading their accommodations. Therefore, of the initial 2,867 partially sprinklered and 821 unsprinklered facilities, we assume that 57 partially sprinklered and 16

unsprinklered facilities would be replaced or fully renovated each year. If there were to be a 10-year phase-in period, then 570 partially sprinklered and 160 unsprinklered buildings would likely be replaced or fully renovated before the phase-in period would expire.

Of these 570 and 160 facilities, we estimate that 15 percent are in the States that have independent sprinkler requirements or would adopt the 2006 edition of NFPA 101, and would therefore require sprinklers absent Federal rulemaking. These 85 and 24 facilities (15 percent of 570 and 160 facilities) are captured in the 435 partially sprinklered and 170 unsprinklered facilities already excluded from our impact analysis, as described above. That leaves an estimated 485 existing partially sprinklered and 136 unsprinklered facilities that would be naturally replaced by new facilities with sprinklers or fully renovated within, for example, a 10-year phase-in period (570 naturally replaced or renovated facilities – 85 in States that would require sprinklers absent Federal rulemaking = 485 facilities; 160 naturally replaced facilities – 24 in States that would require sprinklers absent Federal rulemaking = 136 facilities). Likewise, if there were to be a 7-year phase-in period, then 399 partially sprinklered and 112 unsprinklered buildings would likely be replaced or fully renovated before the phase-in period would expire. If there were to be a 5-year phase-in period, then 285 partially sprinklered and 80 unsprinklered buildings would likely be replaced or fully renovated before the phase-in period would expire.

This brings the total number of estimated affected partially sprinklered facilities to 1,947 (original 2,867 existing partially sprinklered facilities

– 435 facilities in States that would require sprinklers absent Federal rulemaking – 485 existing facilities that would be replaced or renovated naturally over a 10 year phase-in period = 1,947 partially sprinklered facilities that would be affected by this proposed rule). The total number of estimated affected unsprinklered facilities is 515 (original 821 existing unsprinklered facilities – 170 facilities in States that would require sprinklers absent Federal rulemaking – 136 existing facilities that would be replaced naturally over a 10-year phase-in period = 515 unsprinklered facilities that would be affected by this proposed rule).

The same methodology was used to identify the number of affected unsprinklered and partially sprinklered long term care facilities over 7-year and 5-year phase-in periods. These estimates, displayed in table 3, are not the same as the estimates for a 10-year phase-in period because fewer facilities would be naturally replaced or remodeled during a 7-year or 5-year phase-in than during a 10-year phase-in. Therefore, more facilities would be affected by this proposed rule.

Based on discussions with the American Health Care Association and State survey agencies, an average size unsprinklered long term care facility has 100 resident beds and is 50,000 square feet (50,000/100 or 500 square feet per bed). Much larger long term care facilities have recently been constructed. However, as newly constructed facilities, they are already required to have sprinklers installed throughout their buildings. Using the methodology described above, table 3, based on data from our sprinkler survey and our Certification and Survey Provider Enhanced Reporting system, shows the size and number of affected unsprinklered facilities over three different phase-in periods.

TABLE 3.—NUMBER OF UNSPRINKLERED FACILITIES AFFECTED

	Less than 50 beds (less than 24,500 sq. ft)	50–99 beds (24,501–49,500 sq. ft)	100–199 beds (49,501–99,500 sq. ft)	200 or more beds (99,501 or more sq. ft)	Total number of affected facilities
10 year phase-in	102	220	168	25	515
7 year phase-in	110	238	181	27	556
5 year phase-in	116	249	190	28	583

An average partially sprinklered facility also has 100 beds and is 50,000

square feet. Table 4 shows the size and number of affected partially sprinklered

facilities over three different phase-in periods.

TABLE 4.—NUMBER OF PARTIALLY SPRINKLERED FACILITIES AFFECTED

	Less than 50 beds (less than 24,500 sq. ft)	50–99 beds (24,501–49,500 sq. ft)	100–199 beds (49,501–99,500 sq. ft)	200 or more beds (99,501 or more sq. ft)	Total number of affected facilities
10 year phase-in	253	561	745	388	1,947
7 year phase-in	272	603	801	417	2,093
5 year phase-in	285	631	838	436	2,190

These buildings, however, would not require sprinklers to be installed in all areas because the building is already partially sprinklered. For purposes of this impact analysis, we assume that a partially sprinklered building is 25 percent sprinklered, leaving 75 percent of the building to be sprinklered in accordance with this proposed rule. Buildings in this category may have more or less sprinkler coverage than this assumption.

For facilities with fewer than 50 resident beds, we estimate that sprinklers would be installed for 18,375 square feet (75 percent of maximum square footage in this size category). For facilities with 50 to 99 resident beds, we estimate that sprinklers would be installed for 27,750 square feet (75 percent of average square footage in this size category). For facilities with 100 to 199 resident beds, we estimate that sprinklers would be installed for 55,875 square feet (75 percent of average square footage in this size category). For facilities with more than 199 resident beds, we estimate that sprinklers would be installed for 75,000 square feet (75 percent of minimum square footage in this size category).

Installation Cost Per Square Foot

Purchasing and installing a sprinkler system according to the requirements of NFPA 13 encompasses a wide variety of factors, including those briefly described in section II of this proposed rule. Within the requirements of NFPA 13, there are numerous variables that can impact the purchase and installation costs for a facility. Each facility has different needs that must be addressed when purchasing and installing a sprinkler system, and this cost estimate cannot address each particular need or combination of needs. Therefore, we are basing our cost estimates not on the individual requirements of NFPA 13 for an individual facility, but on a bundled purchase and installation estimate for an average facility, as described below. Individual facilities may have costs

above or below those of this average facility due to facility size and facility-specific sprinkler system needs. Long term care facilities that are based in other health care facilities, such as hospitals, would be required by this proposed rule only to have sprinklers in the long term care facility section of the building. Therefore, we do not believe that facility-based long term care facilities would have different installation costs than freestanding facilities with similar resident bed and square footage numbers.

We estimate that it would cost between \$4.10 and \$6.15 per square foot to purchase and install a sprinkler in an existing facility, with an average cost of \$5.50 per square foot. According to the *Architects, Contractors, Engineers Guide to Construction Costs, 2004 Edition* by Design and Construction Resources, purchasing and installing sprinklers in new long term care facilities costs \$2.05 per square foot. This cost estimate incorporates all contractor costs such as labor, materials, and a 20 percent overhead fee; 35 percent taxes and insurance on labor, equipment, and tools; and 5 percent sales tax.

Although we recognize that capital and interest costs may increase the cost of purchasing and installing automatic sprinkler systems in long term care facilities, these costs are not included in our estimates. Due to the individual circumstances of each facility, unknown future interest rates, and various other factors, we are unable to accurately estimate the capital and interest costs of installing sprinkler systems. Therefore, we have chosen to exclude these costs from our estimates while acknowledging that they do exist and will play a role to some degree in the decisions of long term care facilities that would be affected by this proposed rule.

Renovation costs are typically two to three times higher than new construction costs because installing the sprinkler system must be completed in a piecemeal fashion while the building remains occupied. This increases the length of the construction time and,

thus, increases its costs. In addition, renovations to add sprinkler systems often require upgrading or adding related building components such as water lines and fire pumps. The upgrades and additions require more capital investment and construction time. Increased investment and construction time also increases costs.

For purposes of this impact analysis, we assume that renovating a typical facility to add sprinklers would cost approximately 2.5 times more than purchasing and installing sprinklers in new long term care facilities. We do not have a specific source for this assumption; therefore, we have also included cost estimates for facilities that would pay \$4.10 per square foot (2 times the cost of installing sprinklers in new construction) and \$6.15 per square foot (3 times the cost of installing sprinklers in new construction).

Cost Estimates

The cost estimates for both unsprinklered and partially sprinklered facilities are presented in the following tables. They are based on all of the above-described estimates about the number of facilities that would be affected, the sizes of those facilities, and the installation costs per square foot. We note again that the number of facilities that would be affected by this rule changes based on the length of the phase-in period because fewer facilities would be naturally replaced or remodeled during a 7-year or 5-year phase-in than during a 10-year phase-in. Therefore, as the phase-in time is shortened, more facilities would be affected by this rule, increasing the estimated cost impact of this proposed rule.

Based on the above-described estimates and figures, we estimate that an unsprinklered facility meeting the following size specifications would have the following costs to comply with the installation requirements of this proposed regulation. (See table 5)

TABLE 5.—TOTAL INSTALLATION COST PER UNSPRINKLERED FACILITY

	\$4.10 per square foot	\$5.50 per square foot	\$6.15 per square foot
> 50 beds (24,500 square feet)	\$100,450	\$134,750	\$150,675
50–99 beds (37,000 square feet)	151,700	203,500	227,550
100–199 beds (74,500 square feet)	305,450	409,750	458,175
<199 beds (100,000 square feet)	410,000	550,000	615,000
Total cost for 515 facilities (10 year phase-in)	105,185,500	141,102,500	157,778,250
Total cost for 556 facilities (7 year phase-in)	113,510,550	152,270,250	170,265,825
Total cost for 583 facilities (5 year phase-in)	118,941,000	159,555,000	178,411,500

We estimate that a partially sprinklered facility meeting the

following size specifications would have the following costs to comply with

the installation requirements of this proposed regulation. (See table 6)

TABLE 6.—TOTAL INSTALLATION COST PER PARTIALLY SPRINKLERED FACILITY

	\$4.10 per square foot	\$5.50 per square foot	\$6.15 per square foot
> 50 beds (18,375 square feet)	\$75,338	\$101,063	\$113,006
50–99 beds (27,750 square feet)	113,775	152,625	170,663
100–199 beds (55,875 square feet)	229,088	307,313	343,631
More than 199 beds (75,000 square feet)	307,500	412,500	416,250
Total cost for 1,947 facilities (10 year phase-in)	372,868,849	500,189,749	541,842,556
Total cost for 2,093 facilities (7 year phase-in)	400,825,249	537,692,224	582,472,102
Total cost for 2,190 facilities (5 year phase-in)	419,309,099	562,487,624	609,342,841

Based on the different installation costs and phase-in lengths presented in this section, we estimate that the

combined installation cost for all impacted long term care facilities (un-sprinklered and partially

sprinklered) would range from \$478,054,349 to \$787,754,341. (See table 7)

TABLE 7.—TOTAL INSTALLATION COST FOR ALL FACILITIES

	\$4.10 per square foot	\$5.50 per square foot	\$6.15 per square foot
Total cost for 2,462 facilities (10 year phase-in)	\$478,054,349	\$641,292,249	\$699,890,806
Total cost for 2,649 facilities (7 year phase-in)	514,339,799	689,962,474	752,787,927
Total cost for 2,773 facilities (5 year phase-in)	538,250,099	722,042,624	787,754,341

As stated earlier, we do not expect long term care facilities to have funds immediately available to purchase and install sprinklers. Therefore, we propose to allow a phase-in period of undetermined length to help mitigate the cost of installing sprinklers by allowing facilities time to reprioritize and redistribute resources.

For illustrative purposes only, we have estimated the annual costs of this proposed rule for 10, 7, and 5-year

phase-in periods. While we would encourage all facilities to immediately begin the process of purchasing and installing sprinklers, we understand that some facilities would choose to wait until the very end of a phase-in period to begin this process. Therefore, we expect that the full cost of this proposed rule would be distributed over a period of several years as facilities nationwide would likely stagger their installation

schedules to meet their individual needs and circumstances.

The following tables show the estimated annual installation costs for the phase-in periods based on the estimated total cost figures shown in table 7. The annual installation cost estimates have been discounted at 3 and 7 percent in order to compare the cost in today's dollars to the cost in future dollars.

TABLE 8.—ANNUAL COSTS OVER ALL PHASE-IN PERIODS

[In millions]

	\$4.10 per square foot	\$5.50 per square foot	\$6.15 per square foot
10 year phase-in	47.81	64.1	69.96
7 year phase-in	73.48	98.6	107.53
5 year phase-in	107.65	144.4	157.55

Maintenance

After installing an approved, supervised automatic sprinkler system in accordance with the 1999 edition of NFPA 13 throughout the building, all long term care facilities would be required to test, inspect, and maintain their sprinkler systems in accordance with the 1998 edition NFPA 25. We estimate that long term care facilities would conduct quarterly inspections of their sprinkler systems and annual trip tests. We assume that each inspection will take 4 hours to complete, at a cost of \$150 per inspection. We also assume that each trip test would take 6 hours, at a cost of \$250. Based on these assumptions, we estimate that long term care facilities would spend \$850 annually to test and inspect their sprinkler systems. In addition, we assume that long term care facilities will spend an additional \$150 annually to perform any necessary maintenance duties.

Individuals who perform these testing, inspection, and maintenance duties would have to be properly trained and, in some States and local jurisdictions, they would have to be licensed. Generally, long term care facilities would not have enough sprinkler system work needs to directly employ someone with the necessary skills, training, and licensure. Therefore, we believe that long term care facilities would likely contract with another company to meet their testing, inspection, and maintenance needs. In addition to actually conducting the necessary testing, inspection, and maintenance activities, we believe that the contract would also include a provision that the contractor prepares adequate documentation of the activities conducted. We estimate that the total cost of meeting these requirements would be \$1,000 ($\150×4 quarterly inspections = \$600 + \$250 annual trip test + \$150 general maintenance costs = \$1,000).

In addition, all long term care facilities that would be affected by this proposed regulation would be required to maintain documentation of all inspection, maintenance, and testing activities. The burden associated with these requirements is estimated to be 1 hour per long term care facility. Therefore, we estimate it would take 2,462 total annual hours (1 hour \times 2,462 estimated affected long term care facilities) to meet this requirement. This documentation maintenance requirement would cost an affected facility \$19 a year, based on an hourly rate of \$19 for an office employee ($\$19$ per hour \times 1 hour). The total annual cost

of this proposed documentation requirement would be \$46,778 ($\19 per facility \times 2,462 facilities).

This estimated cost would be offset by the elimination of the cost of maintaining smoke alarms. Section 483.70(a)(7)(ii) requires long term care facilities that did not have sprinklers installed throughout their building to have a program for testing, maintenance, and battery replacement to ensure the reliability of smoke alarms in their facilities.

However, § 483.70(a)(7)(iii)(b) exempts long term care facilities from this smoke alarm maintenance requirement if their facilities have sprinkler systems throughout their building that are installed, tested, and maintained in accordance with NFPA 13. Therefore, long term care facilities that install and maintain sprinkler systems in accordance with this proposed regulation would be exempt from the existing requirement to maintain their smoke alarms. Due to the fact that all long term care facilities would be exempt from this smoke alarm requirement upon the phase-in date of a final regulation, we plan to add a sunset date to the smoke alarm requirement upon finalization of this sprinkler regulation. Based on the cost estimates published in "Fire Safety Requirements for Certain Health Care Facilities; Amendment" (70 FR 15229, March 25, 2005), we estimate that this exemption would save an average long term care facility that was affected by the smoke alarm requirement \$2,800 annually. This results in a net savings of \$1,800 annually ($\$2,800$ savings from not maintaining smoke alarms – $\$1,019$ cost of maintaining sprinklers = $\$1,781$ net savings).

C. Alternatives Considered

1. Maintain Current Fire Safety Requirements

We currently require long term care facilities to comply with the fire safety requirements in the LSC. In addition, we currently require long term care facilities that do not have sprinklers installed throughout the building to have and maintain at least battery operated smoke alarms in resident rooms and public areas. We believe that these requirements are a solid foundation for ensuring that all long term care facility residents are protected from the threat of fire.

We also believe that these current measures do not go far enough to protect long term care facility residents. Both the Hartford and Nashville facilities were in substantial compliance with the LSC, yet both facilities experienced

severe fires with large numbers of fatalities.

The smoke alarm requirement that we published in the **Federal Register** on March 25, 2005 (70 FR 15229) after these fires was a step toward improving fire safety and avoiding another devastating fire. Unfortunately, smoke alarms can only warn facility staff and residents of the fire. They cannot suppress a fire or prevent it from spreading to other areas.

Long term care facility residents often have multiple or severe health problems that complicate the facility's ability to ensure their safety in the event of a fire. For example, frail elderly residents may rely on facility staff to assist them in transferring and otherwise moving about the facility. These types of residents are unable to independently protect themselves from the threat of fire by moving away from the danger. They are dependent on facility staff, who are also responsible for ensuring the safety of dozens of other residents. A rapidly growing fire can overwhelm both the staff and residents, leading to tragic consequences.

However, a properly designed, installed, and maintained sprinkler system effectively prevents a fire from spreading to other areas and overwhelming the staff and residents. Containing a fire reduces the threat to residents in other portions of the building and allows facility staff to focus their energy on the area that is most affected by the fire, without worry about the fire spreading to other areas and threatening other residents. Sprinkler systems have consistently served this function for many years, and they are commonly recognized as the single most effective fire safety device currently available.

Given the past success of sprinkler systems and their potential for saving lives in the future, we believe that maintaining the existing fire safety requirements without adding sprinkler requirements does not ensure the safety of long term care facility residents to the greatest extent possible.

In addition, maintaining the existing fire safety requirements would have left decisions regarding more stringent fire safety measures in the hands of State and local governments. State and local governments have, in the past, made very different decisions about fire safety requirements in long-term care facilities. For example, some States, such as Tennessee and Virginia, already require all long-term care facilities to have sprinklers throughout their buildings. In contrast, other States, such as Arkansas and Nebraska, do not have such requirements, resulting in 25 percent or

more of their long-term care facilities completely lacking sprinklers. This level of variability is not acceptable because residents of long-term care facilities should be assured the same minimum level of fire safety regardless of what State or locality they reside in. Federal regulation is the most efficient and expedient manner for achieving the goal of uniform nationwide minimum fire safety standards; therefore, we chose to pursue Federal regulation rather than depending on State and local governments.

2. Exempt Small Facilities

The Medicare Conditions of Participation are the minimum requirements that providers are required to meet in order to be Medicare and Medicaid certified. Many other standards setting organizations have requirements that go beyond what Medicare and Medicaid require. Facilities may choose to strive for these higher standards, although Medicare and Medicaid do not require them to do so.

Exempting any facility from this proposed minimum requirement would be a disservice to the residents of that facility. Residents deserve to be safe from the threat of fire, whether they reside in a large facility or a smaller one. The proposed sprinkler requirement would ensure that, regardless of the size or location of their residence, all residents are protected by the same basic minimum fire safety requirements.

We believe that a phase-in period would help to mitigate the costs of installing sprinklers for small facilities while ensuring that all residents are protected by the same minimum requirements. Therefore, we are not proposing to exempt small facilities from this requirement.

3. Require Immediate Compliance

Requiring immediate compliance with the proposed condition would, we believe, be a hardship for affected long term care facilities. Designing a sprinkler system, purchasing it, installing it, and testing it all require a significant amount of time. The typical 60-day delay in the effective date of a regulation would not be sufficient time to complete the entire sprinkler process. For this reason, we have chosen not to require immediate compliance. Instead, we believe that it is appropriate to propose a several-year phase-in period for this regulation.

We are specifically requesting public comments and suggestions regarding the length of a phase-in period in section II.B of this proposed rule.

D. Conclusion

For these reasons, we are not preparing analyses for the RFA because we have determined that this rule would not have a significant economic impact on small entities because the estimated cost of the proposed regulation would account for less than 1 percent of an affected facility's revenue over, for example, a 7-year or 10-year period.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, the Centers for Medicare and Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 483—REQUIREMENTS FOR STATES AND LONG-TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long-Term Care Facilities

2. In § 483.70, add new paragraph (a)(7)(iv) and new paragraph (a)(8) to read as follows:

§ 483.70 Physical environment.

(a) * * *

(7) * * *

(iv) The terms of paragraph (a)(7) of this section shall remain effective through the date specified at paragraph (a)(8)(i) of this section.

(8) A long term care facility must:

(i) Install an approved, supervised automatic sprinkler system in accordance with the 1999 edition of NFPA 13, *Standard for the Installation of Sprinkler Systems*, as incorporated by reference, throughout the building by phase-in date to be determined. The Director of the Office of the Federal Register has approved the NFPA 13 1999 edition of the Life Safety Code, issued July 22, 1999 for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD 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. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269.

(ii) Test, inspect, and maintain an approved, supervised automatic sprinkler system in accordance with the 1998 edition of NFPA 25, *Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems*, as incorporated by reference. The Director of the Office of the Federal Register has approved the NFPA 25 1998 edition of the Life Safety Code, issued January 16, 1998 for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD 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. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 23, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 3, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. E6-17911 Filed 10-26-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

RIN 0648-AT60

[Docket No. 061020273-6273-01; I.D. 101606A]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2007 Summer Flounder, Scup, and Black Sea Bass Specifications; 2007 Research Set-Aside Projects

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes specifications for the 2007 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. The intent of this action is to establish harvest levels that assure that the target fishing mortality rates (F) or exploitation rates specified for these species in the FMP are not exceeded and to allow for rebuilding of the stocks in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS has conditionally approved four research projects for the harvest of the portion of the quota that has been recommended by the Mid-Atlantic Fishery Management Council (Council) to be set aside for research purposes. In anticipation of receiving applications for Experimental Fishing Permits (EFPs) to conduct this research, the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the activities authorized under the EFPs issued in response to the approved Research Set-Aside (RSA) projects would be consistent with the goals and objectives of the FMP. However, further review and consultation may be necessary before a final determination is made to issue any EFP.

DATES: Comments must be received on or before November 17, 2006.

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

- E-mail: FSB2007@noaa.gov. Include in the subject line the following identifier: "Comments on 2007 Summer Flounder, Scup, and Black Sea Bass Specifications."

- Federal e-Rulemaking portal: <http://www.regulations.gov>.

- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2007 Summer Flounder, Scup, and Black Sea Bass Specifications."

- Fax: (978) 281-9135.

Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. Copies of the supplemental economic analysis are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. These documents are also accessible via the Internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279.

SUPPLEMENTARY INFORMATION:**Background**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Council and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subpart A (General Provisions), subpart G (summer flounder), subpart H (scup), and subpart I (black sea bass).

The regulations outline the process for specifying the annual commercial quotas and recreational harvest limits

for the summer flounder, scup, and black sea bass fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

As required by the FMP, a Monitoring Committee for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, reviews the best available scientific information and recommends catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. Consistent with the implementation of Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004), each Monitoring Committee meets annually to recommend the Total Allowable Landings (TAL), unless the TAL has already been established for the upcoming calendar year as part of a multiple-year specification process, provided that new information does not require a modification to the multiple-year quotas. Further, the TALs may be specified in any given year for the following 1, 2, or 3 years. The Council is not obligated to specify multi-year TALs, but is able to do so, depending on the information available and the status of the fisheries.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) consider the Monitoring Committees' recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their recommendations, with the exception of Board recommendations for the 2007 summer flounder fishery, at a joint meeting held August 1-3, 2006. The Board delayed its action regarding a summer flounder TAL recommendation until its October 22-26, 2006, meeting.

Explanation of RSA

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to

3 percent of the TAL for each species to be set aside each year for scientific research purposes. For the 2007 fishing year, a Request for Proposals was published to solicit research proposals based upon the research priorities that were identified by the Council (70 FR 76253, December 23, 2005). Four applicants were notified in August 2005 that their research proposals had received favorable preliminary review. For informational purposes, these proposed specifications include a statement indicating the amount of quota that has been preliminarily set aside for research purposes (3 percent of the TAL for each fishery, as recommended by the Council and Board), and a brief description of the RSA projects, and the amount of RSA requested for each project. The RSA amounts may be adjusted, following consultation with RSA applicants, in the final rule establishing the 2007 specifications for the summer flounder, scup, and black sea bass fisheries. If the total amount of RSA is not awarded, NMFS will publish a document in the **Federal Register** to restore the unused amount to the applicable TAL.

For 2007, four RSA projects have been conditionally approved by NMFS and are currently awaiting a notice of award. These projects collectively may be awarded the following amounts of RSA (3 percent of the proposed TALs): 389,490 lb (177 mt) of summer flounder; 360,000 lb (163 mt) of scup; and 150,000 lb (68 mt) of black sea bass. The projects collectively also may be awarded up to 1,124,356 lb (510 mt) of *Loligo* squid and 363,677 lb (165 mt) of bluefish.

The University of Rhode Island submitted a proposal to conduct a fourth year of work in a fishery-independent scup survey that would utilize unvented fish traps fished on hard bottom areas in southern New England waters to characterize the size composition of the scup population. Survey activities would be conducted from May 1 through November 30, 2007, at 10 rocky bottom study sites located offshore, where there is a minimal scup pot fishery and no active trawl fishery, and at 2 scup spawning ground sites. Up to two vessels would conduct the survey. Sampling would occur off the coasts of Rhode Island and southern Massachusetts. Up to three vessels would harvest the RSA during the period January 1 through December 31, 2007. The preliminary RSA requested for this project is 2,000 lb (907 kg) of summer flounder; 40,000 lb (18 mt) of scup; and 30,000 lb (14 mt) of black sea bass.

The National Fisheries Institute (NFI) and Rutgers University submitted a

proposal to conduct a fifth year of work on a commercial vessel-based trawl survey program in the Mid-Atlantic region that would track the migratory behavior of selected recreationally and commercially important species. Information gathered during this project would supplement the NMFS finfish survey databases and improve methods to evaluate how seasonal migration of fish in the Mid-Atlantic influences stock abundance estimates. Up to two vessels would conduct survey work in the Mid-Atlantic during January, March, May, and November 2007, along up to eight offshore transects. The transects would include six fixed offshore transects, one each near Alvin, Hudson, Baltimore, Poor Man's, Washington, and Norfolk Canyons, and two to three adaptive transects positioned within the Mid-Atlantic area selected during a pre-cruise meeting with NFI, Rutgers University, and the NMFS Northeast Fisheries Science Center (Center). Up to 15 1-nautical mile tows would be conducted along each transect at depths from 40 to 250 fathoms (73 to 457 m). Up to 25 vessels would harvest the RSA during the period January 1 through December 31, 2007. The preliminary RSA requested for the project is 223,140 lb (101 kg) of summer flounder; 221,581 lb (101 mt) of scup; 61,500 lb (28 mt) of black sea bass; 281,059 lb (127 mt) of *Loligo* squid; and 363,677 lb (165 mt) of bluefish.

The Cornell Cooperative Extension of Suffolk County submitted a proposal to evaluate summer flounder discard mortality in the bottom trawl fishery. The project is intended to improve and enhance fishery information relative to discard mortality of summer flounder in the bottom trawl fishery. Trawl-caught summer flounder, both legal and sub-legal size, would be measured, tagged, and kept in a live holding pen (net pen) for mortality monitoring. Mortality would be monitored on a weekly basis and fish would be released with tags after 2 weeks. Extended mortality and migration information would be collected upon recapture of tagged fish. One inshore day trip would be made every 14 to 17 days from May to September for a total of 10 day trips. Overall, with 120 fish taken on each trip, a total of 1,200 fish would be collected from commercial vessels during the project. The research trips would be made aboard 15 commercial vessels (vessels of opportunity) engaged in the mixed trawl fishery, and would be conducted inshore along the coast of southern Long Island from Jones Inlet to Montauk Point, reaching depths of 240 ft (73 m). Areas sampled would include

NMFS statistical areas 611, 612, 613, and 539. Vessels would be compensated to make three specific tows for summer flounder to assess trawl mortality. Duration of these tows would be 1, 2, and 3 hours. An additional 25 vessels would harvest the RSA amounts allocated to the project over the course of the fishing year. The preliminary RSA requested for the project is 178,000 lbs (81 mt) of summer flounder.

The National Fisheries Institute (NFI) and Rutgers University submitted a proposal to conduct studies on bycatch reduction and gear development in the Mid-Atlantic through evaluation of optimal codend mesh size in the *Loligo* squid fishery. The project would evaluate the performance of intermediate codend mesh sizes above the present legal size of 1.875 inches (4.8 cm) and below 2.5 inches (6.35 cm), e.g. mesh sizes of 2.125 inches (5.4 cm) and 2.25 inches (5.7 cm). The researchers would also attempt to determine the influence of these intermediate mesh sizes on the catch of other species such as butterfish, silver hake, and accompanying bycatch species as well as *Loligo* squid measuring below market size (4 inches (10.2 cm)). The project would use two similar vessels in the 75- to 100-ft (23- to 30-m) range to test different mesh sizes in squid nets under commercial use. The exact number of tows would depend on the duration of each tow, which would be determined by the vessel captain during fishing. The research would involve a total of 108 to 144 tows, each lasting approximately 2–3 hours, and would take place in February and/or March 2007 near the Hudson Canyon. Approximately 25 vessels would harvest the RSA amounts allocated to the project over the course of the fishing year. The preliminary RSA requested for the project is 163,633 lb (74 mt) of summer flounder; 269,305 lb (122 mt) of scup; 40,358 lb (18 mt) of black sea bass; and 331,000 lb (150 mt) of *Loligo* squid.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Explanation of Quota Adjustments Due to Quota Overages

This action proposes commercial quotas based on the proposed TALs and Total Allowable Catches (TACs) and the formulas for allocation contained in the FMP. In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer

flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). If NMFS approves a different TAL or TAC at the final specifications stage, the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**. NMFS anticipates that the information necessary to determine whether overage deductions are necessary will be available by the time the final specifications are published. The commercial quotas contained in these proposed specifications for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final specifications, however, will contain quotas that have been adjusted consistent with the procedures described above.

Summer Flounder

The Center's Southern Demersal Working Group met in May 2005 to address the terms of reference for Stock Assessment Workshop (SAW) 41. The Stock Assessment Review Committee (SARC) accepted the 2005 stock assessment update as the basis for management advice, and also accepted the Demersal Working Group's recommended updated biological reference point values as follows: $F_{msy}=F_{max}=0.276$; $MSY=42$ million lb (22,000 mt), and $B_{msy}=204$ million lb (92,532 mt). F_{msy} is the fishing mortality rate that, if applied constantly, would result in maximum sustainable yield (MSY). F_{max} is the level of fishing mortality that produces maximum yield per recruit. When $F > F_{max}$, overfishing is considered to be occurring, and when $B < \frac{1}{2} B_{msy}$, the stock is considered overfished.

The Southern Demersal Working Group met on June 20, 2006, to update the summer flounder assessment through 2005/2006 based on the latest research survey and fisheries catch data available. This was a routine annual update, as called for by the FMP, and was based on the same population model as used in recent years. Key results of the update were as follows: Overfishing is occurring (i.e., $F > F_{max}$). Almost all of the full-age structure state and Federal survey indices used to update the assessment have dropped since 2003. Mean fish weight has decreased, and this has contributed to increased fishing mortality, as more fish are taken by weight for a given catch level. The 2005 F was estimated to have

been 0.53, a significant decline from the 1.32 estimated for 1994, but well above the threshold F of 0.276. The stock was not determined to be overfished and was estimated to be just above the biomass threshold. Total stock biomass (TSB) increased substantially during the 1990s and through 2004, but decreased slightly since 2004, and was estimated to be 105 million lb (47,627 mt) on January 1, 2006, just over the biomass threshold ($\frac{1}{2}B_{msy}$) of 102 million lb (46,266 mt). Spawning stock biomass (SSB) also increased during the 1990s through 2004 (to 72 million lb (32,659 mt) in 2004), before decreasing to 67 million lb (30,391 mt) in 2005. Recruitment since 1988 was estimated to have improved, generally, although the 2003 and 2005 year classes were estimated to have been well below the median (33 million fish) at 24.5 million fish and 14.5 million fish, respectively.

It has been recognized since 1995 that the summer flounder stock assessment model tends to underestimate F and overestimate stock biomass and recruitment in the most recent years of the analysis (typically for the previous 5 years), until those estimates stabilize as new data are added to the analysis. For example, the 2006 stock assessment update showed that the estimate for F_{2004} had increased from last year's estimate of 0.4 to 0.46; and that the estimate for F_{2005} was 0.53. This pattern is likely the result of an underestimation of the true catch, due to discards and/or unreported landings. The impact for management, given these persistent retrospective patterns, is that, although the summer flounder stock continues to increase, it is increasing at a lower rate than, and is currently at a smaller size than, previously forecast. Because the Magnuson-Stevens Act requires stocks to be rebuilt to a level that produces MSY, it was clear from the 2006 stock assessment update that additional rebuilding of these species is still required. For summer flounder, the rebuilding period ends December 31, 2009.

The regulations state that the Council shall recommend, and NMFS shall implement, measures (including the TAL) necessary to ensure, with at least a 50-percent probability of success, that the applicable specified F will not be exceeded. This requirement is also consistent with a 2000 Federal Court Order (*Natural Resources Defense Council v. Daley*, Civil No. 1:99 CV 00221 (JLG)) regarding the setting of the summer flounder TAL. Through the course of the rebuilding period, NMFS has set TALs estimated to have at least a 50-percent probability of not exceeding F_{max} .

For 2007, the Council's Summer Flounder Monitoring Committee considered that a TAL of 19.9 million lb (9,026 mt) would meet the 50-percent probability of success standard (based on the Southern Demersal Working Group 2006 update), but recommended a TAL (13.88 million lb (6,296 mt)) associated with an F of 0.185, i.e., a 33-percent reduction of the F_{max} (0.276), in order to account for the retrospective pattern of F underestimation. In August 2006, the Council and the Board discussed at length the Southern Demersal Working Group 2006 update, the TAL for 2007, and potential TALs for the remainder of the rebuilding period. The Council considered the following TAL options: (1) a 2007 TAL of 19.9 million lb (9,026 mt); (2) the Summer Flounder Monitoring Committee's recommendation of 13.88 million lb (6,296 mt) for 2007; (3) a 2007 TAL projected to result in rebuilding of the summer flounder stock by 2010 (7.69 million lb (3,489 mt)); (4) a 2007 TAL that would both allow for rebuilding by 2010 and account for the retrospective F pattern (5.22 million lb (2,368 mt)); (5) a constant TAL for 2007 through 2009 that would allow for rebuilding by 2010 (10.04 million lb (4,554 mt)); and (6) a constant TAL for 2007 through 2009 that would allow for rebuilding by 2010 and that corrects for the retrospective pattern of F underestimation (6.72 million lb (3,048 mt)). The Council focused discussion on a 2007 TAL of 19.9 million lb (9,026 mt).

During the August 2006 Council discussion of the feasibility of achieving the biomass target, given recent recruitment levels, NMFS offered to re-examine the biological reference point values based on the use of the most recent scientific information available and on use of a subset (rather than the full range) of recruitment input data. Projections were to be re-run based on the revised reference points, the current growth potential of the population, and the recent history of reproductive effort (recruitment), and the results were to be peer-reviewed. NMFS encouraged the Council to recommend a TAL for 2007, and indicated that any new information resulting from the stock assessment re-examination and the peer review thereof, if appropriate, would be reflected in the proposed specifications. In the end, the Council adopted a 2007 TAL of 19.9 million lb (9,026 mt), with 3 percent of the TAL set aside for research. This TAL would represent a 16-percent decrease for 2007 from the 2006 TAL of 23.59 million lb (10,700 mt). After deducting the RSA, the TAL

would be divided into a commercial quota (60 percent) and a recreational harvest limit (40 percent). The Board delayed its vote until its October 22–26, 2006, meeting, to consider the updated analyses.

NMFS's re-examination of the biological reference points, the peer review of this work, and subsequent analysis stemming from the peer review was completed in September 2006 and

is documented in "Summer Flounder Assessment and Biological Reference Point Update for 2006." This update is available at <http://www.nefsc.noaa.gov/nefsc/saw/2006FlukeReview/>.

The Peer Review Panel's (Panel's) review did not result in any change in the current stock status determinations of the summer flounder stock. It confirmed that overfishing occurred throughout the rebuilding period, and

that F must be substantially lowered for 2007 through 2009 to allow for rebuilding by 2010. The stock continues to be considered not overfished, but is still just slightly above the biomass threshold. Table 1 summarizes and compares findings from the Southern Demersal Working Group 2006 Update and the recent peer reviewed assessment and biological reference point update.

TABLE 1. COMPARISON OF THE FINDINGS OF THE SOUTHERN DEMERSAL WORKING GROUP 2006 UPDATE) AND THE PEER REVIEWED SUMMER FLOUNDER ASSESSMENT AND BIOLOGICAL REFERENCE POINT UPDATE)

Factor	2006 Assessment (June 2006)	Update (September 2006)
F_{\max}	0.276	0.280
F_{rebuild}	0.099	0.15
F_{2005}	0.528	0.407
Overfishing	Yes	Yes
R	33.11 million fish (median)	37 million fish (mean)
$B_{\text{msy proxy}}$	TSB=204 million lb (92,645 mt)	TSB (age 1 + fish) = 215 million lb (97,430 mt) SSB=197 million lb (89,411 mt)*
Biomass threshold	$\frac{1}{2}$ TSB=102 million lb (46,323 mt)	$\frac{1}{2}$ SSB=98.5 million lb (44,706 mt)
SSB ₂₀₀₅	67 million lb (30,600 mt)	105 million lb (47,498 mt)
TSB ₂₀₀₅	105 million lb (47,800 mt) (age 0+ fish)	113 million lb (51,317 mt) (age 1+ fish)
Overfished	No (52% of B_{msy})	No (53% of B_{msy})
MSY	42 million lb (19,072 mt)	47 million lb (21,444 mt)

* Panel suggested use of SSB as B_{msy} proxy in the future, but provided TSB information for comparison.

The Panel recommended several adjustments in the assessment. The most important of these are that the stock condition be assessed using SSB rather than TSB, and several changes in how the weight of fish not yet Age 1 is used in the stock assessment model. With respect to the Southern Demersal Working Group 2006 Update, the recently updated analysis (which incorporated the Panel recommendations) lowered the best estimate of B_{msy} , raised F_{\max} slightly, raised MSY, and raised the SSB estimates and lowered the F estimates for 2000–2005. The annual F projected to allow for rebuilding to SSB_{max} by 2010 (F_{rebuild}) is currently estimated to be 0.15. Should an F of 0.15 in the 2007 fishing year prove to be inconsistent with allowing the stock to rebuild by 2010, based on the results of the annual summer flounder stock assessment

update in June 2007, NMFS would adjust the target F for 2008. Similar adjustment for the 2009 target F would occur based on the June 2008 stock assessment update, if necessary. Fishing at $F=0.15$ starting in 2007 is also anticipated to rebuild the stock to within 1 percent of the B_{msy} proxy currently in the FMP (a TSB of 204 million lb (92,645 mt)) by 2010. The Panel acknowledged the retrospective pattern of F underestimation (by 34 percent), biomass overestimation (by 12 percent), and recruitment overestimation (by 4 percent). The Panel made no recommendation on how to adjust the analysis for this pattern, but noted that it should be taken into account when setting management targets.

At the October 10–12, 2006, Council meeting, following a presentation of the Panel's findings, the Council voted to

include a provision to amend the summer flounder biomass target, based on the updated, best available scientific information, in Amendment 14 to the FMP, which is currently under Council development.

Projections indicate that fishing at a constant F_{\max} level of 0.28 would result in not achieving the biomass target until after 2022. As indicated above, commensurate with the objectives of the FMP, reduced TALs will be needed for 2007 through 2009 to achieve the biomass target by the end of the 10-year rebuilding period for summer flounder. The best available scientific information indicates that a TAL of 14.156 million lb (6,421 mt) is expected to have at least a 50-percent probability of achieving an F of 0.15 in 2007, if the TAL and assumed discard level in 2006 are not exceeded. It also will also ensure, with a much greater than 50-percent

probability of success, that F_{max} will not be exceeded. The setting of an annual TAL greater than this amount would be contrary to the rebuilding requirements of the Magnuson-Stevens Act and objectives of the FMP.

In consideration of the Panel's recommendation to take the retrospective pattern of F underestimation into account when setting management targets, and the requirement to rebuild the stock by the end of 2009, NMFS proposes a TAL that is associated with a 75-percent probability of achieving the F that is projected to allow the stock to rebuild to an SSB of 197 million lb (89,411 mt) and further assure to an even greater extent that F_{max} will not be exceeded. The best available scientific information indicates that a TAL of 12.983 million lb (5,889 mt) is expected to have at least a 75-percent probability of achieving an F of 0.15 in 2007, if the TAL and assumed discard level in 2006 are not exceeded, and is expected to allow for rebuilding of the stock to the target biomass by the end of 2009.

For these reasons, NMFS proposes a summer flounder TAL of 12.983 million

lb (5,889 mt) for 2007. This TAL would represent a 45-percent decrease for 2007 from the 2006 TAL of 23.59 million lb (10,700 mt). The initial TAL would be allocated 60 percent (7,789,800 lb (3,533 mt)) to the commercial sector and 40 percent (5,193,200 lb (2,356 mt)) to the recreational sector, as specified in the FMP. For 2007, the Council and Board agreed to set aside 3 percent of the summer flounder TAL for research activities. After deducting the RSA (389,490 lb (177 mt)) from the TAL proportionally for the commercial and recreational sectors, as specified in the FMP, i.e., 60 percent and 40 percent, respectively, the commercial quota would be 7,556,106 lb (3,427 mt) and the recreational harvest limit would be 5,037,404 lb (2,285 mt). The commercial quota then would be allocated to the coastal states based upon percentage shares specified in the FMP.

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a

system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these proposed specifications because these measures are not authorized by the FMP and NMFS does not have authority to implement them.

Table 2 presents the proposed allocations by state, with and without the commercial portion of the RSA deduction. These state quota allocations are preliminary and are subject to reductions if there are overages of states quotas carried over from a previous fishing year (using the landings information and procedures described earlier). Any commercial quota adjustments to account for overages will be included in the final rule implementing these specifications.

TABLE 2. 2007 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS.

State	Percent Share	Commercial Quota		Commercial Quota less RSA ¹	
		lb	kg ²	lb	kg ²
ME	0.04756	3,705	1,681	3,594	1,630
NH	0.00046	36	16	35	16
MA	6.82046	531,300	240,998	515,361	233,768
RI	15.68298	1,221,673	554,151	1,185,023	537,526
CT	2.25708	175,822	79,753	170,547	77,360
NY	7.64699	595,685	270,203	577,815	262,097
NJ	16.72499	1,302,843	590,970	1,263,758	573,241
DE	0.01779	1,386	629	1,344	610
MD	2.03910	158,842	72,051	154,077	69,889
VA	21.31676	1,660,533	753,218	1,610,717	730,621
NC	27.44584	2,137,976	969,786	2,073,837	940,692
TOTAL ³	100.00001	7,789,801	3,553,456	7,556,108	3,427,450

¹ Preliminary Research Set-Aside: 3 percent of the commercial quota, i.e., 233,694 lb (106 mt).

² Kilograms are as converted from pounds and do not sum to the converted total due to rounding.

³ Rounding of quotas results in totals exceeding 100 percent.

Scup

For scup, the stock is considered overfished when the 3-year average of scup SSB is less than the biomass threshold (2.77 kg/tow; the maximum Center spring survey 3-year average of

SSB). Scup was last formally assessed in June 2002 at the 35th Northeast Regional Stock Assessment Workshop (SAW). At that time, SARC 35 indicated that the species was no longer overfished, but that stock status with respect to

overfishing could not be evaluated. An anomalously large spring SSB index value for 2002 resulted in the 3-year SSB average exceeding the biomass threshold for 2001 through 2003. However, more recent information

indicates that the scup SSB has decreased, and the 3-year SSB average values for 2004 (0.69 kg/tow) and 2005 (1.32 kg/tow) were under one-quarter and one-half of the SSB threshold, respectively. Therefore, the stock is considered overfished.

The proposed scup specifications for 2007 are based on an exploitation rate (21 percent) in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Act, the Council prepared Amendment 12 to the FMP, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8 to the FMP. On April 28, 1999, NMFS disapproved the proposed rebuilding plan for scup because the rebuilding schedule did not appear to be sufficiently risk-averse. Later, however, NMFS advised the Council that use of the exploitation rate as a proxy for F would be acceptable and sufficiently risk-averse. NMFS considers the risks associated with the disapproved rebuilding plan as not applicable to the proposed specifications because they apply only for 1 fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements. The Council is currently addressing this deficiency through Amendment 14 to the FMP, which is under development.

Given the uncertainty associated with the spring survey, the Council and Board agreed with the Scup Monitoring Committee recommendation to set a TAC and TAL for 1 year only. A recommendation on the TAC for 2007 is complicated by the lack of information on discards and mortality estimates for fully recruited fish. In recent years, Council staff has used the 3-year SSB index average, the relative exploitation index (based on total landings and the spring survey SSB index), and

assumptions about F to develop a TAL recommendation. That approach would indicate that a TAL of 31.12 million lb (14,116 mt; nearly double that for 2006) would achieve the target exploitation rate of 21 percent in 2007. Council staff cautioned against use of the SSB index to derive a TAC for 2007, given the current overfished status for scup, poor 2004 and 2005 year classes, and the uncertainty associated with the survey indices, and instead suggested a TAL of 12 million lb (5,443 mt). This value, which is 26-percent lower than the 2006 TAL, falls within the range of yields expected at about $\frac{1}{2}B_{msy}$ (11–16.5 million lb (4,990–7,484 mt)) based on the long-term potential catch, and would constrain harvest to the level of actual landings in 2005. The Scup Monitoring Committee agreed with the Council staff recommendation. Estimated discards of 1.97 million lb (894 mt) were added to the TAL to derive a TAC of 17.97 million lb (8,151 mt).

Reasoning that the scup winter trip limits have been effective in reducing scup discards and that the commercial fishery has not met its quota in the last few years, and concerned about potential shift in effort from summer flounder to scup, the Council and Board rejected the Monitoring Committee recommendation and instead recommended a TAL of 16 million lb (7,258 mt), an amount at the high end of the range of yields expected at $\frac{1}{2}B_{msy}$, and representing a less than 2-percent decrease from 2006, with 3 percent of the TAL set aside for research.

NMFS is concerned about implementing the scup TAL recommended by the Council and Board for the reasons identified by the Scup Monitoring Committee and because the spring survey index values have fallen below the biomass threshold, upon which long-term potential catch projections are based. Following NMFS's notification to the Council in August 2005 that the scup stock had been designated as overfished, the Council initiated development of Amendment 14 to implement a plan to rebuild the scup fishery. Although the amendment is not scheduled to be effective until 2007 (affecting TAL specification for 2008 and beyond), the setting of a more conservative 2007 TAL

would contribute to the rebuilding efforts for this overfished stock.

For these reasons, NMFS proposes to implement a scup TAL of 12 million lb (5,443 mt) for 2007. This TAL would represent a 26-percent decrease for 2007 from the 2006 TAL of 16.27 million lb (7,380 mt). The FMP specifies that the TAC associated with a given exploitation rate be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector, i.e., TAC minus discards equals TAL. The commercial TAC, discards, and TAL (commercial quota) are then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January-April)--45.11 percent; Summer (May-October)--38.95 percent; and Winter II (November-December)--15.94 percent. The commercial TAC would be 10,900,000 lb (4,943 mt) and the recreational TAC would be 3,070,000 lb (1,394 mt). After deducting estimated discards (1.72 million lb (780 mt) for the commercial sector and 250,000 lb (113 mt) for the recreational sector), the initial commercial quota would be 9,176,600 lb (4,163 mt) and the recreational harvest limit would be 2,823,400 lb (1,281 mt). The Council and Board agreed to set aside 3 percent of the TAL for research activities. Deducting this RSA (360,000 lb (163 mt)) would result in a commercial quota of 8,895,800 lb (4,035 mt) and a recreational harvest limit of 2,744,200 lb (1,245 mt).

The proposed specifications would maintain the base scup possession limits, i.e., 30,000 lb (13,608 mt) for Winter I, to be reduced to 1,000 lb (454 kg) when 80 percent of the quota is projected to be reached, and 2,000 lb (907 kg) for Winter II, as implemented for 2006.

Table 3 presents the 2007 commercial allocation recommended by the Council, with and without the preliminary 280,800-lb (127-mt) RSA deduction. These 2007 allocations are preliminary and may be subject to downward adjustment due to 2005 overages in the final rule implementing these specifications, based on the procedures for calculating overages described earlier.

TABLE 3. 2007 PROPOSED INITIAL TAC, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS.

Period	Percent	TAC in lb (mt)	Discards in lb (mt)	Commercial Quota in lb (mt)	Commercial Quota less RSA in lb (mt)	Possession Limits in lb (kg)
Winter I	45.11	4,915,456 (2,230)	775,892 (352)	4,139,564 (1878)	4,012,895 (1820)	30,000 ¹ (13,608)

TABLE 3. 2007 PROPOSED INITIAL TAC, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS.—Continued

Period	Percent	TAC in lb (mt)	Discards in lb (mt)	Commercial Quota in lb (mt)	Commercial Quota less RSA in lb (mt)	Possession Limits in lb (kg)
Summer	38.95	4,244,226 (1,925)	669,940 (304)	3,574,286 (1,621)	3,464,914 (1,572)	n/a
Winter II	15.94	1,736,918 (788)	274,168 (124)	1,462,750 (664)	1,417,991 (643)	2,000 (907)
Total ²	100.00	10,896,600 (4,943)	1,720,000 (780)	9,176,600 (4,163)	8,895,800 (4,035)	

¹The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.

²Totals subject to rounding error.

n/a-Not applicable

The final rule to implement Framework 3 to the FMP (68 FR 62250, November 3, 2003) implemented a process, for years in which the full Winter I commercial scup quota is not

harvested, to allow unused quota from the Winter I period to be rolled over to the quota for the Winter II period. As shown in Table 4, the proposed specifications would maintain the

Winter II possession limit-to-rollover amount ratios (1,500 lb (680 kg) per 500,000 lb (227 mt) of unused Winter I period quota), as implemented for 2006.

TABLE 4. POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD.

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0–499,999	0–227	0	0	2,000	907
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

Black Sea Bass

Amendment 12 to the FMP indicated that the black sea bass stock, which was determined by SARC 27 to be overfished in 1998, could be rebuilt to the target biomass within a 10-year period, i.e., by 2010. The current target exploitation rate is based on the current estimate of Fmax, or 0.33 (25.6 percent). The northern stock of black sea bass was last assessed at the 43rd SAW in June 2006. The SARC 27 Panel did not consider the stock assessment to provide an adequate basis to evaluate stock status against the biological reference points, but did not recommend any other reference points to replace them.

The most recent Center spring survey results indicate that the exploitable biomass of black sea bass decreased in 2005. The 2005 biomass index, i.e., the 3-year average exploitable biomass for 2004 through 2006, is estimated to be 0.804 kg/tow, below the threshold biomass value of 0.976 kg/tow. Based on these results, if the biological reference

points in the FMP are applied, black sea bass once again would be determined to be overfished.

The best available information on stock status indicates that stock size has increased in recent years. In addition, the 2005 year class may be above average. If protected, this year class should allow for additional stock rebuilding in 2006 and beyond. Given the lack of stock projections, it is difficult to predict what the actual biomass will be in 2007. Because the estimate of exploitable biomass is based on a 3-year average, the actual estimate for 2007 will not be derived until the spring 2008 survey results are available; if it is 0.328 (equal to the average for 2004–2006), and assuming an exploitation rate of 21 percent in 2003, the TAL associated with the target exploitation rate would be 4.68 million lb (2,123 mt). However, if the 2007 estimate is 0.396 (equal to the average for 2003–2005), the TAL associated with the target exploitation rate would be 5.650 million lb (2,563 mt). Given the

uncertainty in the survey estimates and the potential underestimation of the 2003 exploitation rate (21 percent), the Monitoring Committee agreed with the Council staff recommendation to set a 1-year TAL (for 2007) of 5 million lb (2,270 mt), noting that it would constrain the 2007 landings to the 2005 and 2006 levels.

Reasoning that the TAL should be set at a level higher than 2005 landings (to avoid discards and highgrading, to accommodate a potential shift in effort from the summer flounder fishery, and assuming that black sea bass availability may improve in 2007), but recognizing the need for a more conservative TAL than implemented for 2006, the Council and Board rejected the Monitoring Committee recommendation, and recommended instead a 6.5-million-lb (2,948-mt) TAL for 2007, with 3 percent of the TAL set aside for research. This TAL would represent a 19-percent decrease from 2006.

NMFS has concerns regarding the Council and Board-recommended black

sea bass TAL, which is well above the range of TALs considered by the Monitoring Committee, for the reasons specified above. More conservative black sea bass TALs will likely need to be implemented during the remainder of the rebuilding period to allow for growth of exploitable biomass (reflected by the spring survey index). NMFS has encouraged the Council to manage this stock with caution and to initiate a process to develop replacement stock status determination criteria that are scientifically supportable and that can be relied on to measure the progress of rebuilding.

For the reasons described above, NMFS proposes to implement a black sea bass TAL of 5 million lb (2,270 mt) for 2007. This TAL would represent a 37.5-percent decrease from the 2006 TAL of 8 million lb (3,629 mt). The FMP specifies that the TAL associated with a given exploitation rate be allocated 49 percent to the commercial sector and 51 percent to the recreational sector; therefore, the initial TAL would be allocated 2.45 million lb (1,111 mt) to the commercial sector and 2.55 million lb (1,157 mt) to the recreational sector. The Council and Board also agreed to set aside 3 percent of the black sea bass TAL for research activities. After deducting the RSA (150,000 lb (68 mt)), the TAL would be divided into a commercial quota commercial quota of 2,376,500 lb (1,078 mt) and a recreational harvest limit of 2,473,500 lb (1,122 mt), as specified in the FMP.

Classification

These proposed specifications are exempt from review under Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact these proposed specifications, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the economic analysis follows.

The economic analysis assessed the impacts of the various management alternatives. The no action alternative is defined as follows: (1) No proposed specifications for the 2007 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum mesh sizes, minimum sizes, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2007; (4) the existing gear restrictive areas would remain in place for 2007; and (5) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quotas). Implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act. In addition, the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources. Therefore, the no action alternative is not

considered to be a reasonable alternative to the preferred action.

The Council prepared economic analyses for Alternatives 1 through 3. Alternative 1 consists of the harvest limits proposed by the Council for summer flounder, and the Council and Board for scup and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the status quo quotas, which were the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. NMFS prepared a supplemental economic analysis for Alternatives 4 through 6. Although NMFS defined Alternative 4 as the no action alternative, no analysis was undertaken for the reasons described above, i.e., because it would likely result in overfishing of the resources. Alternative 5 consists of a summer flounder TAL of 14.156 million lb (6,421 mt, associated with a 50-percent probability of not exceeding the F target) and the most restrictive quotas for scup and black sea bass. Alternative 6 consists of a summer flounder TAL of 12.983 million lb (5,889 mt, associated with a 75-percent probability of not exceeding the F target) and the most restrictive quotas for scup and black sea bass. For clarity, these proposed specifications are described in Alternative 6.

Table 5 presents the 2007 initial TALs, RSA, commercial quotas adjusted for RSA, and preliminary recreational harvests for the fisheries under these three quota alternatives.

TABLE 5. COMPARISON, IN LB (MT), OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED.

	Initial TAL	RSA	Preliminary Adjusted Commercial Quota ¹	Preliminary Recreational Harvest Limit
Quota Alternative 1 (Council's Preferred)				
Summer Flounder	19.9 million (9,026)	567,092 ² (257)	11.60 million (5,261)	7.73 million (3,506)
Scup	16 million (7,257)	480,000 (218)	11.93 million (5,411)	3.59 million (1,628)
Black Sea Bass	6.5 million (2,948)	132,000 ² (60)	3.12 million (1,415)	3.25 million (1,474)
Quota Alternative 2 (Most Restrictive)				
Summer Flounder	5.22 million (2,368)	156,600 (71)	3.04 million (1,379)	2.03 million (921)
Scup	12 million (5,442)	360,000 (163)	8.9 million (4,037)	2.74 million (1,243)
Black Sea Bass	5 million (2,268)	132,000 ² (60)	2.39 million (1,084)	2.48 million (1,125)

TABLE 5. COMPARISON, IN LB (MT), OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED.—Continued

	Initial TAL	RSA	Preliminary Adjusted Commercial Quota ¹	Preliminary Recreational Harvest Limit
Quota Alternative 3 (Status Quo-Least Restrictive)				
Summer Flounder	23.59 million (10,700)	567,062 ² (257)	13.81 million (6,264)	9.21 million (4,178)
Scup	16.27 million (7,380)	488,100 (221)	12.13 million (5,502)	3.65 million (1,656)
Black Sea Bass	8 million (3,629)	132,000 ² (60)	3.86 million (1,751)	4.01 million (1,819)
Quota Alternative 4 (No Action - not analyzed)				
Quota Alternative 5 (NMFS analysis)				
Summer Flounder	14.156 million (6,421)	424,680 (193)	8.24 million (3,738)	5.49 million (2,490)
Scup	12 million (5,443)	360,000 (163)	8.9 million (4,037)	2.74 million (1,243)
Black Sea Bass	5 million (2,268)	150,000 (68)	2.38 million (1,078)	2.47 million (1,122)
Quota Alternative 6 (NMFS analysis - Proposed Action)				
Summer Flounder	12.983 (5,889)	389,490 (177)	7.56 million (3,429)	5.04 million (2,286)
Scup	12 million (5,443)	360,000 (163)	8.9 million ()	2.74 million (1,243)
Black Sea Bass	5 million (2,268)	150,000 (68)	2.38 million (1,078)	2.47 million (1,122)

¹ Note that preliminary quotas are provisional and may change to account for overages of the 2006 quotas.

² Actual RSA amount analyzed by Council staff (rather than 3 percent of TAL)

³ Metric tons are as converted from pounds and are subject to rounding error

Table 6 presents the percent change associated with each of these commercial quota alternatives (adjusted for RSA) compared to the final adjusted quotas for 2006.

TABLE 6. PERCENT CHANGE ASSOCIATED WITH 2007 ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2006 COMMERCIAL ADJUSTED QUOTAS.

	Total Changes Including Overages and RSA				
	Quota Alternative 1 (Council Preferred)	Quota Alternative 2 (Most Restrictive)	Quota Alternative 3* (Least Restrictive)	Quota Alternative 5	Quota Alternative 6
Summer Flounder					
Aggregate Change	-16%	-78%	+ less than 1%	-41%	-46%
Scup					
Aggregate Change	no change	-25%	+ less than 2%	-25%	-25%
Black Sea Bass					
Aggregate Change	-19%	-38%	+ less than 1%	-38%	-38%

*Denotes status quo management measures.

All vessels that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of

these species in state waters. The Council estimates that the proposed 2007 quotas could affect 2,242 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2005. However, the more immediate impact of this rule will likely be felt by the 906 vessels that actively participated in these fisheries (i.e., landed these species) in 2005.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2005 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2006 to 2007.

The analysis of the harvest limits in Alternative 1 (the Council's preferred alternative) indicated that these harvest levels would result in revenue losses of less than 5 percent for 34 vessels and greater than or equal to 5 percent for 859 vessels. More specifically, vessels are projected to incur revenue reductions as follows: No change, 13 vessels; 5–9 percent, 104 vessels; 10–19 percent, 755 vessels; 20 percent or greater, 0 vessels. Most commercial vessels showing revenue reduction of greater than 5 percent are concentrated in MA, RI, NY, NJ, and NC. The Council also examined the level of ex-vessel revenues for the impacted vessel to assess further impacts. While the analysis presented above indicates that in relative terms a large number of vessels (859) are likely to experience revenue reductions of more than 5 percent, dealer data show that a large proportion of those vessels (296 vessels, or 34 percent) had small gross sales (less than \$1,000), thus indicating that the dependence on fishing is likely very small.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Alternative 1 would decrease total summer flounder and black sea bass revenues by approximately \$3.72 million and \$1.80 million, respectively, relative to expected revenues earned from the 2006 quotas. No changes in scup revenues are expected in 2007 relative to 2006 since the proposed scup quota under Alternative 1 is identical to quota in place in 2006.

The overall reduction in ex-vessel gross revenue associated with the potential changes in quotas in 2007 versus 2006 is approximately \$5.52 million (in 2005 dollars) under Alternative 1. Assuming that the decrease in total ex-vessel gross revenue associated with the proposed rule for each fishery is distributed equally among the vessels that landed those

species in 2005 (the last full year of data availability), the average decrease in gross revenue per vessel associated with the preferred quota would be \$4,960 for summer flounder and \$3,197 for black sea bass. The total average gross revenue reduction for vessels that land both summer flounder and black sea bass would then be \$8,157. No revenue reductions are expected for scup. The number of vessels landing summer flounder, scup, and black sea bass in 2005 was 750, 439, and 563, respectively.

The predicted changes in ex-vessel gross revenues associated with the potential changes in quotas in 2007 versus 2006 assumed static 2005 prices (summer flounder--\$1.70/lb; scup--\$0.75/lb; and black sea bass--\$2.54/lb). However, if prices for these species change as a consequence of changes in landings, then the associated revenue changes could be different than those estimated above, and could mitigate some of the revenue reductions associated with lower quantities of quota available under this alternative.

The analysis of the harvest limits of Alternative 2 (i.e., the most restrictive harvest limits) indicated that all 906 vessels would incur revenue losses equal to or greater than 5 percent. More specifically, vessels are projected to incur revenue reductions as follows: 5–9 percent, 0 vessels; 10–19 percent, 0 vessels; 20–29 percent, 24 vessels; 30–39 percent, 180 vessels; 40–49 percent, 31 vessels; and greater or equal to 50 percent, 671 vessels. The majority of the revenue losses of 50 percent or higher are attributed to quota reductions associated with the summer flounder fishery. Further examination shows that 311 of the impacted vessels (34 percent) had gross sales of \$1,000 or less and 491 of the impacted vessels (54 percent) had gross sales of \$10,000 or less, thus likely indicating that the dependence on these fisheries for some of these vessels is very small. As in Alternative 1, most commercial vessels showing revenue reduction are concentrated in MA, RI, NY, NJ, and NC.

Alternative 2 was estimated to decrease total summer flounder, scup, and black sea bass revenues by approximately \$18.28 million, \$2.27 million and \$3.64 million respectively, relative to expected revenues earned from the 2006 quotas. The overall reduction in ex-vessel gross revenue associated with the potential changes in quotas in 2007 versus 2006 is approximately \$24.19 million (in 2005 dollars) under Alternative 2. Assuming that the decrease in total ex-vessel gross revenue associated with the proposed rule for each fishery is distributed

equally among the vessels that landed those species in 2005 (the last full year of data availability), the average decrease in gross revenue per vessel associated with the Alternative 2 quota would be \$24,373 for summer flounder, \$5,170 for scup and \$6,465 for black sea bass. The total average gross revenue reduction for vessels that land summer flounder, scup and black sea bass would then be \$36,008. The number of vessels landing summer flounder, scup, and black sea bass in 2005 was 750, 439, and 563, respectively.

The predicted changes in ex-vessel gross revenues associated with the potential changes in quotas in 2007 versus 2006 assumed static 2005 prices (summer flounder--\$1.70/lb; scup--\$0.75/lb; and black sea bass--\$2.54/lb). However, if prices for these species change as a consequence of changes in landings, then the associated revenue changes could be different than those estimated above, and could mitigate some of the revenue reductions associated with lower quantities of quota available under this alternative.

The analysis of the harvest limits in Alternative 3 (i.e., the least restrictive harvest limits) indicated that these harvest levels would result in revenue increases for 488 vessels and losses of less than 5 percent for 418 vessels. As in the analysis for Alternative 1, it is likely that a large proportion of the impacted vessels are likely to have small gross sales (less than \$1,000), thus indicating that the dependence on these fisheries is likely very small.

Alternative 3 was estimated to increase total summer flounder, scup and black sea bass revenues by approximately \$0.03 million, \$0.15 million and \$0.08 million respectively, relative to expected revenues earned from the 2006 quotas (assuming the entire quotas are landed).

The overall increase in ex-vessel gross revenue associated with the potential changes in quotas in 2007 versus 2006 is approximately \$0.26 million (in 2005 dollars) under Alternative 3. Assuming that the increase in total ex-vessel gross revenue associated with the proposed rule for each fishery is distributed equally among the vessels that landed those species in 2005 (the last full year of data availability), the average increase in gross revenue per vessel associated with the Alternative 3 quota would be \$40 for summer flounder, \$342 for scup and \$142 for black sea bass. The total average gross revenue reduction for vessels that land all three species would then be \$524. The number of vessels landing summer flounder, scup, and black sea bass in 2005 was 750, 439, and 563, respectively.

The predicted changes in ex-vessel gross revenues associated with the potential changes in quotas in 2007 versus 2006 assumed static 2005 prices (summer flounder--\$1.70/lb; scup--\$0.75/lb; and black sea bass--\$2.54/lb). However, if prices for these species change as a consequence of changes in landings, then the associated revenue changes could be different than those estimated above, and could mitigate some of the revenue reductions associated with lower quantities of quota available under this alternative.

The NMFS analysis of the harvest limits in Alternative 5 indicate that these harvest levels would result in revenue losses of less than 5 percent for 548 vessels and greater than or equal to 5 percent for 369 vessels (with a total of 917 active vessels for 2005). More specifically, vessels are projected to incur revenue reductions as follows: 5–9 percent, 86 vessels; 10–19 percent, 149 vessels; 20–29 percent, 70 vessels; and 30–39 percent, 64 vessels. As in Alternative 1, most commercial vessels showing revenue reduction are concentrated in MA, RI, NY, NJ, and NC.

The overall decrease in gross revenue associated with the reduced quotas in 2007 compared to expected landings levels in 2006 is approximately \$11,414,200 (in 2006 dollars) under Alternative 5. By species, Alternative 5 would decrease total summer flounder, scup and black sea bass revenues by \$9.68 million, \$0.51 million and \$1.22 million, respectively. If the decreases are assumed to be distributed equally among the vessels that landed those species in 2005 (the last full year of data availability), the average decrease in gross revenue per vessel associated with Alternative 5 would be \$12,810 for summer flounder, \$1,145 for scup and \$2,125 for black sea bass. The averages are additive so for vessels that land all three species the average gross revenue reduction is estimated at \$16,080. The number of vessels landing summer flounder, scup, and black sea bass in 2005 was determined by NMFS to be 756, 448, and 574, respectively.

In the NMFS analysis, a price-quantity equation was used to predict how reductions in summer flounder landings affect ex-vessel prices. The average nominal ex-vessel price per pound for summer flounder was estimated to be \$1.79 in 2006 (assuming the entire TAL will be landed) and was estimated to increase to \$1.91 in 2007 under Alternative 5 in response to reduced landings levels. To compare projected summer flounder revenues under Alternative 5 to 2006 levels, the 2007 average ex-vessel price per pound

(\$1.91) was converted to its 2006 inflation adjusted value of \$1.86. For scup and black sea bass, it was assumed that the price-quantity relationships will remain constant under Alternative 5. Although to account for the effect of rising seafood prices, inflation adjusted 2006 average ex-vessel prices per pound were calculated for both scup (\$0.77) and black sea bass (\$2.60) in the analysis.

The NMFS analysis of the harvest limits in Alternative 6 indicated that these harvest levels would result in revenue losses of less than 5 percent for 542 vessels and greater than or equal to 5 percent for 375 vessels (with a total of 917 active vessels for 2005). More specifically, vessels are projected to incur revenue reductions as follows: 5–9 percent, 83 vessels; 10–19 percent, 145 vessels; 20–29 percent, 64 vessels; 30–39 percent, 52 vessels; and 40–49 percent, 31 vessels. As in Alternative 1, most commercial vessels showing revenue reduction are concentrated in MA, RI, NY, NJ, and NC.

The overall decrease in gross revenue associated with the reduced quotas in 2007 compared to expected landings levels in 2006 is approximately \$12,533,500 (in 2006 dollars) under Alternative 6. By species, Alternative 6 would decrease total summer flounder, scup and black sea bass revenues by \$10.8 million, \$0.51 million and \$1.22 million, respectively. If the decreases are assumed to be distributed equally among the vessels that landed those species in 2005 (the last full year of data availability), the average decrease in gross revenue per vessel associated with Alternative 6 would be \$14,290 for summer flounder, \$1,145 for scup and \$2,125 for black sea bass. The averages are additive so for vessels that land all three species the average gross revenue reduction is estimated at \$17,560. The number of vessels landing summer flounder, scup, and black sea bass in 2005 was determined by NMFS to be 756, 448, and 574, respectively.

In the NMFS analysis, a price-quantity equation was used to predict how reductions in summer flounder landings affect ex-vessel prices. The average nominal ex-vessel price per pound for summer flounder was estimated to be \$1.79 in 2006 (assuming the entire TAL will be landed) and was estimated to increase to \$1.93 in 2007 under Alternative 6 in response to reduced landings levels. To compare projected summer flounder revenues under Alternative 6 to 2006 levels, the 2007 average ex-vessel price per pound (\$1.93) was converted to its 2006 inflation adjusted value of \$1.88. For scup and black sea bass, it was assumed

that the price-quantity relationships will remain constant under Alternative 6. Although to account for the effect of rising seafood prices, inflation adjusted 2006 average ex-vessel prices per pound were calculated for both scup (\$0.77) and black sea bass (\$2.60) in the analysis.

For the analysis of the alternative recreational harvest limits, the 2007 recreational harvest limits were compared with previous years through 2005, the most recent year with complete recreational data. Landings statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from a 5–percent overage in 1993 to a 122–percent overage in 2000. In 2003, recreational landings were 11.64 million lb (5,280 mt), 25 percent above the recreational harvest limit of 9.28 million lb (4,209 mt). In 2004, recreational landings were 10.8 million lb (4,899 mt), 4 percent below the recreational harvest limit of 11.21 million lb (5,085 mt). In 2005, recreational landings were 10.02 million lb (4,545 mt), 2 percent below the recreational harvest limit of 11.98 million lb (5,085 mt).

The Alternative 1 summer flounder 2007 recreational harvest limit (adjusted for RSA) of 7.73 million lb (3,506 mt), would be a 17–percent decrease from the 2006 recreational harvest limit of 9.29 million lb (4,214 mt), and would represent a 23–percent decrease from 2005 landings. The 2007 summer flounder Alternative 2 recreational harvest limit of 2.03 million lb (921 mt) would be 78 percent lower than the 2006 recreational harvest limit, and would represent an 80–percent decrease from 2005 recreational landings. The 2007 summer flounder Alternative 3 (status quo) recreational harvest limit of 9.21 million lb (4,178 mt) would be a less than 1–percent decrease from the 2006 recreational harvest limit (due to the preliminary summer flounder RSA for 2005) and would represent an 8–percent decrease from 2005 recreational landings. The 2007 summer flounder Alternative 5 recreational harvest limit of 5.49 million lb (2,490 mt) would be 41 percent lower than the 2006 recreational harvest limit, and would represent a 45–percent decrease from 2005 recreational landings. The 2007 summer flounder Alternative 6 recreational harvest limit of 5.04 million lb (2,286 mt) would be 46 percent lower than the 2006 recreational harvest limit, and would represent a 50–percent decrease from 2005 recreational landings.

Scup recreational landings declined over 89 percent for the period 1991 to

1998, then increased by 517 percent from 1998 to 2000. The number of fishing trips also declined over 73 percent from 1991 to 1998, and then increased by 127 percent from 1998 to 2000. The decrease in the recreational fishery in the 1990s occurred both with and without any recreational harvest limits, and it is perhaps a result of the stock being over-exploited and at a low biomass level during that period. In addition, it is possible that party/charter boats may have targeted other species that were relatively more abundant than scup (e.g., striped bass), thus accounting for the decrease in the number of fishing trips in this fishery in the 1990s. In 2003, recreational landings were 8.43 million lb (3,824 mt), 110 percent above the recreational harvest limit of 4.01 million lb (1,819 mt) and the highest for the 1991 through 2005 period. In 2004 and 2005, recreational landings were 4.41 million lb (2,000 mt) and 2.38 million lb (1,080 mt), 10 percent above, and 40 percent below, respectively, the recreational harvest limit of 4.01 million lb (1,819 mt) for 2004 and 3.96 million lb (1,796 mt) for 2005.

Under Alternative 1, the scup recreational harvest limit for 2007 would be 3.59 million lb (1,628 mt), 13.5 percent below the 2006 recreational harvest limit of 4.15 million lb (1,882 mt), and 51 percent above the 2005 recreational landings. The scup recreational harvest limit of 2.74 million lb (1,243 mt) for 2007 under Alternatives 2, 5, and 6 would be 34 percent less than the 2006 recreational harvest limit, and 15 above 2005 recreational landings. The Alternative 3 scup recreational harvest limit of 3.65 million lb (1,656 mt) for 2007 would be a 12-percent decrease from the 2006 recreational harvest limit and would represent a 53-percent increase over 2005 recreational landings.

Black sea bass recreational landings have shown a slight upward trend from 1991 through 1997, and increased substantially in 2002 to 4.35 million lb (1,973 mt). In 2003, 2004, and 2005, recreational landings were 3.29 million lb (1,492 mt), 1.67 million lb (757 mt), and 1.77 million lb (802 mt), respectively.

Under Alternative 1, the black sea bass recreational harvest limit for 2007 would be 3.25 million lb (1,474 mt), 19 percent below the 2006 recreational harvest limit of 3.99 million lb (1,810 mt), and 82 percent above the 2005 recreational landings. The black sea bass recreational harvest limit of 2.48 million lb (1,125 mt) for 2007 under Alternatives 2, 5, and 6 would be 38 percent less than the 2006 recreational harvest limit, and 40 percent above 2005

recreational landings. The Alternative 3 black sea bass recreational harvest limit of 4.01 million lb (1,819 mt) for 2007 would be a less than 1-percent increase from the 2006 recreational harvest limit and would represent a 127-percent increase over 2005 recreational landings.

If Alternative 1, 2, 5, or 6 is implemented, more restrictive summer flounder management measures (i.e., lower possession limits, larger minimum size limits, and/or shorter open seasons) may be required to prevent anglers from exceeding the 2007 recreational harvest limit. If 2007 scup and black sea bass landings are similar to those for 2006, more restrictive limits (i.e., lower possession limits, greater minimum size limits, and/or shorter seasons) may not be necessary to prevent anglers from exceeding this recreational harvest limit under any of the alternatives.

While it is likely that proposed management measures under Alternative 6 would restrict the recreational fishery for 2007, and that these measures may cause some decrease in recreational satisfaction, there is neither behavioral or demand data available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. Currently, the market demand for this sector is relatively stable. Summer flounder recreational trips averaged 5.1 million for the 1991 to 2005 period, ranging from 3.8 million in 1992 to 6.1 million in 2001. For 2002 through 2005, summer flounder recreational fishing trips were estimated at 4.6 million, 5.6 million, 5.1 million, and 5.8 million per year, respectively. Scup recreational trips have shown a slight upward trend from the early 1990s to the early 2000s, ranging from approximately 199,000 trips in 1997 to 972,000 trips in 2003, with an average of approximately 454,000 trips per year for the 1991 through 2005 period. For 2004 and 2005, scup recreational fishing trips were estimated at approximately 568,000 and 458,000, respectively. Black sea bass recreational fishing trips have averaged approximately 247,000 per year for the 1991 through 2005 period, ranging from approximately 136,000 trips in 1999, to 311,000 trips in 1997. In 2005, recreational trips for black sea bass numbered approximately 166,000, the third lowest value in the 1991 through 2005 time series.

It is unlikely that these measures would result in any substantive decreases in the demand for party/charter boat trips. It is likely that party/charter anglers would target other species when faced with potential

reductions in the amount of summer flounder, scup, and black sea bass that they are allowed to catch. The Council intends to recommend specific measures to attain the 2007 summer flounder recreational harvest limit in December 2006, and will provide additional analysis of the measures upon submission of its recommendations in early 2007.

In summary, the proposed specifications represent substantially lower 2007 TALs for summer flounder, scup, and black sea bass. The proposed specifications were chosen because they allow for the maximum level of commercial and recreational landings, while allowing the NMFS to meet its legal requirements under the Magnuson-Stevens Act and while achieving the objectives of the FMP. The summer flounder TAL was chosen to allow for rebuilding of the stock by 2010 and to acknowledge the pattern of fishing mortality rate underestimation. Due to the level of uncertainty in the scup and black sea bass stock assessments and to the recent stock indices, the scup and black sea bass TALs were selected as risk-averse management alternatives intended to constrain 2007 landings to recent (2005) levels. The proposed 2007 adjusted commercial quotas for summer flounder, scup, and black sea bass for the year 2007 are 46 percent, 34 percent, and 38 percent lower, respectively, relative to the adjusted quotas for year 2006. The proposed recreational harvest limits (adjusted for RSA) would be 45-, 25-, and 38-percent lower than the adjusted recreational harvest limits for year 2006.

The proposed commercial scup possession limits for Winter I (30,000 lb (13.6 mt) per trip, to be reduced to 1,000 lb (454 kg) upon attainment of 80 percent of the Winter I quota) and Winter II (2,000 lb (907 kg) per trip) and the Winter II possession limit-to-rollover amount ratio were chosen as an appropriate balance between the economic concerns of the industry (i.e., landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over each period. The proposed Winter I possession limit specifically coordinates with the 30,000-lb (13.6-mt) landing limits per 2-week period recommended by the Commission (beginning in 2005) to be implemented by most states, while satisfying concerns about enforcement of possession limits. Continuation of these possession limits and ratios is not expected to result in changes to the economic or social aspects of the fishery relative to 2006.

The commercial portion of the summer flounder RSA preliminary

allocation in the proposed specifications, if made available to the commercial fishery, could be worth as much as \$397,280 dockside, based on a 2005 ex-vessel price of \$1.70/lb (or \$439,344 based on NMFS' inflation adjusted summer flounder price estimate of \$1.88/lb). Assuming an equal reduction in fishing opportunity among all active vessels (i.e., the 750 vessels that landed summer flounder in 2005), this could result in a per-vessel potential revenue loss of approximately \$530 (or \$581 based on NMFS' 2006 summer flounder price and 2005 active vessel estimate). Changes in the summer flounder recreational harvest limit as a result of the RSA are not expected to be significant as the deduction of RSA from the TAL would result in a relatively marginal decrease in the recreational harvest limit from 5.2 million lb (2,359 mt) to 5.0 million lb (2,268 mt). Because this is a marginal change, it is unlikely that the recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The commercial scup RSA allocation, if made available to the commercial fishery, could be worth as much as \$210,600 dockside, based on a 2005 ex-vessel price of \$0.75/lb (or \$216,216 based on NMFS' inflation adjusted scup price estimate of \$0.77/lb). Assuming an

equal reduction in fishing opportunity for all active commercial vessels (i.e., the 439 vessels that landed scup in 2005), this could result in a loss of potential revenue of approximately \$480 per vessel (or \$482 based on NMFS' 2006 scup price and 2005 active vessel estimate). The deduction of RSA from the TAL results in a relatively marginal decrease in the recreational harvest limit from 2.64 million lb (1,197 mt) to 2.56 million lb (1,162 mt). It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The commercial portion of the black sea bass RSA, if made available to the commercial fishery, could be worth as much as \$186,690 dockside, based on a 2005 ex-vessel price of \$2.54/lb (or \$191,100 based on NMFS' inflation adjusted scup price estimate of \$2.60/lb). Assuming an equal reduction in fishing opportunity for all active commercial vessels (i.e., the 563 vessels that caught black sea bass in 2005), this could result in a loss of approximately \$332 per vessel (or \$333 based on NMFS' 2006 black sea bass price and 2005 active vessel estimate). The deduction of RSA from the TAL would result in a relatively marginal decrease in recreational harvest from black sea bass recreational harvest limit from 2.55

million lb (1,157 mt) to 2.48 million lb (1,122 mt). It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this RSA allocation.

Overall, long-term benefits are expected as a result of the RSA program. The results of these projects will provide needed information on high-priority fisheries management issues related to Mid-Atlantic fisheries management. If the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL. It should also be noted that fish harvested under the RSAs would be sold, and the profits would be used to offset the costs of research. As such, total gross revenue to the industry would not decrease if the RSAs are utilized.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

Dated: October 23, 2006.

Samuel D. Rauch III,

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

[FR Doc. 06-8932 Filed 10-24-06; 11:07 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 71, No. 208

Friday, October 27, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 24, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Federal-State Marketing Improvement Program (FSMIP).

OMB Control Number: 0581-NEW.

Summary of Collection: The Federal-State Marketing Improvement Program (FSMIP) operates pursuant to the authority of the Agricultural Act of 1946 (7 U.S.C. 1621, *et seq.*). Section 204(b) authorizes the Secretary of Agriculture to make available funds to State Departments of Agriculture, State bureaus and departments of markets, State agricultural experiment stations, and other appropriate State agencies for cooperative projects in marketing service and in marketing research to effectuate the purposes of title II of the Agricultural Act of 1946. FSMIP provides matching grants on a competitive basis to enable States to explore new market opportunities for U.S. food and agricultural products and to encourage research and innovation aimed at improving the efficiency and performance of the U.S. marketing system.

Need and Use of the Information: The information collection requirements in this request are needed to implement the Federal-State Marketing Improvement Program (FSMIP). The information will be used by the Agricultural Marketing Service (AMS) to establish the entity's eligibility for participation, the suitability of the budget for the proposed project, and compliance with applicable Federal regulations.

Description of Respondents: State, local or tribal government.

Number of Respondents: 40.

Frequency of Responses: Reporting: annually; semi-annually.

Total Burden Hours: 4,730.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6-18043 Filed 10-26-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV06-996-2 N]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection to the Board to fill a vacant Board position for the remainder of a term of office ending June 30, 2009. The Board consists of 18 members representing producers and industry representatives.

DATES: Written nominations must be received on or before December 1, 2006.

ADDRESSES: Nominations should be sent to Dawana J. Clark, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734-5243; Fax: (301) 734-5275; E-mail: *Dawana.Clark@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term "peanut industry representatives" includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would fill a vacant industry representative position from the Virginia-Carolina peanut producing region. The new member would serve for the remainder of a 3-year term of office ending June 30, 2009.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mrs. Clark. Copies of this form may be obtained at the internet site: <http://www.ams.usda.gov/fv/peanut-farbill.htm>, or from Mrs. Clark. USDA seeks a diverse group of members representing the peanut industry. Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Dated: October 24, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6-18041 Filed 10-26-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TM-07-01]

Notice of Funds Availability (NOFA) Inviting Applications for the Federal-State Marketing Improvement Program (FSMIP); Notice of Request for Emergency Review and Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces the availability of approximately \$1.3 million in competitive grant funds for fiscal year 2007 to enable States to explore new market opportunities for U.S. food and agricultural products and to encourage research and innovation aimed at improving the efficiency and performance of the U.S. marketing system. Eligible applicants include State departments of agriculture, State agricultural experiment stations, and other appropriate State Agencies. Applicants are encouraged to involve industry groups, academia, community-based organizations, and other stakeholders in developing proposals and conducting projects. In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), AMS is requesting emergency review and approval of a new information collection.

DATES: Proposals will be accepted through February 12, 2007. Comments regarding the information collection requirement under the Paperwork Reduction Act of 1995 must be received on or before December 26, 2006.

ADDRESSES: Submit proposals and other required documents to: FSMIP Staff Officer, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4009 South Building, Washington, DC 20250; telephone (202) 720-8043; e-mail janise.zygmont@usda.gov.

Comments concerning the information collection requirements should be sent to the Office of Information and Regulatory Affairs, OMB: Attention: Desk Officer for AMS, Washington, DC 20503. Please indicate that your comments refer to Docket No. TM-07-01. Comments concerning the information collection requirements also should be sent to the FSMIP Staff Officer at the above address.

FOR FURTHER INFORMATION CONTACT:

Janise Zygmont, FSMIP Staff Officer; telephone (202) 720-8043; fax (202) 690-4948; or e-mail janise.zygmont@usda.gov.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). FSMIP provides matching grants on a competitive basis to enable States to explore new market opportunities for U.S. food and agricultural products and to encourage research and innovation aimed at improving the efficiency and performance of the U.S. marketing system. Eligible applicants include State departments of agriculture, State agricultural experiment stations, and other appropriate State agencies. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division. State agencies specifically named under the authorizing legislation should assume the lead role in FSMIP projects, and use cooperative or contractual linkages with other agencies, universities, institutions, and producer, industry or community-based organizations as appropriate. Multi-State projects are encouraged as long as one State assumes the coordinating role, using appropriate cooperative arrangements with the other States involved.

Proposals must be accompanied by completed Standard Forms (SF) 424 and 424A. AMS will not approve the use of FSMIP funds for advertising or, with limited exceptions, for the purchase of equipment. Detailed program guidelines may be obtained from the contact listed above, and are available at the FSMIP Web site: <http://www.ams.usda.gov/tmd/fsmip.htm>.

Background

FSMIP funds a wide range of applied research projects that address barriers, challenges, and opportunities in marketing, transportation, and distribution of U.S. food and agricultural products domestically and internationally.

Eligible agricultural categories include livestock, livestock products, food and feed crops, fish and shellfish, horticulture, viticulture, apiary, and forest products and processed or manufactured products derived from such commodities. Reflecting the growing diversity of U.S. agriculture, in recent years, FSMIP has funded projects dealing with nutraceuticals, bioenergy, compost, and products made from agricultural residues.

Proposals may deal with barriers, challenges, or opportunities manifesting at any stage of the marketing chain including direct, wholesale, and retail. Proposals may involve small, medium, or large scale agricultural entities but should potentially benefit multiple producers or agribusinesses. Proprietary proposals that benefit one business or individual will not be considered.

Proposals that address issues of importance at the State, regional or national level are appropriate for FSMIP. FSMIP also seeks unique proposals on a smaller scale that may serve as pilot projects or case studies useful as a model for other States. Of particular interest are proposals that reflect a collaborative approach among the States, academia, the farm sector and other appropriate entities and stakeholders. FSMIP's enabling legislation authorizes projects to:

- Determine the best methods for processing, preparing for market, packing, handling, transporting, storing, distributing, and marketing agricultural products.
- Determine the costs of marketing agricultural products in their various forms and through various channels.
- Assist in the development of more efficient marketing methods, practices, and facilities to bring about more efficient and orderly marketing, and reduce the price spread between the producer and the consumer.
- Develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.
- Eliminate artificial barriers to the free movement of agricultural products in commercial channels.
- Foster new/expanded domestic/foreign markets and new/expanded uses of agricultural products.
- Collect and disseminate marketing information to anticipate and meet consumer requirements, maintain farm income, and balance production and utilization.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is requesting emergency review and approval from the Office of Management and Budget of a new information collection.

Title: Federal-State Marketing Improvement Program (FSMIP).

OMB Number: 0581-NEW.

Type of Request: Approval of a new information collection.

Expiration Date of Approval: 3 years from date of OMB approval.

Estimate of Burden: The public reporting and recordkeeping burden for this collection of information is estimated to total 4,730 hours.

Abstract: The primary objective of FSMIP is to enable States to explore new market opportunities for U.S. food and agricultural products and to encourage research and innovation aimed at improving the efficiency and performance of the U.S. marketing system. Eligible entities under this program include State departments of agriculture, State agricultural experiment stations, and other appropriate State Agencies.

AMS has established guidelines that contain full details about FSMIP and the application process. The guidelines and application forms are available from the FSMIP Staff Officer by calling 202/720-8043, faxing 202/690-4948, or e-mailing to janise.zygmunt@usda.gov. This information is also available at the FSMIP Web site: <http://www.ams.usda.gov/tmd/fsmip.htm>. Eligible entities are strongly encouraged to follow the guidelines when preparing applications for submission to the FSMIP.

FSMIP applicants must complete Form SF-424, "Application for Federal Assistance" (approved under OMB #4040-0004), for each application. Form SF-424A, "Budget Information—Non-Construction Programs" (approved under OMB #0348-0044), also must be completed for each application to show the project's budget breakdown, both with regard to expense categories and the division between Federal and matching non-Federal sources, as applicable. A Proposal Narrative is also required for each application.

AMS needs to receive the information contained in this collection of information to select the projects that will best meet and fulfill FSMIP program objectives. The selection process is competitive and AMS must ensure that limited funds are used for the intended purpose.

Estimate of Burden: The public reporting burden for completing the SF 424, SF 424A, and the Proposal Narrative is estimated to average 33 hours per response.

Respondents: State departments of agriculture, State agricultural experiment stations, and other appropriate State Agencies.

Estimated Annual Number of Respondents: 40.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Annual Number of Responses: 80.

Estimated Total Annual Burden on Respondents: 2,640 hours.

After approval of the grant application and before grant funds are dispersed, grantees must complete the following forms to certify compliance with applicable Federal regulations: Form SF-424B, "Assurances—Non-Construction Programs" (approved under OMB #0348-0040); AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions; AD-1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions; and AD-1049, Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1—for Grantees Other Than Individuals.

In addition, four copies of the Grant Agreement must be signed with an original signature and dated once by grantees after their proposals have been approved and before grant funds are dispersed. The information will be used to affirm the award amount, time frame, objectives and work plan agreed upon by the grantee and USDA/AMS. The Grant Agreement also outlines responsibilities of both parties with regard to the grant.

Standard Form 270, Request for Advance or Reimbursement (approved under OMB #0348-0004), is completed whenever the grantee requests an advance or reimbursement of grant funds. The information will be used to keep track of grant disbursements and the level of matching funds expended by the grantee during the grant period. We expect that grantees will submit a total of three SF 270 forms during the grant period.

Estimate of Burden: The public reporting burden for completing the SF 424B, AD-1047, AD-1048, AD-1049, the Grant Agreement, and three SF 270 forms is estimated to average 22.6 hours per response.

Respondents: State departments of agriculture, State agricultural experiment stations, and other appropriate State Agencies.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Annual Number of Responses: 25.

Estimated Total Annual Burden on Respondents: 565 hours.

Progress Reports are required at the midpoint of projects approved for one year and at six-month intervals for projects of longer duration. Progress Reports should (1) briefly summarize activities performed and milestones achieved for each objective or sub-element of the narrative; (2) note

unexpected delays or impediments as well as favorable or unusual developments; (3) outline work to be performed during the succeeding period; and (4) indicate the amount of grant and matching funds expended to date. We expect that grantees will submit a total of two Progress Reports during the grant period.

Estimate of Burden: The public reporting burden for two Progress Reports is estimated to average 14 hours per response.

Respondents: State departments of agriculture, State agricultural experiment stations, and other appropriate State Agencies.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Annual Number of Responses: 50.

Estimated Total Annual Burden on Respondents: 700 hours.

Not later than 90 days following the ending date of the Grant Agreement the grantee must submit Standard Form 269A, Financial Status Report (short form) (approved under OMB #0348-0038), or Standard Form 269, Financial Status Report (long form) (approved under OMB #0348-0039) to document the final financial status of the grant project and to indicate that the one-to-one matching requirement has been met. The grantee must also submit a Final Report of results and accomplishments within 90 days following the grant ending date. The Final Report will include:

- An outline of the issue or problem.
- How the issue or problem was approached via the project.
 - Contribution of public or private agency cooperators.
 - Results, conclusions and lessons learned.
- Current or future benefits to be derived from the project.
 - Additional information available (publications, Web sites).
 - Recommendations for future research needed, if applicable.
 - Contact person for the project with telephone number and e-mail address.

Estimate of Burden: The public reporting burden for completing the SF 269A or SF 269, as appropriate, and the Final Report is estimated to average 32 hours per response.

Respondents: State departments of agriculture, State agricultural experiment stations, and other appropriate State agencies.

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Annual Number of Responses: 25.

Estimated Total Annual Burden on the Respondents: 800 hours.

Comments are invited on: (1) Whether the new collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the new 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.

All comments concerning the information collection shall reference Docket No. TM-07-01, and the date and page number of this issue of the **Federal Register**. Comments concerning the information collection requirements should be sent to the office of Information and Regulatory Affairs, OMB: Attention: Desk Officer for AMS, Washington, DC 20503. Please state that your comments refer to Docket No. TM-07-01. Comments also may be sent to Janise Zygmunt, Staff Officer, Federal-State Marketing Improvement Program, Agricultural Marketing Service (AMS), USDA, Room 4009-South, 1400 Independence Avenue, SW., Washington, DC 20250; phone 202/720-8043; and e-mail janise.zygmunt@usda.gov. Comments received will be available for public inspection during regular business hours at the same address. All comments will become a matter of public record.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The two SF forms as well as the Proposal Narrative can be filled out electronically and printed out for submission or filled out electronically and submitted as an attachment through the <http://www.grants.gov> Web site with the Proposal Narrative.

How To Submit Proposals and Applications

Applicants have the option of submitting FSMIP applications electronically through the Federal grants Web site, <http://www.grants.gov> instead

of mailing hard copy documents. Applicants considering the electronic application option are strongly urged to familiarize themselves with the Federal grants Web site well before the application deadline and to begin the application process before the deadline. Additional details about the FSMIP application process for all applicants are available at the FSMIP Web site: <http://www.ams.usda.gov/tmd/fsmip.htm>.

FSMIP is listed in the "Catalog of Federal Domestic Assistance" under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all federally assisted programs.

Authority: 7 U.S.C. 1621-1627.

Dated: October 24, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6-18040 Filed 10-26-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2006-0155]

Notice of Request for Extension of Approval of an Information Collection; Plum Pox Compensation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations that provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox.

DATES: We will consider all comments that we receive on or before December 26, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0155 to submit or view public comments and to view supporting and related materials

available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

• **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0155, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0155.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: For information on regulations for plum pox compensation, contact Mr. Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737; (301) 734-8899. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

SUPPLEMENTARY INFORMATION: *Title:* Plum Pox Compensation.

OMB Number: 0579-0159.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with the States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests, such as plum pox, that are new to or not widely distributed within the United States.

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely

reduced fruit production, and the fruit that is produced is often misshapen and blemished. Plum pox virus is transmitted locally by a variety of aphid species, as well as by budding and grafting with infected plant material, and spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts.

There are no known effective methods for treating trees or other plant material infected with plum pox, nor are there any known effective prophylactic treatments to prevent the disease from occurring in trees exposed to the disease due to their proximity to infected trees or other plant material. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other plant material.

The regulations in "Subpart-Plum Pox" (7 CFR 301.74-301.74-5) quarantine areas of the United States where plum pox has been detected, restrict the interstate movement of host material from quarantined areas, and provide for compensation to owners of commercial stone fruit orchards and fruit tree nurseries whose trees or nursery stock were destroyed to eradicate plum pox.

Section 310.74-5 requires applicants for the payment of compensation to complete a form.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

This notice includes a description of the information collection requirement currently approved by the Office of Management and Budget (OMB) for plum pox compensation under numbers 0579-0159 and 0579-0251. After OMB approves and combines the burden for both collections under one collection (number 0579-0159), the Department will retire number 0579-0251.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Owners of commercial stone fruit orchards and owners of fruit tree nurseries.

Estimated Annual Number of Respondents: 4.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Annual Number of Responses: 4.

Estimated Total Annual Burden on Respondents: 1 hour. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 23rd day of October 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6-18042 Filed 10-26-06; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Mystic Ranger District, South Dakota, Section 30 Limestone Mining Proposal

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement

SUMMARY: A Plan of Operation has been submitted by Pete Lien and Sons, Inc., for the purpose of mining for chemical grade limestone within mining claims on National Forest System land. The proposal is to mine within Pennington County totaling approximately 100 acres about one mile north of the northwest boundary of Rapid City, South Dakota.

DATES: Comments concerning the scope of the analysis would be most useful if received 30 days following the date of this notice. The draft environmental impact statement is expected to be available for public review in the Fall of 2007 and the final environmental impact statement is expected to be completed by the Spring of 2008.

ADDRESSES: Send written comments to Frank Carroll, Acting District Ranger, Black Hills National Forest, Mystic Ranger District, S-30 Limestone Mining Operation, 8221 South Highway 16, Rapid City, South Dakota 57702. Telephone number: (605) 343-1567. E-mail: *comments-rocky-mountain-black-hills-mystic@fs.fed.us* with "Section 30" as the subject. Electronic comments must be readable in Word, RichText or pdf formats.

FOR FURTHER INFORMATION CONTACT: Dave Slepnickoff, Project Coordinator, Black Hills National Forest, Mystic Ranger District, at above address, phone (605) 343-1567.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Purpose and Need for this project is authorization of Pete Lien and Sons, Inc., proposal to exercise their rights under U.S. mining laws while protecting the environment in accordance with Forest Service regulations for locatable minerals. The Purpose and Need has several components. Pete Lien and Sons, Inc. has a statutory right to extract locatable minerals (chemical grade limestone) as proposed in accordance with the General Mining Law of 1872, as amended (30 U.S.C. 21-54). The Forest Service has the responsibility to protect surface resources of National Forest System lands to the extent practicable. Forest Service mining regulations state that, "operations shall be conducted so as, where feasible, to minimize adverse impacts on National Forest System surface resources (36 CFR 228.8)."

Proposed Action

The proposed action is to approve the Plan of Operation (PoO) submitted by Pete Lien and Sons, Inc. to mine approximately 100 acres of National Forest System land on the PLS 30-1 through PLS 30-10 Lode Mining Claims, SDMMC #209097. The Plans of Operation was developed by Pete Lien and Sons, Inc. It was submitted to the Forest Service in accordance with the General Mining Law of 1872, as amended and Forest Service mining regulations at 36 CFR part 228 Subpart A. The Project is located between Rapid City and Black Hawk, South Dakota. Legal description is; T.2N., R.7E., NE¹/₄ Section 30, BHM.

The Plan of Operation is summarized as follows:

- It is estimated that the operation will process approximately 10 million tons of limestone. The life of the proposed mine is estimated at 10 years, not including final reclamation.

- Remove vegetation, stockpile topsoil for future reclamation, drill and blast rock to remove an approximate 20-foot bed of limestone rock resulting in an open pit with approximately 20-foot high walls.

- Blasted rock may be crushed on site to reduce size for hauling. Raw materials will be hauled to the east of Highway 79 for processing into chemical grade limestone products.

- Concurrent reclamation is planned. Therefore approximately 60 acres will be disturbed at any one time. Reclamation will result in a depression on the existing hillside. High walls will be reduced, site graded, topsoil applied, and vegetation planted once mineral extraction is complete.

- The Mine Safety and Health Administration (MSHA) will be responsible or enforcing mine safety regulations. The mine site will be enclosed by fences and gates as required by MSHA and other regulatory guidance.

Pete Lien and Sons, Inc. will secure permits for all mining and reclamation activities as required by law. Several permits have been obtained or will be obtained pending the NEPA analysis and decision. Notable permit requirements include:

- Clean Water Act—Apply for construction/mining activity permit with National Pollutant Discharge Elimination System (NPDES).

- Clean Air Act—Permit or permits will be obtained to ensure that equipment and dust control measures comply with the Clean Air Act.

- South Dakota Mining License—Pete Lien and Sons, Inc. currently has a mining license inclusive of the relevant portion of section 30. The proposed mine may be exempt from further state permitting per a statutory exemption for the extraction of cement precursors.

- Pennington County Construction (Mining) Permit—Pete Lien and Sons, Inc. will notify the County of its schedule and plans to initiate mining on section 30. Construction permit CP 01-05 specifies the scope of the County's further review of road impacts, drainage, and other matters related to mining on section 30.

It is possible that Forest Plan direction may need to be amended for one or more resources, to allow a decision on this project. Any appropriate amendment(s) will be part of the proposal.

Craig Bobzien, Forest Supervisor, Black Hills National Forest, 1019 North 5th Street, Custer, South Dakota 57730-7239.

Nature of Decision To Be Made

The Forest Supervisor will decide whether the proposed action will proceed as proposed or as modified by an alternative. Also, he will decide which recommended mitigation measures and monitoring requirements will be applied. Finally, he will decide if a Forest Plan Amendment is required.

Scoping Process

The Forest Service will advertise the proposal in the Rapid City Journal, newspaper of record. The project will be listed in the Black Hills National Forest Quarterly NEPA calendar. Adjacent landowners, known interested parties, and government agencies will be sent letters describing the project and identifying the project timeframe. Scoping comments are requested by November 27, 2006. An informational and public meeting is scheduled for November 14, 2006 at 7 p.m. in the Black Hawk Elementary School Gymnasium regarding this project proposal.

Preliminary Issues

At this time, project planners are aware of issues related to cultural (heritage) resources and scenic quality. Through the Scoping process, we will use comments obtained about the proposed action to determine the breadth of issues to be addressed in the analysis.

The potential for adverse effects to heritage resources has been identified as an issue for this proposed undertaking. A number of archaeological sites have been identified and recorded in the project area as a result of heritage resource surveys. Five of these sites have been evaluated as eligible for nomination to the National Register of Historic Places. Through consultation with Indian tribes, use of this area for religious activities has also been documented. Pursuant to the National Historic Preservation Act (NHPA), the Forest is in consultation with Indian tribes and the South Dakota State Historic Preservation Office to develop measures of avoidance and/or mitigation for significant cultural and archaeological values by the proposed undertaking. Successful completion of consultation pursuant to the NHPA would result in a Memorandum of Agreement that will implement avoidance or mitigation of significant heritage resources in the Area of Potential Effect.

The existing vegetation will be removed prior to mining. The current scenic view will be altered from visible vantage points.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service is seeking information that planners may not be aware of, or if you have comments and/or concerns regarding potential effects of the proposal to authorize mining on the Section 30 PLS Lode Mining Claims. Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be for 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. vs. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing

the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 19, 2006.

Craig Bobzien,

Forest Supervisor, Black Hills National Forest.
[FR Doc. 06-8898 Filed 10-26-06; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Forest Service****Notice of New Fee; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108-447)**

AGENCY: National Forests in Florida, Ocala National Forest. USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The USDA Forest Service proposes a new fee site that will involve a special recreation permit for each operator using the Ocala National Forest designated off-highway vehicle trail system. There would be a choice between a three-consecutive day permits (\$15) or an annual permit (proposed to be between \$60 and up to \$120 pending final financial and marketing analysis, public input, and agency review). The Forest Service will use funds generated to sustain the trail system, facilities, patrols, and monitoring.

The Ocala National Forest is committed to providing quality motorized recreation in balance with what the land can support. The Ocala National Forest recently designated approximately 150 miles of off-highway vehicle trails for motorcycles and unlicensed all-terrain vehicles that consist of mixed-use roads, ATV/motorcycle trails, and motorcycle-only trails. Analysis has begun to consider additional designated trails on the Ocala National Forest which would be included in the fee permit system.

DATES: The proposed fee would be initiated no sooner than April 1, 2007. Comments, concerns, or questions on this proposal must be submitted by October 30, 2006.

ADDRESSES: Submit comments, concerns, or questions about this proposal to District Ranger, Ocala

National Forest, 40929 State Road 19, Umatilla, Florida 3448-5849.

FOR FURTHER INFORMATION CONTACT:

Contact Bret Bush, Recreation Program Manager, 352-625-2520 extension 2509.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108-447)

directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The Recreation Resource Advisory Committee will review proposals for new fees at least three months prior to the recommended initiation date.

Dated: October 3, 2006.

John Richard Lint,

District Ranger, Ocala National Forest.

[FR Doc. 06-8929 Filed 10-26-06; 8:45 am]

BILLING CODE 3410-11-M

ANTITRUST MODERNIZATION COMMISSION**Public Meeting**

AGENCY: Antitrust Modernization Commission.

ACTION: Notice of public meeting.

SUMMARY: The Antitrust Modernization Commission will hold a public meeting on November 14, 2006. The purpose of the meeting is for the Antitrust Modernization Commission to deliberate on possible recommendations regarding the antitrust laws to Congress and the President.

DATES: November 14, 2006, 9:30 a.m. to approximately 4 p.m. Advanced registration is required.

ADDRESSES: Morgan Lewis, Main Conference Room, 1111 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission; telephone: (202) 233-0701; e-mail: info@amc.gov. Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

For Registration: For building security purposes, advanced registration is required. If you wish to attend the Commission meeting, please provide your name by e-mail to meetings@amc.gov or by calling the Commission offices at (202) 233-0701. Please register by 12 noon on November 13, 2006.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Antitrust Modernization Commission to deliberate on its report and/or

recommendations to Congress and the President regarding the antitrust laws. Deliberation will cover potential recommendations relating to the role of State attorneys general in merger enforcement, the application of antitrust in regulated industries, and the Foreign Trade Antitrust Improvements Act ("FTAIA"). The Commission may conduct additional business as necessary. Materials relating to the meeting will be made available on the Commission's Web site (www.amc.gov) in advance of the meeting.

The AMC has called this meeting pursuant to its authorizing statute and the Federal Advisory Committee Act, Antitrust Modernization Commission Act of 2002, Public Law 107-273, section 11054(f), 116 Stat. 1758, 1857; Federal Advisory Committee Act, 5 U.S.C. App., section 10(a)(2); 41 CFR 102-3.150 (2005).

Dated: October 23, 2006.

By direction of Deborah A. Garza, Chair of the Antitrust Modernization Commission.

Approved by Designated Federal Officer:

Andrew J. Heimert,

*Executive Director & General Counsel,
Antitrust Modernization Commission.*

[FR Doc. E6-18000 Filed 10-26-06; 8:45 am]

BILLING CODE 6820-YH-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from Procurement List.

SUMMARY: The Committee is proposing to delete from the Procurement List products previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: November 26, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail SKennerly@jwod.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an

opportunity to submit comments on the proposed actions.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:
Products

Cover, Helmet, Arctic White
NSN: 8415-00-NIB-0068.
NSN: 8415-00-NIB-0078.

Cover, Helmet, Reversible
NSN: 8415-00-NIB-0064.
NSN: 8415-00-NIB-0079.

NPA: Lions Volunteer Blind Industries, Inc., Morristown, Tennessee.

Contracting Activity: U.S. Army Soldier Systems Command, Natick, Massachusetts.

Helmet Assembly, Combat Vehicle Crewman
NSN: 8470-00-NIB-0003—Helmet Assembly, Combat Vehicle Crewman.
NPA: Washington-Greene County Branch, PAB, Washington, Pennsylvania.

Contracting Activity: U.S. Army Soldier Systems Command, Natick, Massachusetts.

Envelope, Crystal Clear Vinyl
NSN: 7510-00-NIB-0004.
NSN: 7510-00-NIB-0006.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.

Contracting Activity: Federal Bureau of Investigation, Dept of Justice, Washington, DC.

Pad, Comfort, Ground Troops, Parachutists
NSN: 8470-00-NIB-0001—Pad, Comfort, Ground Troops, Parachutists.
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.

Contracting Activity: Departments of Army and Air Force—Dallas, Dallas, Texas.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6-18028 Filed 10-26-06; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

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

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail SKennerly@jwod.gov.

SUPPLEMENTARY INFORMATION:

Additions

On August 11 and September 1, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 46189 and 52058) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Base Supply Center, U.S. Army Medical Research Acquisition Activity, 820 Chandler Street, Fort Detrick, Maryland.

NPA: Industries for the Blind, Inc., West Allis, Wisconsin.

Contracting Activity: Army Contracting Agency, Ft. Detrick, Maryland.

Service Type/Location: Custodial Services, Cereal Crops Research Unit, USDA Agricultural Research Service, 502 Walnut Street, Madison, Wisconsin.

NPA: Madison Area Rehabilitation Centers, Inc., Madison, Wisconsin.

Contracting Activity: USDA, Agriculture Research Service, Peoria, Illinois.

Service Type/Location: Custodial Services, Veterans Center, 1642 42nd Street NE, Cedar Rapids, Iowa.

NPA: Goodwill Industries of Southeast Iowa, Iowa City, Iowa.

Contracting Activity: VA Medical Center, Iowa City, Iowa.

Service Type/Location: Custodial/Grounds Maintenance/Refuse Removal/Snow Removal/Naval Operations Support Center, 800 Dan Street, Akron, Ohio, 3190 Gilbert Avenue, Cincinnati, Ohio, 1089 E. Ninth Street, Cleveland, Ohio, 7221 Second Street, Columbus, Ohio, 28828 Glenwood Road, Perrysburg, Ohio.

NPA: VGS, Inc., Cleveland, Ohio.

Contracting Activity: Naval Facilities Engineering Field Activity Midwest, Great Lakes, Illinois.

Service Type/Location: Shadow Boarding, Anniston Army Depot, 7 Frankford Avenue, Bldg 221, Anniston, Alabama.

NPA: Calhoun-Cleburne Mental Health Board, Inc., Anniston, Alabama.

Contracting Activity: Anniston Army Depot, Anniston, Alabama.

Deletions

On June 30, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 37537) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 1 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Apron, Food Handler's

NSN: 8415-00-255-8577.

NPA: Arizona Industries for the Blind, Phoenix, Arizona.

NPA: Alabama Industries for the Blind, Talladega, Alabama.

Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Binder, Note Pad

NSN: 7510-00-NIB-0196.

NSN: 7510-00-NIB-0197.

NPAs: New York City Industries for the Blind, Inc., Brooklyn, New York.

ForSight Vision, York, Pennsylvania.

Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

File, Combination Desk

NSN: 7520-01-452-1565—File, Horizontal Desk.

NPA: Occupational Development Center, Inc., Thief River Falls, Minnesota.

Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Folder, File, Military Personnel Records Jacket

NSN: 7530-DA Form 201.

NPA: L.C. Industries for the Blind, Inc., Durham, North Carolina.

Contracting Activity: TAGCEN, Washington, Department of the Army, Washington, DC.

Igniter Assembly, Empty

NSN: 1330-01-M00-0103.

NPA: None Authorized.

Contracting Activity: Pine Bluff Arsenal, Pine Bluff, Arkansas.

Inking Pad

NSN: 7510-01-431-6516.

NPA: Cattaraugus County Chapter, NYSARC, Olean, New York.

Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Matt Rehab, Grade C Reg Bed

NSN: 7699 27 X 73 C.

NSN: 7699 38 X 75 C.

NSN: 7699 33 X 75 C.

NSN: 7699 26 X 76 C.

NSN: 7699 30 X 76 C.

NSN: 7699 34 X 76 C.

NSN: 7699 31 X 78 C.

NSN: 7699 36 X 78 C.

NSN: 7699 26X72-1/2C.

NPAs: Georgia Industries for the Blind, Bainbridge, Georgia.

NPAs: Mississippi Industries for the Blind, Jackson, Mississippi.

NPAs: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

NPAs: Virginia Industries for the Blind, Charlottesville, Virginia.

NPAs: L.C. Industries for the Blind, Inc., Durham, North Carolina.

Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Mattress, Plastic Coated Innerspring

NSN: 7210-00-995-1093.

NSN: 7210-00-682-7146.

NPAs: Lions Volunteer Blind Industries, Inc., Morristown, Tennessee.

NPAs: Georgia Industries for the Blind, Bainbridge, Georgia.

NPAs: Mississippi Industries for the Blind, Jackson, Mississippi.

NPAs: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

NPAs: Virginia Industries for the Blind, Charlottesville, Virginia.

Contracting Activity: Veterans Affairs National Acquisition Center, Hines, Illinois.

Plate, Marking, Blank

NSN: 9905-00-473-6336.

NPA: None Authorized.

Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Sponge, Surgical

NSN: 6510-00-988-3838.

NSN: 6510-00-559-3219.

NSN: 6510-00-119-9314.

NPA: None Authorized.

Contracting Activity: Department of Veterans Affairs, Washington, DC.

Trap, Animal

NSN: 3740-00-531-3905.

NPA: ACT CORP., Daytona Beach, Florida.

Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6-18029 Filed 10-26-06; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Social and Economic Supplement to the Current Population Survey.

Form Number(s): CPS-580 (ASEC), CPS-580 (ASEC)SP, CPS-676, CPS-676(SP).

Agency Approval Number: 0607-0354.

Type of Request: Revision of a currently approved collection.

Burden: 32,500 hours.

Number of Respondents: 78,000.

Avg Hours per Response: 25 minutes.
Needs and Uses: The purpose of this request for review is to obtain clearance for the Annual Social and Economic Supplement (ASEC), which we will conduct in conjunction with the February, March, and April Current Population Survey (CPS). Congressional passage of the State Children's Health Insurance Program, or Title XXI, led to a mandate from Congress, in 1999, that the sample size for the CPS, and specifically the Annual Social and Economic Supplement (ASEC), be increased to a level whereby more reliable estimates can be derived for the number of individuals participating in this program at the state level. By administering the ASEC in February, March, and April, we have been able to achieve this goal. The U.S. Census Bureau has conducted this supplement annually for over 50 years. The Census Bureau, the Bureau of Labor Statistics (BLS), and the Department of Health and Human Services (HHS) sponsor this supplement.

The instrument questionnaire contains the same items that were in the 2006 ASEC instrument, with the inclusion of additional questions that collect information on payments from pensions and retirement plans.

The ASEC can be divided into five logical series of questions as follows: Work Experience; Personal Income and Noncash Benefits; Household Noncash Benefits; Welfare Reform Items; and Migration.

ASEC data are used by social planners, economists, Government officials, and market researchers to gauge the social and economic well-being of the Nation as a whole, and selected population groups of interest.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182; Title 29, U.S.C., Sections 1-9.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB

Desk Officer either by fax (202) 395-7245 or e-mail (bharrisk@omb.eop.gov).

Dated: October 24, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-18003 Filed 10-26-06; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration.

Title: Public Telecommunications Facilities Program (PTFP) Application Form.

Form Number(s): None.

OMB Approval Number: 0660-0003.

Type of Review: Regular submission.

Burden Hours: 23,830.

Number of Respondents: 300.

Average Hours per Response: On-line application, 75 hours; printed application, 84 hours. In addition, in every grant cycle, NTIA/PTFP requires revised information to be submitted by applicants under serious consideration for funding, 4 hours for an on-line application, and 7 hours for a printed application.

Needs and Uses: The PTFP assist, through matching funds, in the planning and construction of public telecommunications facilities. The application makes possible the required competitive review process for making decisions on which applicants are funded.

Affected Public: Not-for-profit institutions; state, local, or tribal government.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Alison Zaleski, (202) 395-6466.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to Alison Zaleski, OMB Desk Officer, fax number (202) 395-5806, or on the Internet at azaleski@omb.eop.gov.

Dated: October 24, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-18004 Filed 10-26-06; 8:45 am]

BILLING CODE 3510-60-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-813]

Canned Pineapple Fruit from Thailand: Preliminary Results of the Full Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 3, 2006, the Department of Commerce (the "Department") initiated a sunset review of the antidumping duty order on canned pineapple fruit ("CPF") from Thailand pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of substantive responses filed by domestic and respondent interested parties, the Department determined to conduct a full sunset review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the *Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: October 27, 2006.

FOR FURTHER INFORMATION CONTACT: Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4114.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2006, the Department published the notice of initiation of the second sunset review of the antidumping duty order on CPF from Thailand pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 71 FR 16,551 (April 3, 2006). The Department received a notice of intent to participate from Maui Pineapple Co., Ltd., ("Maui"), within the deadline specified in 19 CFR § 351.218(d)(1)(i). Maui claimed

interested party status under section 771(9)(C) of the Act, as a producer of a domestic-like product in the United States. We received a complete substantive response from Maui within the 30-day deadline specified in 19 CFR § 351.218(d)(3)(i). The Department also received a timely and complete substantive response from respondent interested parties, (The Thai Food Processors' Association, Thai Pineapple Canning Industry Corp., Ltd., ("TPC"), Malee Sampran Public Co., Ltd., ("Malee"), The Siam Agro Industry Pineapples and Others Public Co., Ltd., ("SAICO"), Great Oriental Food Products Co., Ltd., ("Great Oriental"), Thai Pineapple Products and Other Fruits Co., Ltd., ("THAICO"), The Tipco Foods (Thailand) PCL ("TIPCO"), Pranburi Hotei Co., Ltd., ("PHC"), and Siam Fruit Canning (1988) Co., Ltd., ("SIFCO")), (collectively, the "Respondents"), within the applicable deadline specified in 19 CFR § 351.218(d)(3)(i). On May 12, 2006, the Department received rebuttal comments from Maui.

Section 351.218(e)(1)(ii)(A) of the Department's regulations provides that the Department normally will conclude that respondents have provided adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation.

On May 22, 2006, the Department issued an adequacy determination stating that the Respondents did not meet the adequacy requirements. See Memorandum from Zev Primor to Tom Futtner "Adequacy Determination in Antidumping Duty Sunset Review of Canned Pineapple from Thailand" (May 22, 2006). On May 30, 2006, and June 8, 2006, we received timely comments pertaining to our calculation methodology from the Respondents and Maui, respectively. Upon review of the parties' comments, we modified our calculation methodology and determined that the Respondents met the adequacy requirements. See Memorandum from Zev Primor to Tom Futtner "Correction to the Adequacy Calculation in the Antidumping Duty Sunset Review of Canned Pineapple Fruit from Thailand" (July 12, 2006). As a result, in accordance with 19 CFR § 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order.

On July 25, 2006, the Department determined that the sunset review of the antidumping duty order on CPF from Thailand is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than February 27, 2007, in accordance with section 751(c)(5)(B) of the Act. See *Extension of Time Limits for Preliminary Results and Final Results of the Full Sunset Review of the Antidumping Duty Order on Canned Pineapple Fruit from Thailand*, 71 FR 42,082 (July 25, 2006).

Scope of the Order

The product covered by this review is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive.

There have been no scope rulings for the subject order. There was one changed circumstances determination in which the Department affirmed that TIPCO is the successor-in-interest to the Thai Pineapple Public Co., Ltd. See *Final Results of Antidumping Duty Changed Circumstances Review: Canned Pineapple Fruit from Thailand*, 69 FR 36,058 (June 28, 2004)

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum for the Preliminary Results of the Full Sunset Review of the Antidumping Duty Order on Canned Pineapple Fruit from Thailand," (the "Decision Memorandum") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated October 20, 2006, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum which is on

file in room B-099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be viewed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on CPF from Thailand would be likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
SAICO	51.16
Malee	41.74
All Others	24.64

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act. This notice serves as the preliminary reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Dated: October 20, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-18055 Filed 10-26-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-836

Glycine From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the review of glycine from the People's Republic of China ("PRC"). This review covers the period March 1, 2005, through February 28, 2006.

EFFECTIVE DATE: October 27, 2006.

FOR FURTHER INFORMATION CONTACT:

Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3207.

SUPPLEMENTARY INFORMATION:**Statutory Time Limits**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Background

On March 29, 1995, the Department published in the **Federal Register** an antidumping duty order on glycine from the PRC. See *Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116, (March 29, 1995). On April 28, 2006, the Department published a notice of initiation of the administrative review of the antidumping duty order on glycine from the People's Republic of China. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006). The preliminary results of this administrative review are currently due no later than December 1, 2006.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because the Department requires additional time to analyze the supplemental questionnaire responses, issue additional supplemental questionnaires, as well as to evaluate what would be the most appropriate surrogate values to use during the period of review. Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days. The preliminary results will now be due no later than April 2, 2007, which is the first business day after the 120-day extension (the 120th day falls on the weekend). The final results continue to be due 120 days

after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 23, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-18049 Filed 10-26-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration****California Institute of Technology, et al., Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments**

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 2104, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20301
Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 06-008. Applicant: California Institute of Technology, Pasadena, CA 91125. Instrument: Neutron Guide. Manufacturer: Swiss Neutronics, Switzerland. Intended Use: See 71 FR 18082, July 27, 2006. Reasons: The article is a compatible key accessory for the high-resolution, direct-geometry, time-of-flight chopper spectrometer (ARCS) at the Spallation Neutron Source at Oak Ridge N.L. It will be used to investigate the energy spectra obtained when neutrons incident on a sample are scattered by the motions of atoms or of electron spins in the sample. Studies will include the thermodynamics of atom vibrations or spin motions, or of their characteristic energies and momenta, cooperative motions of electrons in solids relevant to electrical transport, magnetic properties and superconductivity. The neutron guide is especially useful for studies that require low or medium-energy neutron beams that are incident upon the sample.
Docket Number: 06-014. Applicant: Howard Hughes Medical Institute, Harvard Medical School Boston, MA

02115. Instrument: Confocal Microscope, Model Opera. Manufacturer: Evotec, Germany. Intended Use: See notice at 71 FR 18082, April 10, 2006. Reasons: The foreign instrument provides:

1. An integrated fast autofocus system and an automated water immersion lens system for superior resolution and lower background in a true point confocal laser scanning microscope using a Nipkow spinning disk
2. Ultra high-throughput performance (> 200,000 images per day)
3. Parallel acquisition of three different wavelengths through three different LCD cameras with a dedicated cluster of three three computers that process an image while the following one is being acquired
4. Open architecture which allows creation of new scripts or modification and enhancement of existing or imported scripts
5. Broad user support providing a wide variety of services with rapid servicing, parts replacement and instrument upgrading.

Advice provided by: The National Institutes of Health.

Docket Number: 06-015. Applicant: University of Kentucky, Department of Chemistry, Lexington, KY 4056-0055. Instrument: Optical Parametric Oscillator System. Manufacturer: GWU Lasertechnik, Germany. Intended Use: See notice at 71 FR 26048, July 27, 2006. Reasons: The foreign article is a compatible accessory for an existing Nd:YAG laser as well as an existing data acquisition system developed over several years. It provides: (1) a wavelength tuning range from 412 nm to 2.5 μm , (2) a divergence of < 0.5 mrad, (3) linewidth < 4 cm⁻¹ and (4) motorized crystal tuning.
Docket Number: 06-017. Applicant: University of Michigan, Materials Science and Engineering Department, Ann Arbor, MI 48109-2136. Instrument: Ultrasonic Fatigue Testing Equipment. Manufacturer: BOKU Institute of Physics, Austria. Intended Use: See notice at 71 FR 26048, May 3, 2006. Reasons: The foreign instrument provides a highly specialized system to be used for studying ultra-high cyclic fatigue behavior of materials in the gigacycle regime. It provides measurements for understanding crack growth behavior in various materials including next generation superalloys and prediction of lifetime behavior with cyclic loading frequencies to 20 KHz with capability to stall and return to load repeatedly.

Advice received from the: Air Force Research Lab.
 Docket Number: 06-037. Applicant: Wesleyan University, Middletown, CT 06459-0170. Instrument: Micromanipulators and Control System, Temperature Control and Moveable Top Plate. Manufacturer: Scientifica, United Kingdom. Intended Use: See notice at 71 FR 42632, July 27, 2006. Reasons: The foreign instrument provides sub-micron precision and stability so as to allow the manipulators and moveable table to record neurons electrically in whole-cell patch-clamp mode, with a heater to maintain in vivo temperatures. An electrode can penetrate the neuronal membrane allowing electrical control of the neuron. The manipulators, movable table and heater are computer controlled to automatically guide the manipulators back to preset positions. Advice received from: The National Institutes of Health.

Docket Number: 06-041. Applicant: University of Illinois at Chicago, Chicago, IL 6067-7059. Instrument: Beam Stabilizing System. Manufacturer: Laser Laboratorium Gottingen, Germany. Intended Use: See 71 CFR 42633, July 27, 2006. Reasons: The instrument is intended to be used with a KrF Laser in order to improve the beam quality of the laser, maximizing the possibility of a uniform beam with an even wavefront for ultraviolet operation at 248 nm with extension of operation into the x-ray range of 0.29 nm for general studies of the interaction of intense radiation with matter. Advice received from: The National Institutes of Health.

Docket Number: 06-044. Applicant: Columbia University, New York, NY. Instrument: Ultra-High Vacuum Low Temperature Scanning Tunneling Microscope. Manufacturer: Omicron Nano Technology, Germany. Intended Use: See 71 FR 42633, July 27, 2006. Reasons: The foreign instrument provides:

1. A fully cryogenic STM that is directly connected to a liquid helium cryostat at 4 K, with a hold time of 15 hours before recharging is necessary
2. Cooling of both sample and tip for operation and measurement at 4 K with spatial sample/tip instrumental drift rates of less than 1 billionth of an inch per hour.
3. Tip manipulation and transfer inside the ultra-high vacuum chamber without exposure to ambient air conditions.

Docket Number: 06-045. Applicant: Purdue University, Laboratory of Chemistry, West Lafayette, IN 47907-2084. Instrument: Nd:YAG Laser/ Dye

Laser. Manufacturer: InnoLas, Germany. Intended Use: See notice at 71 FR 42633, July 27, 2006. Reasons: The foreign instrument provides:

1. Incorporation of both lasers into a single compact housing, ensuring that both lasers are properly aligned and minimizing realignment if they are moved. The smaller footprint saves limited laboratory space.
2. Exceptional mechanical and thermal stability associated with the laser body being fabricated out of a single cast-aluminum body resulting in superior reliability and an exceptionally stable day-to-day beam profile with minimal beam walk for maximal beam overlap
3. The Nd:YAG laser radiates a 600mJ/pulse at 1064 nm, 300mJ/pulse at 532 nm and 140 mJ/pulse at 355 nm.
4. Repetition rate of 20 Hz. All nine of the other Nd:YAG lasers in the lab operate at 20 Hz making this rate an absolute requirement for planned multi-laser experiments.

Advice received from: The National Institutes of Health.

Docket Number: 06-046. Applicant: University of Colorado, JILA Department, Boulder, CO 80309. Instrument: Nd:YAG Laser, Model SL-300-20 D. Manufacturer: InnoLas, Germany. Intended Use: See notice at 71 FR 42633, July 27, 2006 (comparable case with 06-065). Reasons: The foreign instrument provides exceptional stability and reliability to perform experiments run every day over months and years. Down time must be minimal. The laser must be operated in an environment subject to vibration from turbomolecular vacuum pumps. The housing of an InnoLas laser is machined out of a single, monolithic metal block and offers superior stability in a vibrationally harsh environment. The laser must also operate at a repetition rate of 20 Hz to be synchronized with the rest of the experiment and should be mounted as close as possible to the ion source for laser safety, making minimal dimensions of the laser head desirable. The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and we know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Gerald A. Zerdy,

Program Manager Statutory Import Programs Staff.

[FR Doc. E6-18048 Filed 10-26-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100506F]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of cancellation and rescheduling of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) has cancelled the public meeting of its Habitat/Marine Protected Area (MPA)/Ecosystem Committee that was scheduled in October, 2006. The new meeting is rescheduled for November, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, November 14, 2006, at 9 a.m.

ADDRESSES: The meeting will be held at the Tavern on the Harbor, 30 Western Avenue, Gloucester, MA 01930; telephone: (978) 283-4200; fax: (978) 283-0204.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The initial notice was published in the **Federal Register** on October 12, 2006, (71 FR 60109) but the meeting has been rescheduled due to conflicts. At the rescheduled meeting the committee will review the PDT's recommendations for a Great South Channel Habitat Area of Particular Concern (HAPC) alternative and potentially recommend an additional HAPC alternative to the Council for inclusion in the Draft Supplemental Environmental Impact Statement (DSEIS) for the Essential Fish Habitat (EFH) Omnibus Amendment. The committee will also receive a briefing on current EFH consultations on non-fishing impact projects in the Northeast. Other topics may be covered at the committee's discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will

be restricted to those issues specifically listed in this notice and issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978-465-0492, at least 5 days prior to the meeting date.

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

Dated: October 24, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E6-18026 Filed 10-26-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102306D]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet November 12-17, 2006. The Council meeting will begin on Monday, November 13, at 2:30 pm, reconvening each day through Friday, November 17. All meetings are open to the public, except a closed session will be held from 2:30 p.m. until 4:30 p.m. on Monday, November 13 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Hilton San Diego/Del Mar Hotel, 15575 Jimmy Durante Boulevard, Del Mar, CA 92014; telephone: (858) 792-5200. Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820-2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

- A. Call to Order
 - 1. Opening Remarks and Introductions
 - 2. Roll Call
 - 3. Executive Director's Report
 - 4. Approve Agenda
- B. Administrative Matters
 - 1. Future Council Meeting Agenda Planning
 - 2. Updated Research and Data Needs
 - 3. Legislative Matters
 - 4. Fiscal Matters
 - 5. Appointments of Council Officers and Members of Advisory Bodies, Standing Committees, and Other Forums, Including the 2007-09 Advisory Body Term, and any Necessary Changes to Council Operating Procedures
 - 6. Council Three-Meeting Outlook, Draft March 2007 Council Meeting Agenda, and Workload Priorities
- C. Highly Migratory Species Management
 - 1. NMFS Report
 - 2. Final Changes to Routine Management Measures
 - 3. Exempted Fishing Permits
 - 4. Fishery Management Plan (FMP) Amendment 1: Overfishing Response for Bigeye Tuna
 - 5. Yellowfin Tuna Status
- D. Groundfish Management
 - 1. NMFS Report
 - 2. Groundfish Bycatch Work Plan
 - 3. Groundfish Stock Assessments for 2007
 - 4. Exempted Fishing Permits for 2007 Fisheries
 - 5. Consideration of Inseason Adjustments
 - 6. Shore-Based Whiting Monitoring Program
 - 7. Intersector Allocation for Trawl Individual Quotas and Other Management Needs
- E. Habitat/Current Habitat Issues
- F. Coastal Pelagic Species Management
 - 1. Pacific Sardine Stock Assessment and Harvest Guideline
 - 2. Stock Assessment Review Panel Terms of Reference for 2007
- G. Pacific Halibut Management
 - Changes to Catch Sharing Plan and 2007 Annual Regulations
- H. Marine Protected Areas
 - Channel Islands National Marine Sanctuary Marine Protected Areas
- I. Salmon Management
 - 1. Preseason Salmon Management Schedule for 2007
 - 2. Salmon Methodology Review

3. FMP Amendment 15 (de minimis fisheries)

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, NOVEMBER 12, 2006

Budget Committee - 4 p.m.

MONDAY, NOVEMBER 13, 2006

Council Secretariat - 8 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Habitat Committee - 8 a.m.
Scientific and Statistical Committee - 8 a.m.
Special Session: National Marine Sanctuary Roundtable Discussion - 8:30 a.m.

Special Session: Groundfish Ecosystem Productivity Presentation - 10:30 a.m.
Enforcement Consultants - 5:30 p.m.
Legislative Committee - 7 p.m.

TUESDAY, NOVEMBER 14, 2006

Council Secretariat - 7 a.m.
California State Delegation - 7 a.m.
Oregon State Delegation - 7 a.m.
Washington State Delegation - 7 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Salmon Amendment Committee - 8 a.m.
Scientific and Statistical Committee - 8 a.m.
Habitat Committee/Scientific and Statistical Subcommittee on Ecosystem Management - 2:30 p.m.
Enforcement Consultants - As necessary

WEDNESDAY, NOVEMBER 15, 2006

Council Secretariat - 7 a.m.
California State Delegation - 7 a.m.
Oregon State Delegation - 7 a.m.
Washington State Delegation - 7 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Salmon Amendment Committee - 8 a.m.
Enforcement Consultants - As necessary
Annual Awards Banquet - 6 p.m.

THURSDAY, NOVEMBER 16, 2006

Council Secretariat - 7 a.m.
California State Delegation - 7 a.m.
Oregon State Delegation - 7 a.m.
Washington State Delegation - 7 a.m.
Groundfish Advisory Subpanel - 8 a.m.
Groundfish Management Team - 8 a.m.
Salmon Advisory Subpanel - 8 a.m.
Salmon Technical Team - 8 a.m.
Enforcement Consultants - As necessary

FRIDAY, NOVEMBER 17, 2006

Council Secretariat - 7 a.m.
California State Delegation - 7 a.m.
Oregon State Delegation - 7 a.m.
Washington State Delegation - 7 a.m.
Salmon Technical Team - As necessary
Enforcement Consultants - As necessary
Although non-emergency issues not contained in this agenda may come

before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: October 24, 2006.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E6-18031 Filed 10-26-06; 8:45 am]
BILLING CODE 3510-22-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Agreed Import Levels for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 23, 2006.

AGENCY: Committee for the Implementation of Textiles Agreements (CITA).

ACTION: Directive to Commissioner, U.S. Customs and Border Protection (CBP) establishing agreed levels.

EFFECTIVE DATE: January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to U.S. Customs and Border Protection website (<http://www.cbp.gov>), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In the Memorandum of Understanding (MOU) between the Governments of the United States of America and the People's Republic of China concerning Trade in Textile and Apparel Products, signed and dated November 8, 2005, and Paragraph 242 of the *Report of the Working Party for the Accession of China to the World Trade Organization*, the Governments of the United States and China established agreed levels for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported to the United States during three one-year periods beginning on January 1, 2006 and extending through December 31, 2008.

The agreed levels published below may be adjusted during the course of the year for "carryover" or "carryforward" under the terms of the MOU.

Baby socks in HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 shall be counted in dozen pairs. These baby socks are subject to the quota level for 332/432/632-T and the sublevel for 332/432/632-B but the correct category designation 239 will be required at the time of entry for quota purposes.

In the letter published below, the Chairman of CITA directs the Commissioner, U.S. Customs and Border Protection (CBP), to establish the 2007 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>).

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 2006.

Commissioner,
U.S. Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: Pursuant to the Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China, Concerning Trade in Textiles and Apparel Products, dated November 8, 2005, you are directed to prohibit, effective on January 1, 2007, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories and HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050, produced or manufactured in

China and exported during the twelve-month period beginning on January 1, 2007 and extending through December 31, 2007, in excess of the following agreed levels:

Category	Restraint Period
200/301	8,659,019 kilograms.
222	18,631,460 kilograms.
229	38,467,942 kilograms.
332/432/632-T (plus baby socks) ¹ ..	73,963,859 dozen pairs, of which not more than 70,318,431 dozen pairs shall be in categories 332/432/632-B (plus baby socks) ² .
338/339pt. ³	23,424,875 dozen.
340/640	7,586,600 dozen.
345/645/646	9,201,612 dozen.
347/348	22,124,305 dozen.
349/649	25,634,144 dozen.
352/652	21,317,554 dozen.
359-S/659-S ⁴	5,164,454 kilograms.
363	116,231,482 numbers.
443	1,514,342 numbers.
447	241,880 dozen.
619	62,222,069 square meters.
620	90,221,904 square meters.
622	37,104,765 square meters.
638/639pt. ⁵	9,067,571 dozen.
647/648pt. ⁶	8,955,399 dozen.
666pt. ⁷	1,084,516 kilograms.
847	19,853,162 dozen.

Baby socks in HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 shall be counted in dozen pairs for quota purposes. These baby socks are subject to the quota level for 332/432/632-T and the sublevel for 332/432/632-B but the correct category designation 239 will be required at the time of entry for quota purposes.

The agreed levels set forth above are subject to adjustment pursuant to the current

¹ Categories 332/432/632-T: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.20.9010, 6115.93.6020, 6115.93.9020, 6115.99.1420 and 6115.99.1820.

² Categories 332/432/632-B: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.93.6020, 6115.93.9020, 6115.99.1420 and 6115.99.1820.

³ Categories 338/339pt: all HTS numbers except: 6110.20.1026, 6110.20.1031, 6110.20.2067, 6110.20.2077, 6110.90.9067, and 6110.90.9071.

⁴ Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

⁵ Categories 638/639pt.: all HTS numbers except: 6110.30.2051, 6110.30.2061, 6110.30.3051, 6110.30.3057, 6110.90.9079, and 6110.90.9081.

⁶ Categories 647/648pt.: all HTS numbers except 6203.43.3510, 6204.63.3010, 6210.40.5031, 6210.50.5031, 6211.20.1525 and 6211.20.1555.

⁷ Category 666pt.: only HTS numbers 6303.12.0010 and 6303.92.2030.

MOU between the Governments of the United States and China.

Products in the above categories and HTS numbers 6111.20.6050, 6111.30.5050, and 6111.90.5050 exported during 2006 shall be charged to the applicable category limits for that year (see directive dated December 13, 2005) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Sincerely,
Philip J. Martello,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. E6-18053 Filed 10-26-06; 8:45 am]
BILLING CODE 3510-DS-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Review of Department of Defense Supported Federal Advisory Committees

AGENCY: DoD.
ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, as amended (5 U.S.C., Appendix) and 41 CFR, parts 102-3 through 102-3.185, the Department of Defense gives notice of changes to several existing DoD-Supporting Federal Advisory Committees.

These changes are a result of the Department of Defense's continuing efforts to improve its Federal Advisory Committee Management Program by streamlining the independent advice and recommendations being received by the Secretary of Defense and his senior advisors. Key to the Department of Defense's efforts was the need to provide the Secretary of Defense and his senior advisors a strategic view of issues by establishing a foundation for cross communications and integrated thinking which is centrally funneled to the ultimate decision maker.

The specific changes being made are:

A. The Department of Defense establishes the Defense Health Board. This Federal Advisory Committee shall advise the Secretary of Defense, through the Under Secretary of Defense (Personnel and Readiness) and the Assistant Secretary of Defense (Health Affairs) on matters pertaining to operational programs, policy development, and research programs and requirements for the treatment and prevention of disease and injury, the promotion of health and delivery of health care services to Department of Defense beneficiaries.

B. The Department of Defense disestablishes the following chartered Federal Advisory Committees and reestablishes their functions as subcommittees of the Defense Health Board:

Armed Forces Epidemiological Board
Board of Directors of Amputee Patient Care Program
Scientific Advisory Board of the Armed Forces Institute of Pathology

C. With the disestablishment of the Armed Forces Epidemiological Board, the Department of Defense also disestablishes the Department of Defense Mental Health Task Force as a subcommittee of the Armed Forces Epidemiological Board and reestablishes it as a non-chartered subcommittee of the Defense Health Board. The Department of Defense Mental Health Task Force, as a subcommittee of the Defense Health Board, shall comply with the provisions of Section 723 of Public Law 109-163.

D. The Department of Defense disestablishes the following chartered Federal Advisory Committees and reestablishes their functions as subcommittees of the Defense Science Board:

Joint Advisory Committee on Nuclear Weapons Surety
DoD Advisory Group on Electronic Devices

These committees and their subcommittees provide necessary and valuable independent advice to the Secretary of Defense and other senior Defense officials in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education, and training, and various technical program areas.

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balance is obtained.

FOR FURTHER INFORMATION CONTACT: Contact Frank Wilson, Committee Management Office for the Department of Defense, 703-601-2554, extension 113.

Dated: October 23, 2004.

L.M. Bynum,
Alternate OSD Federal Register, Liaison Officer, Department of Defense.
[FR Doc. 06-8910 Filed 10-26-06; 8:45 am]
BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.
ACTION: Notice.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests.

DATES: November 16, 2006, from 8 a.m. to 4 p.m., and November 17, 2006, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Hotel Providence, 311 Westminster Street, Providence, RI 02903.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than November 6, 2006.

Dated: October 23, 2006.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 06-8907 Filed 10-26-06; 8:45 am]
BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Department of Defense, Uniformed Services University of the Health Sciences (USU).
ACTION: Quarterly Meeting Notice.

SUMMARY: The actions that will take place include the approval of minutes from the Board of Regents Meeting held July 31, 2006; acceptance of administrative reports; approval of faculty appointments and promotions; and the awarding of post-baccalaureate masters and doctoral degrees in the

biomedical sciences and public health. The President, USU; Dean, USU School of Medicine; and Acting Dean, USU Graduate School of Nursing will also present reports. These actions are necessary for the University to remain an accredited medical school and to pursue our mission, which is to provide trained health care personnel to the uniformed services.

DATES: November 13, 8 a.m. to 2 p.m.

ADDRESSES: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814-4799.

FOR FURTHER INFORMATION CONTACT:

CAPT Jane E. Mead, NC, USN, Executive Secretary, Board of Regents. 301.295.0962.

Dated: October 23, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06-8909 Filed 10-26-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Army, DoD.

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant a biological materials license concerning the Raman Spectra Database, invention disclosure number AFIP 06-40, to ChemImage Corporation, with its principal place of business at 7301 Penn Avenue, Pittsburgh, PA 15208.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702-5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619-7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619-6664, both at telefax (301) 619-5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with

the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06-8937 Filed 10-26-06; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: *Effective Date:* September 30, 2006.

FOR FURTHER INFORMATION CONTACT:

Lucrecia Murdock, Civilian Senior Leader Management Office, 140 Army Pentagon, Washington, DC 20310-0140.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Department of the Army Performance Review Boards are:

1. Ms. Kristine L. Allaman, Director, Strategic Integration, Headquarters, U.S. Army Corps of Engineers.
2. Dr. Richard Amos, Deputy to the Commander, U.S. Aviation and Missile Life Cycle Management Command.
3. Mr. William A. Armbruster, Deputy Assistant Secretary of the Army for Privatization and Partnership, Office of the Secretary of the Army (Installations and Environment).
4. Ms. Sue Baker, Principal Deputy for G-3 Operations, U.S. Army Materiel Command.
5. Mr. Terry F. Bautista, Regional Business Director, Gulf Region, Headquarters, U.S. Army Corps of Engineers.
6. Mr. Thomas R. Berard, Executive Director, U.S. Army White Sands Missile Range, U.S. Army Developmental Test Command.
7. BG Bruce A. Berwick, Commander, Great Lakes & Ohio River Division, U.S. Army Corps of Engineers.
8. Mr. Vernon M. Bettencourt, Deputy CIO/G-6, Office of the Chief Information Officer/G-6.

9. Mr. Scott Castle, Principal Deputy General Counsel, Office of the General Counsel.

10. MG James Cheatham, Assistant to the DCG for Reserve Affairs, US. Army Materiel Command.

11. Mr. William D. Chesarek, Director, U.S. Army Europe Global Rebasing and Restructuring Directorate, Headquarters, Europe and 7th Army, Office of the Deputy Chief of Staff, G-3.

12. Mr. Ronald Chronister, Executive Director, Integrated Material Management Center, U.S. Aviation and Missile Life Cycle Management Command.

13. Dr. Craig E. College, Deputy Assistant Chief of Staff for Installation Management, Office of the Assistant Chief of Staff for Installation Management.

14. Ms. Kathryn A. Condon, Executive Deputy to the Commander General, U.S. Army Materiel Command.

15. Mr. William J. Cooper, Special Assistant for Transportation Engineering/Director, Transportation Agency, Surface Deployment and Distribution Command.

16. Mr. James M. Crum, Deputy Director, Program Management Office, Iraq Reconstruction/Director PMO Washington, U.S. Army Acquisition Support Center, Office of the Director.

17. Mr. James C. Dalton, Regional Business Director, U.S. Army Corps of Engineers.

18. Mr. Addison D. Davis, IV, Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health), Office of the Assistant Secretary of the Army (Installations and Environment).

19. Ms. Jeannie A. Davis, Chief, Policy and Program Development Division, Office of the Deputy Chief of Staff, G-1.

20. Mr. Scott J. Davis, Deputy Program Manager (Operations) Future Combat System, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

21. Daniel B. Denning, Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs)/Deputy Assistant Secretary of the Army (Training Readiness and Mobilization).

22. Mr. Clifton L. Dickey, Special Assistant to the Deputy Chief of Staff G-3/5/7, Office of the Deputy Chief of Staff G-3/5/7.

23. Mr. George S. Dunlop, Principal Deputy Assistant Secretary of the Army (Civil Works)/Deputy Assistant Secretary of the Army (Legislative Liaison).

24. Mr. John Dugan, Deputy to the Commander, U.S. Tank-Automotive and

Armaments Life Cycle Management Command.

25. Dr. Susan L. Duncan, Director of Human Resources, Headquarters, U.S. Army Corps of Engineers.

26. Mr. Thomas J. Edwards, Assistant Deputy Chief of Staff, G-4, Office of the Deputy Chief of Staff, G-4.

27. Mr. Victor Ferlise, Deputy to the Commander, U.S. Communication-Electronics Life Cycle Management Command.

28. Mr. Patrick J. Fitzgerald, The Auditor General, U.S. Army Audit Agency.

29. Mr. Nelson M. Ford, Principal Deputy/Assistant Secretary of the Army (Financial Management and Comptroller)/(Controls), Office of the Secretary of the Army (Financial Management and Comptroller).

30. BG Russell L. Frutiger, Deputy Chief of Staff, G-1 Deputy Commanding General, United States Army, North Atlantic Treaty Organization.

31. Mr. Troy E. Gilleland Jr., Assistant Deputy Chief of Staff, G-1, U.S. Army Forces Command.

32. Dr. Samuel L. Grier, Deputy Civilian Commandant, Office of the Secretary of Defense.

33. Ms. Judith A. Guenther, Director, Investment, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

34. Mr. Joseph F. Guzowski, Principal Deputy Chief of Legislative Liaison, Office, Chief of Legislative Liaison.

35. Mr. Robert W. Hall, Executive Director, U.S. Army Operational Test Command.

36. Ms. Wilhelmenia C. Hinton-Lee, Regional Business Director, Great Lakes & Ohio River Division.

37. Ms. Barbara J. Hefferman, Director, Resource Integration, Office of the Assistant Chief of Staff for Installation Management.

38. Ms. Stephanie L. Hoehne, Principal Deputy Chief of Public Affairs/Director, Soldiers Media Center, Office of Public Affairs.

39. Ms. Patricia L. Kelly, Director, Force Projection & Distribution, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

40. Mr. Thomas E. Kelly III, Deputy Under Secretary of the Army, Office of the Under Secretary of the Army.

41. Dr. James R. Houston, Director, Engineer Research & Development Center (ERDC).

42. MG Ronald L. Johnson, Deputy Commanding General, U.S. Army Corps of Engineers.

43. Mr. Gregory Kee, Deputy Chief of Staff G-5 for Strategy and Concepts, U.S. Army Materiel Command.

44. Mr. Michael A. Kirby, Deputy Under Secretary of the Army for

Business Transformation, Office of the Under Secretary of the Army.

45. Mr. J. Stephen Koons, Assistant Deputy Chief of Staff, G-4, U.S. Army Forces Command.

46. Mr. Douglas W. Lamont, Deputy Assistant Secretary of the Army (Project Planning and Review), Office of the Assistant Secretary of the Army (Civil Works).

47. Dr. Michael J. Lavan, Director, Technology Directorate, U.S. Army Space and Missile Defense Command.

48. Mr. Mark R. Lewis, Assistant Deputy Chief of Staff for Operations, G-3/5/7, Office of the Deputy Chief of Staff, G-3/5/7.

49. Ms. Carol E. Lowman, Director, Southern Region, U.S. Army Contracting Agency, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

50. Mr. Mark D. Manning, Special Assistant to the Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).

51. Mr. Gary P. Martin, Director, U.S. Army Communication—Electronics Research, Development and Engineering Center, U.S. Army Research, Development and Engineering Center, U.S. Army Research, Development and Engineering Command.

52. Mr. John C. Metzler, Jr., Director of Cemetery Operations, Arlington National Cemetery, Military District of Washington.

53. Mr. John M. Miller, Director, U.S. Army Research Laboratory, U.S. Army Research, Development and Engineering Command.

54. Ms. Kathleen S. Miller, Director, Operations and Support Office of the Assistant Secretary of the Army (Financial Management and Comptroller).

55. Mr. Wesley C. Miller, Director, Resource Management, U.S. Army Corps of Engineers.

56. Ms. Joyce E. Morrow, Administrative Assistant to the Secretary of the Army.

57. Florabel G. Mullick, M.D., Sc.D, FCAP, Principal Deputy Director, Armed Forces Institute of Pathology.

58. Mr. Thomas E. Mullins, Deputy Assistant Secretary of the Army for Plans, Programs and Resources, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

59. Mr. Dean G. Popps, Principal Deputy Assistant Secretary of the Army (Acquisition, Logistics and Technology)/Director for Iraq Reconstruction and Program Management), Office of the Assistant

Secretary of the Army (Acquisition, Logistics and Technology).

60. Mr. Geoffrey G. Prosch, Principal Deputy Assistant Secretary of the Army (Installations, Logistics & Environment), Office of the Assistant Secretary of the Army (Installations and Environment).

61. Mr. William J. Reeves, Jr., Director, Technical Interoperability and Matrix Center, U.S. Army Space and Missile Defense Command.

62. Mr. Allan M. Resnick, Director, Requirements Integration, U.S. Army Training and Doctrine Command.

63. Mr. Mark Sagan, Chief Counsel, U.S. Communication—Electronics Life Cycle Management Command.

64. Mr. Philip E. Sakowitz, Jr., Deputy, Installation Management Agency.

65. Mr. Richard G. Sayre, Executive Technical Director and Deputy to the Commander, Headquarters, U.S. Army Test and Evaluation Command.

66. Mr. Anthony Sconyers, Chief Counsel, U.S. Army Sustainment Command.

67. Mr. Robert E. Seger, Assistant Deputy Chief of Staff—Operations and Training, U.S. Army Training and Doctrine Command.

68. BG Todd T. Semonite, Commander, North Atlantic Division, U.S. Army Corps of Engineers.

69. Mr. David J. Shaffer, Deputy to the Commander, U.S. Army Research, Development and Engineering Command.

70. Mr. Brian M. Simmons, Executive Director, U.S. Army Developmental Test Command.

71. Mr. Mohan Singh, Regional Business Director, North Atlantic Division, U.S. Army Corps of Engineers.

72. Mr. Robert E. Slockbower, Regional Business Director, Southwestern Division, U.S. Army Corps of Engineers.

73. Mr. Craig R. Schmauder, Deputy General Counsel (Civil Works & Environment), Office of the General Counsel.

74. Mr. Karl F. Schneider, Assistant Deputy Chief of Staff, G-1, Office of the Deputy Chief of Staff, G-1.

75. Mr. Robert H. Smiley, Director, Reserve Affairs Integration Office, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).

76. Mr. Lewis S. Steenrod, Director of Modernization, Office of the Deputy Chief of Staff, G-8.

77. Mr. Earl H. Stockdale, Chief Counsel, Headquarters, U.S. Army Corps of Engineers.

78. Dr. James J. Streilein, Director, U.S. Army Evaluation Center, U.S. Army Test and Evaluation Command.

79. Mr. Larry Stubblefield, Deputy Administrative Assistant to the

Secretary of the Army/Director, Shared Services, Office of the Administrative Assistant to the Secretary of the Army.

80. Mr. John C. F. Tillson, J8/Deputy Director, Capabilities and Assessments (Advisory), Headquarters, European Command.

81. Mr. Davis D. Tindoll, Jr., Deputy Region Director (Korea) (Advisory), U.S. Army Installation Management Korea Region Office.

82. Ms. Belinda A. Tiner, Deputy Auditor General, Policy and Operations Management, U.S. Army Audit Agency.

83. Mr. Donald C. Tison, Assistant Deputy Chief of Staff, G-8, Office of the Deputy Chief of Staff, G-8.

84. Ms. Claudia L. Tomblom, Deputy Assistant Secretary of the Army (Management and Budget), Office of the Assistant Secretary of the Army (Civil Works).

85. Mr. Michael L. Vajda, Director, Civilian Human Resources Agency, Office of the Deputy Chief of Staff, G-1.

86. Mr. Edward W. Walters III, Deputy Assistant Secretary for Strategy and Performance Planning, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

87. Mr. Scott Welker, Deputy to the Commander, U.S. Army Sustainment Command.

88. MG David F. Whereley, Jr., Director, DC National Guard.

89. Mr. Joseph W. Whitaker, Jr., Deputy Assistant Secretary of the Army (Installation & Housing), Office of the Assistant Secretary of the Army (Installations and Environment).

90. Mr. Gary L. Winkler, Principal Director, Governance, Acquisition & Chief Knowledge Officer, Office of the Chief Information Office/G-6.

91. Mr. David E. Wright, Director, Infrastructure & Logistics Division, North Atlantic Treaty Organization.

The members of the Performance Review Board for the Defense Intelligence Senior Executive Service are:

1. MG John De Freitas, Commanding General, U.S. Army Intelligence and Security Command.

2. Mr. Terrance M. Ford, Assistant Deputy Chief of Staff, G-2, Office of the Deputy Chief of Staff.

3. Mr. Thomas A. Gandy, Director, Counterintelligence, Human Intelligence.

4. Mr. Darell G. Lance, Chief of Staff, U.S. Army Intelligence and Security Command.

5. Mr. Maxie L. McFarland, Deputy Chief of Staff for Intelligence, U.S. Army Training and Doctrine Command.

6. Mr. Jerry V. Proctor, Deputy for Futures, U.S. Army Training and Doctrine Command.

7. Mr. Ben W. A. Purcell, Deputy Director of Intelligence, United States Forces Korea.

8. Ms. Mary Lynn Schnurr, Director, Army Intelligence Community Information Management, Office of the Deputy Chief of Staff, G-2.

9. Mr. Mark A. Smith, Deputy Director for Intelligence, United States Southern Command.

10. Mr. Robert J. Winchester, Assistant for Intelligence Liaison, Office, Chief of Legislative Liaison.

11. Ms. Patricia F. Zitz, Director, Resource Integration, Office of the Deputy Chief of Staff, G-2.

The members of the Performance Review Board for the Defense Intelligence Senior Level are:

1. Mr. Collin A. Agee, Technical Advisor, Intelligence, Surveillance & Reconnaissance, Office of the Deputy Chief of Staff, G-2.

2. Mr. Stephen Bradner, Special Advisor to Commanders in Chief, UNC, Combined Forces Command.

3. Mr. Stephen R. Covington, Special Assistant to the Supreme Allied Commander, Europe for Strategic Studies of the Former Soviet Union.

4. MG John DeFreitas, III, Commanding General, U.S. Army Intelligence and Security Command.

5. Mr. Thomas F. Greco, Special Assistant to the G-2, Headquarters, U.S. Army Europe and 7th Army.

6. Mr. Ernie H. Gurany, Senior General Military Intelligence Analyst, National Ground Intelligence Center.

7. Mr. Larry L. Miller, Senior Cryptologic, Operations Officer, U.S. Army Intelligence and Security Command.

8. Mr. Daniel T. Morris, Special Assistant to the Commander, National Ground Intelligence Center.

9. Mr. William E. Peterson, Senior Intelligence Advisor, Office of the Deputy Chief of Staff, G-2.

10. Mr. Robert Reuss, Technical Advisor, Intelligence Surveillance and Reconnaissance and Operational Environment Integration, U.S. Army Training and Doctrine Command.

11. Ms. Mary B. Scott, Chief Scientist, National Ground Intelligence Center.

12. Mr. William H. Speer, Technical Advisor, Foreign Intelligence Production, Office, Deputy Chief of Staff, G-2.

The members of the Performance Review Board for the Scientific and Technicals, are:

1. Dr. Arthur D. Ballato, Senior Research Scientist (Electromagnetics), U.S. Army Communications and Electronics Research, Development and Engineering Center, U.S. Army Materiel Command.

2. Dr. Todd S. Bridges, Senior Research Scientist (Environmental), U.S. Army Engineering Research and Development Center.

3. Dr. Walter Bryzik, Chief Scientist, U.S. Army Tank Automotive Research, U.S. Army Materiel Command.

4. Dr. Kwong Kit Choi, Senior Research Scientist for Physical Sciences, U.S. Army Research Laboratory.

5. Dr. Henry O. Everitt, III, Senior Research Scientist (Optical Sciences), U.S. Army Research, Development and Engineering Command.

6. Dr. Richard Fong, Senior Research Scientist (Warheads Technology), U.S. Army Armament Research Development and Engineering Center.

7. Dr. Grant R. Gerhart, Senior Research Scientist (Computer Modeling & Simulation), U.S. Army Tank Automotive Research Command.

8. Dr. Claire C. Gordon, Senior Research Scientist (Biological Anthropology), Research, Development & Engineering Command.

9. Dr. Shashi P. Karna, Senior Research Scientist (NanoFunctional Materials), U.S. Army Research Laboratory.

10. Dr. Tomasz R. Letowski, Senior Research Scientist (Soldier Performance), U.S. Army Research Laboratory.

11. Dr. Jester M. Loomis, Senior Research Scientist (Radio Frequency Sensors), U.S. Army Research Development and Engineering Command.

12. Dr. Joseph N. Mait, Senior Research Scientist (Electromagnetics), U.S. Army Research Laboratory.

13. Dr. James W. McCauley, Senior Research Engineer (Ceramic Materials), U.S. Army Research Laboratory.

14. Dr. Robert W. McMillan, Senior Research Scientist (Research Applications), U.S. Army Space and Missiles Defense Command.

15. Dr. Paul F. Mlakar, Senior Research Scientist (Weapons Effects/Structural Dynamics), U.S. Army Engineering Research and Development Center.

16. Dr. Nasser M. Nasrabadi, Senior Research Scientist (Sensors), U.S. Army Research Laboratory.

17. Dr. John A. Parmentola, Director for Research and Laboratory Management, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

18. Dr. Arunachalam M. Rajendran, Senior Research Scientist (Applied Mechanics), U.S. Army Research Laboratory.

19. Dr. James A. Ratches, Chief Scientist Night Vision Electro-Optics, U.S. Army Communications and Electronics Research.

20. Dr. Jaques Reifman, Senior Research Scientist (Advanced Medical Technology), U.S. Army Medical Research and Medical Command.

21. Dr. Donald T. Resio, Senior Research Scientist (Coastal Sedimentation), U.S. Army Engineering Research and Development Center.

22. Dr. Paul B. Ruffin, Senior Research Physicist (Micro-Sensors and Systems), U.S. Army Research, Development and Engineering Command.

23. Dr. Jose Luis Sagripanti, Research Scientist (Biochemistry), U.S. Army Edgewood Chemical Biological Center.

24. Dr. Connie S. Schmalljohn, Senior Research Scientist for Medical Defense Against Infectious Disease Threats, U.S. Army Research Institute of Infectious Diseases.

25. Dr. Edward M. Schmidt, Senior Research Scientist (Ballistics Research), U.S. Army Research Laboratory.

26. Dr. Michael P. Scully, Senior Research Engineer for Rotorcraft (Aerodynamics and Preliminary Design), U.S. Army Research, Development and Engineering Command.

27. Dr. Paul H. Shen, Senior Research Scientist (Nuclear/Electronics Survivability), U.S. Army Research Laboratory.

28. Dr. Brian R. Strickland, Chief Scientist (Directed Energy Applications), U.S. Army Space and Missile Defense Command.

29. Dr. Mark B. Tischler, Senior Research Scientist (Rotorcraft Flight Dynamics and Control), U.S. Army Research, Development and Engineering Command.

30. Dr. James J. Valdes, Scientific Advisor for Biotechnology, U.S. Army Edgewood Chemical Biological Center.

31. Dr. Charles E. Wade, Senior Research Scientist Combat Casualty Care, U.S. Army Institute of Surgical Research.

32. Dr. Billy J. Walker, Senior Research Scientist (Computational Fluid Dynamics), U.S. Army Research, Development and Engineering Command.

33. Dr. Bruce J. West, Senior Research Scientist (Mathematical Sciences), U.S. Army Research Laboratory, Army Research Office.

34. Dr. Thomas W. Wright, Senior Research Scientist (Terminal Ballistics), U.S. Army Research Laboratory.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06-8935 Filed 10-26-06; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of an Extension of the Comment Period for the Final Environmental Impact Statement To Consider Issuance of a Department of the Army Permit Pursuant to Section 404 of the Clean Water Act for Mingo Logan Coal Company's (Mingo Logan) Proposal To Construct and Operate Spruce No. 1 Mine in Logan County, WV

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice extending comment period.

SUMMARY: The U.S. Army Corps of Engineers (USACE) Huntington District announces the extension of the public comment period for the proposed Spruce No. 1 Mine Final Environmental Impact Statement (FEIS).

DATES: Submit comments by November 22, 2006.

ADDRESSES: Send written comments and suggestions concerning this proposal to Mrs. Teresa Spagna, Regulatory Project Manager, Regulatory Branch, CELRH-OF-FS, U.S. Army Corps of Engineers, Huntington District, 502 8th Street, Huntington, WV 25701. Requests to be placed on the mailing list should be sent to this address.

FOR FURTHER INFORMATION CONTACT: Mrs. Teresa Spagna, Regulatory Project Manager at (304) 399-5710 or electronic mail at Teresa.D.Spagna@Lrh01.usace.army.mil.

SUPPLEMENTARY INFORMATION: On September 22, 2006, the U.S. Army Corps of Engineers (USACE) Huntington District published a notice in the **Federal Register** (71 FR 55441) announcing the availability of the FEIS. Based on requests from members of an environmental group, the USACE is extending the comment period until November 22, 2006.

Copies of the FEIS may be obtained by contacting USACE Huntington District Regulatory Branch at (304) 399-5210 or (304) 399-5710.

Copies of the FEIS are also available for inspection at the locations identified below:

(1) Blair Post Office, P.O. Box 9998, Blair, WV 25022-9998.

(2) Kanawha County Public Library, 123 Capital Street, Charleston, WV 25301.

(3) Logan County Public Library, 16 Wildcat Way, Logan, WV 25601.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06-8938 Filed 10-26-06; 8:45 am]

BILLING CODE 3710-GM-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Supplement to Notice of Intent To Prepare Draft Environmental Impact Statement for the Proposed Implementation of Interim Water Storage Contracts Associated With the Southeastern Federal Power Customers Settlement Agreement, at Lake Sidney Lanier/Buford Dam, GA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Announcement of meetings.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Mobile District, issued a Notice of Intent (NOI) on June 16, 2006 (71 FR 34901) describing the preparation of a Draft Environmental Impact Statement (EIS), as required by the National Environmental Policy Act (NEPA), to address the proposed implementation of interim water storage contracts at Lake Sidney Lanier/Buford Dam, GA, as contained in a settlement agreement associated with the *Southeastern Federal Power Customers, Inc., (SeFPC) v. Secretary of the Army, et al.* (1:00CV02954-TPJ) lawsuit. The Draft EIS will also address any changes in water management operations at Lake Lanier/Buford Dam, as well as the potential for other changes to operations in downstream reservoir projects in the Apalachicola, Chattahoochee, Flint Rivers (ACF) basin, which would result from implementation of the interim water storage contracts. This supplement to the NOI provides additional information explaining the scoping process that will be used to gather information on the project from the public and details regarding the dates and locations of public scoping meetings.

DATES: Scoping comments may be provided anytime during preparation of the EIS, but would be most useful for planning purposes if provided by December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Questions about this Draft EIS or the NEPA process can be answered by: Ms. Joanne Brandt, Environmental Compliance Manager, Inland Environment Team, U.S. Army Engineer

District—Mobile, P.O. Box 2288, Mobile, AL 36628-0001; telephone (251) 690-3260; or delivered by electronic facsimile at (251) 694-3815; or E-mail:

joanne.u.brandt@sam.usace.army.mil.

You may also request to be included on the mailing list for public distribution of meeting announcements and documents.

SUPPLEMENTARY INFORMATION: Public Scoping Meetings. Public scoping meetings have been scheduled to allow participation from interested individuals throughout the ACF basin. Five public scoping meetings will be held on the dates and at the locations listed below. All meetings will have the same format and present the same information to the public. These meetings will be conducted as open-house meetings with subject matter experts located at various information stations. A court reporter will be available to accept oral statements, and comment forms will be available to accept specific written comments.

Tuesday, November 28, 2006, 5 p.m.–8 p.m., Georgia Mountains Center, 301 Main Street SW., Gainesville, GA 30503, (770) 534-8420.

Wednesday, November 29, 2006, 5 p.m.–8 p.m., Renaissance Waverly Hotel, 2450 Galleria Parkway, Atlanta, GA 30339, (888) 391-8724.

Thursday, November 30, 2006, 5 p.m.–8 p.m., Troup County Parks and Recreation Center, 1220 Lafayette Parkway, LaGrange, GA 30240, (706) 883-1670.

Tuesday, December 5, 2006, 5 p.m.–8 p.m., Dothan Conference Center, 3113 Oxmoor Industrial Boulevard, Dothan, AL 36303, (800) 453-5302.

Wednesday, December 6, 2006, 5 p.m.–8 p.m., The Center for Economic and Workforce Development, Tallahassee Community College, 444 Appleyard Drive, Tallahassee, FL 32304, (850) 201-6200.

Currently Identified Environmental Issues. The EIS will address the potential for any impacts to the multiple project purposes identified for Lake Sidney Lanier/Buford Dam and downstream reservoirs along with other resource areas of interest, including hydropower, navigation, water quality, water supply, flood control, fish and wildlife conservation, endangered and threatened species, recreation, cultural resources, and socioeconomic concerns. This preliminary list could be revised according to your comments and continued coordination and analyses conducted during preparation of the EIS.

Public Participation. Public participation throughout the NEPA process is essential. The Corps invites full public participation to promote open communication and better decision making. All persons, stakeholders, and organizations that have an interest in the interim water storage contracts, including Federal, State and local agencies and officials, appropriate Federally recognized Indian tribes, other interested parties and the public, including minority, low-income, disadvantaged individuals, are invited to participate in the NEPA process. Assistance will be provided upon request to anyone having difficulty with understanding how to participate. Public comments are welcomed anytime throughout the NEPA process.

Scoping Comments. Your input and participation in the scoping process will help identify the issues that need to be evaluated in the EIS. Comments on the project may be submitted in written form or presented verbally at one of the five public scoping meetings. You can make a difference by providing us with your specific comments or concerns about the implementation of the interim water storage contracts. By commenting, the Corps will address and consider your concerns in the EIS. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your comments can also address significant issues and resource areas of concern; additional stakeholders to be involved in the evaluation process; sources of pertinent information and any significant data gaps; assist in identifying and focusing the alternatives to be evaluated; defining the baseline for comparison of impacts; and appropriate methods and tools that can be used to assess impacts of the proposed action. The more specific your comments, the more useful they will be.

The Corps encourages electronic filing of comments in response to this NOI. For information on electronically filing comments, see the instructions at <http://www.LanierEIS-InterimStorageContracts.org> under the Comments link. The public scoping meetings (date, time, and location listed above) are designed to provide another opportunity to offer comments on the proposed action. Interested groups and individuals are encouraged to attend these meetings and to present comments that they believe should be addressed in the EIS. Following completion of the public scoping meetings, a report will be prepared to summarize the comments received and areas of concern identified during the scoping period.

Web Page. Additional information about the project is available from the Web page <http://www.LanierEIS-InterimStorageContracts.org>. If you would also like to be included on the mailing list for public distribution of meeting announcements, newsletters and other documents, you may fill out a contact form on the Web page.

Dated: October 20, 2006.

Peter F. Taylor,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 06-8936 Filed 10-26-06; 8:45 am]

BILLING CODE 3710-CR-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Lower Willamette River Dredged Material Management Plan, Portland, OR

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500-1508) and Public Law 102-484 Section 2834, as amended by Public Law 104-106 Section 2867, the Department of the Army hereby gives notice of intent to prepare a Draft Environmental Impact Statement (EIS) for the subject Dredged Material Management Plan (DMMP). The Portland District of the U.S. Army Corps of Engineers will be the lead agency in preparing the EIS.

The EIS will consider Federal actions associated with the development of a DMMP for the Federal navigation channel in the city of Portland, Multnomah County, OR. The DMMP is a study conducted to develop a long-term (20-year) strategy for providing viable dredged material placement alternatives that would meet the needs of maintaining the Federal channel at Portland Harbor. The overall goal of the DMMP is to develop a long-term plan for continued maintenance of the federal navigation channel that supports commercial navigation within Portland Harbor and to conduct dredged material placement in the most economically and environmentally sound manner and to maximize the use of dredged material as a beneficial source.

DATES: Submit comments by November 27, 2001.

ADDRESSES: Mail comments to Ms. Carolyn Schneider, Portland District, Corps of Engineers, CENWP-PM-E, P.O. Box 2946, Portland, OR 97208-2946.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Erickson, Project Manager, Portland District, Corps of Engineers, telephone: (503) 808-4713, or Ms. Carolyn Schneider, Environmental Resource Specialist, Portland District, Corps of Engineers, telephone: (503) 808-4770.

SUPPLEMENTARY INFORMATION: The Federal navigation channel is from Willamette River mile (WRM) 0 to 11.6. Historically, approximately 500,000 to 750,000 cubic yards of silty sand and sandy silts have been dredged from the Lower Willamette River in three to five year intervals. The Corps has not performed maintenance dredging since 1997. Presently, sediment has accumulated in the Federal navigation channel to the point that portions of the channel are less than the 40 foot depth required for safe navigation. Additional sediment accumulation could increase the potential for safety hazards and adverse economic impacts.

Proposed Action: In accordance with U.S. Army Corps of Engineers Regulation 1105-2-100, a DMMP is being prepared for the Federal navigation project to ensure that maintenance dredging activities are performed in an environmentally acceptable manner, use sound engineering techniques, are economically warranted, and that sufficient disposal facilities are available for at least the next 20 years. The Lower Willamette River DMMP will focus on management of material dredged from the federal navigation channel and will take into consideration non-Federal dredging projects permitted by the Portland District.

Reasonable Alternatives: The Corps will consider both dredging and non-dredging measures, either separately or in combination. The EIS will evaluate alternatives that will consist of an array of disposal and beneficial use options. It is Corps of Engineers planning policy to consider all practicable and relevant alternative management procedures. Options for maintaining the Lower Willamette River Federal navigation channel that are being considered include the following: (1) Dredging and in-water placement of dredged material. Dredged material that satisfies Sediment Evaluation Framework (SEF) guidelines for unconfined aquatic disposal will be placed at in-water sites. The Corps has identified potential locations for in-water disposal of dredged material that are being assessed; (2) Dredging and

upland disposal of dredged material. Material that doesn't meet the SEF guidelines for unconfined aquatic disposal will be placed upland. The Corps has identified potential locations for upland disposal of dredged material that are being assessed; (3) Beneficial uses of dredged material; (4) Non-dredging channel maintenance measures. Non-dredging channel maintenance measures will be considered that reduce dredging needs. They include, but are not limited to, hydraulic control structures, sediment control structures, sediment traps, upstream erosion control measures, and changes to the operation of upstream dams; (5) "No Action". This alternative consists of a continuation of the current maintenance dredging at the as-constructed channel dimensions and placing dredged material at the existing sites without modification.

Scoping Process: The Corps of Engineers invites affected Federal, State, and local agencies, Native American tribes, and other interested organizations and individuals to participate in the development of the EIS. The Corps of Engineers anticipates conducting a public scoping meeting for this EIS in the fall of 2006. The exact date, time, and location of this meeting have not yet been determined. This information will be publicized once the meeting arrangements have been made. The Corps will provide notice to the public of additional opportunities for public input on the EIS during review periods for the draft and final EIS. The draft EIS is currently scheduled to be available for public review in June 2007. The final EIS is currently scheduled to be available in January 2008.

Thomas E. O'Donovan,

Colonel, EN, Commanding.

[FR Doc. 06-8934 Filed 10-26-06; 8:45 am]

BILLING CODE 3710-AR-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6680-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060305, ERP No. D-GSA-B81011-VT, New U.S. Border Station and Commercial Port of Entry Route I-91 Derby Line, Design and Construction, Vermont.

Summary: EPA does not object to the project as proposed, but encourages GSA to consider additional measures to reduce air pollution emissions. Rating LO.

EIS No. 20060316, ERP No. D-GSA-B40096-ME, Madawaska Border Station Project, Replacement of Existing Border Station in Madawaska, International Border between United States and Canada, Aroostook County, ME.

Summary: EPA does not object to the project as proposed, but encourages GSA to adopt measures to reduce air emissions. Rating LO.

EIS No. 20060328, ERP No. D-NRS-B36026-MA, Cape Cod Water Resources Restoration Project, Restore Degraded Salt Marshes, Restore Anadromous Fish Passages, and Improve Water Quality for Shellfishing Area, Cape Cod, Barnstable County, MA.

Summary: EPA does not object to the project as proposed. Rating LO.

EIS No. 20060349, ERP No. D-DOE-E01016-FL, Orlando Gasification Project (DOE/EIS-0383), To Provide Cost-Shared Funding for Construction and Operation of Facilities at Orlando Utilities Commission's Station Energy Center near Orlando, FL.

Summary: EPA expressed environmental concerns about the proposed power plant's potential impacts on air quality, wetlands, hazardous waste, and cumulative impacts. Evaluation of these impacts may require various forms of modeling and risk assessments. Impacts to wetlands and mitigation measures need to be discussed further in the FEIS. Rating EC1.

Final EISs

EIS No. 20060326, ERP No. F-BOP-B81010-NH, Berlin, Coos County, Proposed Federal Correctional Institution, Construction and Operation, City of Berlin, Coos County, NH.

Summary: EPA does not object to the project as proposed, but continues to encourage the BOP to investigate whether combined heat and power

technologies could reduce energy usage at the facility.

EIS No. 20060120, ERP No. FB-FTA-L40210-WA, Central Link Light Rail Transit Project (Sound Transit) Construction and Operation of the North Link Light Rail Extension, from Downtown Seattle and Northgate, Updated Information on Refined Design Concepts, Funding, Right-of-Way and U.S. Army COE Section 404 Permits, King County, WA.

Summary: No formal comment letter was sent to the lead agency.

EIS No. 20060370, ERP No. FS-AFS-F65039-WI, McCaslin Project, Vegetation Management Activities that are Consistent with Direction in the Nicolet Forest Plan, New Information to Address Inadequate Disclosure of the Cumulative Effect Analysis for Six Animal and Eight Plant Species, Lakewood/Lasna District, Chequamegon-Nicolet National Forest, Oconto and Forest Counties, WI.

Summary: EPA's concerns about the cumulative impact analysis have been resolved; therefore, EPA does not object to the proposed project.

Dated: October 24, 2006.

Robert W. Hargrove,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6-18019 Filed 10-26-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6680-5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 10/16/2006 Through 10/20/2006 Pursuant to 40 CFR 1506.9.

EIS No. 20060435, Final EIS, COE, AZ, Rio Salado Oeste Project, Ecosystem Restoration along the Salt River, City of Phoenix, Maricopa County, AZ, *Wait Period Ends:* 11/27/2006, *Contact:* Scott K. Estergard 602-640-2003.

EIS No. 20060436, Draft Supplement, FHW, IN, US-31 Kokomo Corridor Project, Updated Information on Alternative J, Transportation Improvement between IN-26 and U.S. 35 Northern Junction, City of Kokomo and Center Township, Howard and

Tipton Counties, IN, *Comment Period Ends:* 12/11/2006, *Contact:* Larry Heil 317-226-7480.

EIS No. 20060437, Draft EIS, NRS, WV, Dunloup Creek Watershed Plan, Voluntary Floodplain Buyout, Implementation, West Virginia Third Congressional District, Fayette and Raleigh Counties, WV, *Comment Period Ends:* 12/11/2006, *Contact:* Ronald Hilliard 304-284-7540.

EIS No. 20060438, Draft EIS, VAD/DON, CA, Fort Rosecrans National Cemetery Annex, Construction and Operation, Located at Marine Corps Air Station (MCAS) Miramar, Point Loma, San Diego County, CA, *Comment Period Ends:* 12/11/2006, *Contact:* Hiphil Clemente 619-532-3781.

EIS No. 20060439, Final Supplement, AFS, CA, Rock Creek Recreational Trails Project, Updated Information on Habitat Status and Population Trend for the Pacific Deer Herd, Implementation, Eldorado National Forest, Eldorado County, CA, *Wait Period Ends:* 11/27/2006, *Contact:* Laura Hierholzer 530-642-5187.

EIS No. 20060440, Draft EIS, GSA, VA, Federal Bureau of Investigation (FBI) Central Records Complex, Site Selection and Construction, Winchester, Frederick County, VA, *Comment Period Ends:* 12/11/2006, *Contact:* Katrina Scarpato 215-446-4651.

EIS No. 20060441, Final EIS, CGD, MA, Northeast Gateway Deepwater Port License Application to Import Liquefied Natural Gas (LNG) (USCG-2005-22219), Massachusetts Bay, City of Gloucester, MA, *Wait Period Ends:* 11/27/2006, *Contact:* Roddy Bachman 202-372-1451.

EIS No. 20060442, Final EIS, BLM, ID, Coeur d'Alene Resource Management Plan, Implementation, Benewah, Bonner, Boundary, Kootenai and Shoshone Counties, ID, *Wait Period Ends:* 11/27/2006, *Contact:* Scott Pavey 208-769-5059.

Amended Notices

EIS No. 20060348, Draft EIS, NPS, MN, Disposition of Bureau of Mines Property, Twin Cities Research Center Main Campus, Implementation, Hennepin County, MN, *Comment Period Ends:* 11/24/2006, *Contact:* Kim M. Berns 651-290-3030-x244. Revision of FR Notice Published 08/18/2006: Extend Comment Period from 10/16/2006 to 11/24/2006.

EIS No. 20060360, Draft EIS, AFS, WA, Gifford-Pinchot National Forest and Columbia River Gorge National Scenic Area (Washington Portion) Site-Specific Invasive Plant Treatment Project, Implementation, Skamania,

Cowlitz, Lewis, Clark, Klickitat Counties, WA, *Comment Period Ends:* 11/22/2006, *Contact:* Carol A.

Chandler 541-360-5100. Revision of FR Notice Published 09/01/2006: Extending Comment Period from 10/16/2006 to 11/22/2006.

EIS No. 20060376, Draft EIS, FHW, AK, Knik Arm Crossing Project, To Provide Improved Access between the Municipality of Anchorage and Matanuska-Susitna Borough, AK, *Comment Period Ends:* 11/17/2006, *Contact:* Ms. Edrie Vinson 907-586-7464. Revision of FR Notice Published 09/15/2006: Extend Comment from 10/30/2006 to 11/17/2006.

Dated: October 24, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6-18018 Filed 10-26-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0856; FRL-8099-8]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel FIFRA SAP to consider and review Worker Exposure Assessment Methods.

DATES: The meeting will be held on January 9-12, 2007, from 8:30 a.m. to 5 p.m., eastern time.

Comments: Written comments and requests to make oral comments are accepted until the date of the meeting. However, the Agency encourages the submission of written comments by December 26, 2006, and requests to present oral comments by January 2, 2007. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations: Nominations of candidates to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before November 8, 2006.

Special Accommodations: For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as

much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center - Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments: Submit your comments, identified by docket ID number EPA-HQ-OPP-2006-0856, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments. Your use of the Federal eRulemaking Portal to submit comments to EPA electronically is EPA's preferred method for receiving comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2006-0856. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instruction before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available

on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in a docket index that is available at <http://www.regulations.gov>. Although listed in a docket index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

Nominations, requests to present oral comments, and requests for special accommodations: Submit nominations to serve as an ad hoc member of the FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-8498; fax number: (202) 564-8382; e-mail address: christian.myrta@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this

action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information subject heading, **Federal Register** date and page number.
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA-HQ-OPP-2006-0856 in the subject line on the first page of your request.

1. *Written comments.* Although, submission of written comments are accepted until the date of the meeting, unless otherwise stated, the Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, by December 26, 2006, to provide FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

2. *Oral comments.* Although, requests to present oral comments are accepted until the date of the meeting, unless otherwise stated, to the extent that time

permits, the Chair of the FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. However, each individual or group wishing to make brief oral comments to FIFRA SAP is encouraged to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** by January 2, 2007, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment e.g., overhead projector, 35 mm projector, chalkboard. Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis.

4. *Request for nominations to serve as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Exposure assessment, statistics, biological monitoring, pharmacokinetics, and agricultural engineering. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before November 8, 2006. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency. The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be

ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110-48 [5-02]) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting

minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site at <http://epa.gov/scipoly/sap> or may be obtained from the OPP Regulatory Public Docket at <http://www.regulations.gov>.

II. Background

A. Purpose of the FIFRA SAP

The FIFRA SAP serves as the primary scientific peer review mechanism of the United States Environmental Protection Agency (EPA), Office of Prevention, Pesticides and Toxic Substances and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is a Federal advisory committee established in 1975 under the Federal Insecticide, Fungicide and Rodenticide Act and operates in accordance with requirements of the Federal Advisory Committee Act. The SAP is composed of a permanent panel consisting of seven members, appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by the 1996 Food Quality Protection Act, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the Panel. As a peer review mechanism, the FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of scientific analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The Agency issued its first occupational exposure testing guidelines in the early 1980s. These guidelines were intended to standardize the methodology used to conduct the studies necessary to allow the Agency to determine the potential exposures, and consequently risks, associated with the activities surrounding the use of pesticides. These activities included handling pesticides (i.e., mixing, loading and applying) as well as working in treated sites following pesticide applications (e.g., harvesting, thinning, weeding, servicing cooling towers). In the early 1990s, two databases--the Pesticide Handlers

Exposure Database (PHED) and the Chemical Manufacturers Association (CMA) data--were constructed in order to estimate exposures resulting from mixing/loading/applying pesticides. The data assembled for use in these databases were taken from published literature as well as from industry studies submitted to the Agency. These databases have been used as the main sources for estimating occupational exposures to workers handling pesticides for both registration and reregistration actions. Since the early 1980s, the Agency has been using a scenario-based approach in its assessments for estimating exposures for occupational pesticide handlers (e.g., mixers, loaders, and applicators). This approach is consistent with the Agency's guidelines for exposure assessment which can be found on the EPA website at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=15263>.

Over the years since the issuance of the exposure guidelines, there have been scientific issues raised about the accuracy of exposure estimates based on data developed using these methods. In addition, recent protocols for the generation of new agricultural pesticide handler exposure data are being generated by a pesticide industry task force and were reviewed by the Agency's Human Subjects Review Board (HSRB) (see <http://www.epa.gov/osa/hsrb/files/june2006finaldraftreport82806.pdf> for further information). The board raised questions concerning the scientific merits of the proposed protocols.

Given the scientific issues that have been raised regarding occupational pesticide exposure estimates and study protocols, including the recent comments from the HSRB, at this time EPA is asking the FIFRA Scientific Advisory Panel (SAP) to evaluate, in detail, issues associated with certain methodologies used to generate exposure studies and the procedures used to develop exposure estimates. As part of the background for the SAP meeting, the Agency is developing a case study that details the procedures and data the Agency uses to evaluate 6 exposure scenarios that are common in agriculture. These data can be found in the existing Pesticide Handlers Exposure Database.

The following four issues are expected to be the focus of this SAP review: Sample collection methods (e.g., whole-body dosimetry, handwashing, facial/neck wipes, and biological monitoring); data needs (e.g., availability of data in the Pesticide Handlers Exposure Database); unit exposure (e.g., relating the amount of

exposure to the amount of chemical active ingredient handled); and sample size issues (e.g., inter-/intra-worker variability and representativeness).

C. FIFRA SAP Documents and Meeting Minutes

EPA's position paper, charge/questions to the FIFRA SAP, FIFRA SAP composition i.e., members and ad hoc members for this meeting, and the meeting agenda will be available by mid December 2006. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at <http://www.regulations.gov> and the FIFRA SAP homepage at <http://www.epa.gov/scipoly/sap>.

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained from the OPP Regulatory Public Docket at <http://www.regulations.gov>.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 19, 2006.

Clifford Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. E6-18036 Filed 10-26-06; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0201; FRL-8101-4]

Organic Arsenical Herbicides (MSMA, DSMA, CAMA, and Cacodylic Acid), Reregistration Eligibility Decision; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of August 9, 2006, concerning the availability of the reregistration eligibility decision (RED) for the organic arsenical herbicides MSMA, DSMA, DAMA, and cacodylic acid. EPA also issued a notice in the **Federal Register** of October 4, 2006, announcing the extension of the original comment period by 30 days. This document is extending the comment period until December 13, 2006.

DATES: Comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0201 must be received on or before December 13, 2006.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of August 9, 2006.

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0523; e-mail address: wormell.lance@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in **SUPPLEMENTARY INFORMATION** of the August 9, 2006 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of October 4, 2006 (71 FR 58605) (FRL-8097-4). In that document, EPA announced the extension of the comment period for the RED document for the organic arsenical herbicides MSMA, DSMA, DAMA, and cacodylic acid. EPA is hereby extending the comment period, which was set to end on November 9, 2006, to December 13, 2006.

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

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period. However, the Administrator may extend the comment period, if additional time for comment is requested. In this case, the Monomethyl Arsonic Acid (MAA) Research Task Force, the Professional Landcare Network (PLANET) and several growers have requested additional time to develop comments.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 19, 2006.

Debra Edwards,

Director, Special Review and Reregistration, Division, Office of Pesticide Programs

[FR Doc. E6-18035 Filed 10-26-06; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0857; FRL-8100-2]

Notice of Filing of Pesticide Petitions for Establishment or Amendment to Regulations for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 27, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0857 and pesticide petition number (PP) 6E7058, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail.* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery.* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions. Direct your comments to docket ID number EPA-HQ-OPP-2006-0857. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact

information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

- Pesticide manufacturing (NAICS code 32532).

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*: Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*: When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at <http://www.regulations.gov>. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

(PP) 6E7058. The Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W., Princeton, NJ 08540 proposes to establish tolerances for residues of the insecticide cyfluthrin; Cyano (4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in or on raw agricultural commodities grass, forage at 15 parts per million (ppm) and grass, hay at 40 ppm.

Adequate analytical methodology using Gas Chromatography/Electron Capture (GC/EC) detection is used to measure and evaluate the chemical residue(s).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 2006.

Meridith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6-18033 Filed 10-26-06; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8235-2]

Notice of Proposed Administrative Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with subsections 122 (h)(1) and (i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(h)(1) and (i), notice is hereby given of a proposed administrative settlement agreement concerning the Terrero Mine Superfund Site, Terrero, San Miguel County, New Mexico (the site), between the Cyprus Amax Minerals Company (Cyprus) and the U.S. Environmental Protection Agency (EPA).

The settlement agreement requires the settling party Cyprus to pay \$212,000.00 to the Hazardous Substances Superfund for reimbursement of CERCLA response costs incurred by the EPA in connection with the site and with two other Superfund Site Identification Codes. The settlement includes a covenant not to sue by the EPA pursuant to section 107 of CERCLA, 42 U.S.C. 9607, and follows the model settlement agreement promulgated by the EPA Office of Site Remediation Enforcement in February 2003.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202-2733, or through the contacts indicated below.

DATES: Comments must be submitted on or before November 27, 2006.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202-2733. A copy of the proposed settlement may be obtained from Barbara Aldridge, 6SF-AC, 1445 Ross Avenue, Dallas, Texas 75202-2733, or by calling (214) 665-2712. Comments should reference the Terrero Mine Superfund Site, Terrero, New Mexico, and EPA Docket Number 6-11-06 and should be addressed to Barbara Aldridge at the address listed above.

FOR FURTHER INFORMATION CONTACT: James L. Turner, Office of Regional Counsel (6RC-S), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 or call (214) 665-3159.

Dated: October 19, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E6-18020 Filed 10-26-06; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Edward Kent Christian*; to acquire voting shares of Kiester Investments, Inc., and thereby indirectly acquire voting shares of First State Bank of Kiester, all of Kiester, Minnesota

2. *Jeffrey F. Burzinski*, Chaska, Minnesota, as an individual, and as part of a group acting in concert with Jeffrey J. Burzinski, Chaska, Minnesota; Kathryn J. Burzinski, Chanhassen,

Minnesota; Elizabeth Burzinski, Chaska, Minnesota; and Margene Burzinski, Chaska, Minnesota; to acquire voting shares of Peregrine Corporation, Chaska, Minnesota, and thereby indirectly acquire voting shares of Community Bank Corporation, Chaska, Minnesota.

Board of Governors of the Federal Reserve System, October 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6-18016 Filed 10-26-06; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at <http://www.ffiec.gov/nic/>.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *First NBC Bank Holding Company*; to become a bank holding company by acquiring 100 percent of the voting

shares of First NBC Bank, both of New Orleans, Louisiana.

Board of Governors of the Federal Reserve System, October 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6-18015 Filed 10-26-06; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07-06BS]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

OWCD Professional Training Program Online Application System—New—The Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the Career Development Division (CDD), Office of Workforce and Career Development

(OWCD), is to prepare an applied public health workforce through training and service. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy and other related professions seek opportunities to broaden their knowledge and skills to improve the science and practice of public health. Each year CDC's professional training programs accept applications from potential candidates for review and selection.

The purpose of this project is to efficiently and effectively recruit and select qualified individuals to participate in the CDD professional training programs by collecting information through an online application management system.

This online application provides the CDD with the information necessary to

recruit qualified professionals to participate in public health professions training programs to build critical public health workforce capacity in epidemiology, preventive medicine, prevention effectiveness/health economics, public health informatics, and public health management and leadership. Further benefit from this online application is the reduction of duplicate candidate records as well as agency resources to administer and process paper records.

The application process includes the following: Submission of the responses to the questions in the online application; submission of academic transcripts, professional credentials, and letters of recommendation; a review by selected programmatic staff and expert panel members; selection of qualified candidates for interview; interview of

candidates; and selection of trainees for programs.

The online application questions ask for demographic data, academic history, professional experience, references and description of professional goals. The application questions and data collected are necessary to the application process to determine programmatic eligibility and to ensure that the most highly qualified candidates are chosen for the training programs.

With the exception of their time, the cost to the candidates is minor. One expense depends on their academic institutions since they must obtain and submit all their academic transcripts. Another expense depends on the cost to obtain and submit other professional credentials including professional licenses and certifications. The final expense is the cost to submit letters of recommendation.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Responses per respondent	Average burden per response	Total burden (in hours)
Fellowship and Training Candidates	600	1	1	600

Dated: October 23, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6-18011 Filed 10-26-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07-05DA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Surveillance of HIV/AIDS Related Events Among Persons Not Receiving Care—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting approval from the Office of Management and Budget (OMB) to interview 1,000 randomly selected HIV-infected persons in the United States who are not receiving care to determine: (1) Their reasons for not being in care; (2) information about any barriers to receiving care; and (3) their

clinical status (*i.e.*, CD4, HIV viral load levels and drug resistance). There are approximately 1 million HIV-infected persons in the United States. Of these, an estimated 75 percent know they are infected, but approximately half of those who know they are infected do not have evidence of having received any medical care for their HIV infection.

For this proposed data collection, areas participating in CDC's Morbidity Monitoring Project (MMP) will identify HIV-infected people using their state's HIV/AIDS surveillance and supplemental laboratory databases. Once HIV-infected people who are not in care are identified, a structured interview will be conducted. The target number of structured interviews is 500. Qualitative interviews will be conducted with the first 75 persons who agree to a second interview. The information to be collected includes demographic data, HIV testing history, high-risk drug use and sexual behaviors, and reasons for not using health care and treatment.

Results from this study will be used in conjunction with data from the MMP to determine the extent of medical services and resources needed for persons who are infected with HIV, but who have not received medical care and treatment. Additionally, new data related to those not receiving care will be used to design effective interventions

for linking persons to care. Participation in the data collection is voluntary and there is no cost to respondents to participate in the survey other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Types of data collection	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Structured Interview	500	1	30/60	250
Qualitative Interview	75	1	1	75
Total				325

Dated: October 23, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6-18012 Filed 10-26-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07-06BP]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should

be received within 60 days of this notice.

Proposed Project

Outcomes Data Collection of the National Prevention Information Network—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV, STD, and TB Prevention (NCHSTP) within the Centers for Disease Control and Prevention (CDC) proposes a survey data collection to assess the CDC National Prevention Information Network's (NPIN) Web site, products and services. The CDC NPIN serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, STDs, TB and viral Hepatitis. Products and services offered by the CDC NPIN Web site is the primary channel used by the CDC to provide information concerning prevention, treatment, and care of HIV, STD, TB, and viral Hepatitis to its prevention partners, stakeholders, and other constituents.

The CDC NPIN Web site includes several searchable databases that can be used to locate information about testing centers, funding opportunities, upcoming conferences, educational materials, and news. The Web site is a widely used service by the public, with more than 24 million hits and 2 million visits recorded annually. Following enhancements to the Web site completed in February 2006, 5,214,286 hits have already been recorded from February to May 2006. In addition to the Web site, consumers can access information and order materials and resources by phone using the NPIN toll-free reference and referral line or electronic mail system. As of June 29, 2006, 82,599 organizations have ordered materials and resources using this system. Cumulatively, over 49,209 requests for materials have been logged

and 3,846,890 materials have been ordered by the public.

The primary purposes of the proposed data collection are to assess CDC NPIN users' satisfaction and perceived quality with the Web site, products, and services; determine the extent to which the users' needs are being met; and identify how the Web site, products, and services can be enhanced to meet the needs of the user. Specifically, the evaluation will examine (1) perceived quality, (2) user expectations, satisfaction, and trust, (3) frequency of use, and (4) other sources of information used related to the treatment and prevention of HIV/AIDS, STDs, TB, and viral Hepatitis.

The evaluation will be accomplished by survey data collection from users of the CDC NPIN Web site and users of CDC NPIN products and services. The first survey will be conducted annually with a random sample of CDC NPIN Web site users. Users that visit the CDC NPIN Web site for 2 or more minutes will be prompted to complete and submit the survey online. The second survey will be conducted online bi-annually with a random sample of users of CDC NPIN products and services, stratified by type of organization. Organizations that do not have access to the Internet will have the option to complete the survey via electronic mail or will be administered the survey by phone.

Respondents include representatives from government agencies, community-based organizations, advocacy organizations, and various other organizations involved in the prevention and/or treatment of HIV/AIDS, STDs, TB, and/or viral Hepatitis. An OMB Clearance determination was conducted prior to preparing this package.

The estimated annualized burden is provided in the following table. To assess the average burden per response for the data collection, a pilot test was conducted with no more than 9 participants for each survey. As

indicated in the table, the average burden per response for the NPIN Web site User survey is 13 minutes and for the NPIN Products and Services User survey, 15 minutes. This differential is due to the difference in survey lengths.

The NPIN Web site User survey is comprised of 25 questions and the NPIN Products and Services User survey is comprised of 28 questions. The "Other" category of respondents is comprised of organizations that identified themselves

as "Other" or "Unknown" when requesting products or services from NPIN. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
NPIN Web site User Survey	All organizations	1,437	1	13/60	311
Subtotal .....	.....	1,437	.....	.....	311
NPIN Products and Services User Survey	Social service organization	224	2	15/60	112
	Health services organization/hospital/clinic.	680	2	15/60	340
	Community-based organization	291	2	15/60	146
	Association/foundation	52	2	15/60	26
	Libraries/clearinghouse/resource center ..	40	2	15/60	20
	Faith-based organization	133	2	15/60	67
	Government agency	352	2	15/60	176
	Educational organization/institution	671	2	15/60	336
	International agency	85	2	15/60	43
	Correctional facilities/agency	85	2	15/60	43
	News/media	32	2	15/60	16
	Businesses/corporation	101	2	15/60	51
	General public	394	2	15/60	197
	Other	1,437	2	15/60	719
Subtotal .....	.....	4,577	.....	.....	2,292
Total .....	.....	6,014	.....	.....	2,603

Dated: October 23, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control Prevention.

[FR Doc. E6-18013 Filed 10-26-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07-05CG]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74,

Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Medical Monitoring Project (MMP)—New—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This proposed data collection supplements the HIV/AIDS surveillance programs in 26 selected State and local health departments, which collect information on persons diagnosed with, living with, and dying from HIV

infection and AIDS and will incorporate data elements from two data collections: Supplement to HIV/AIDS Surveillance (SHAS) project (0920-0262) and the Adult/Adolescent Spectrum of HIV Disease (ASD). Both projects stopped data collection in 2004.

Although CDC receives surveillance data from all U.S. States, these supplemental surveillance data are needed to make estimates of key indicators, such as quality of HIV-related ambulatory care and the severity of need for HIV-related care and services. A large number of cities and States are heavily impacted by the HIV/AIDS epidemic, resulting in the need for population-based national estimates of HIV-related behaviors, clinical outcomes, and quality of HIV care.

This project will collect data on behaviors and clinical outcomes from a probability sample of HIV-infected adults receiving care in the U.S. Collection of data from interviews with HIV-infected patients will provide information on patient demographics, and the current levels of behaviors that may facilitate HIV transmission: Sexual and drug use behaviors; patients' access to, use of and barriers to HIV-related secondary prevention services; utilization of HIV-related medical

services; and adherence to drug regimens. Collection of data from patient medical records will provide information on: Demographics and insurance status; the prevalence and incidence of AIDS-defining opportunistic illnesses and comorbidities related to HIV disease; the receipt of prophylactic and antiretroviral medications; and whether patients are receiving screening and treatment according to Public Health Service guidelines. No other Federal agency collects national population-based behavioral and clinical

information from HIV-infected adults in care. The data will have significant implications for policy, program development, and resource allocation at the State/local and national levels.

CDC is requesting approval for a 3-year clearance for data collection. Data will be collected by 26 Reporting Areas (19 States, Puerto Rico and 6 separately funded cities). CDC estimates an average of 400 respondents per site with an 80% response rate, resulting in 8,320 respondents for the interview portion. A Short interview will be used for patients who are too ill to complete the Standard

interview or when the interview must be translated, and a Proxy interview will be available if the patient consents to having a family member or other person answer the questions in the case of severe illness or in the event the selected participant died prior to being interviewed. The proxy and the short interview, each which will be used on approximately 2% of patients, will take approximately 20 minutes. Participation of respondents is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Types of data collection	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Standard interview	7,988	1	45/60	5,991
Short interview	166	1	20/60	55
Proxy interview	166	1	20/60	55
Total				6,101

Dated: October 23, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6-18014 Filed 10-26-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Portfolio Review on Birth Defects and Developmental Disabilities

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Portfolio Review on Birth Defects and Developmental Disabilities.

Times and Dates:

8:30 a.m.–4:30 p.m., January 8, 2007

(Closed).

8 a.m.–5 p.m., January 9, 2007 (Closed).

Place: CDC Harkin Global Communications Center, 1600 Clifton Road, Atlanta, GA 30333.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552(b)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters To Be Discussed: The meeting will include the review of the Division of Birth Defects and Developmental Disabilities' programs, strategies, and activities.

Contact Person for More Information: Esther Sumartojo, Associate Director for Science, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE., Mailstop E-87, Atlanta, GA 30333, Telephone Number 404.498.3072.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 20, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6-18005 Filed 10-26-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and

Disease Registry (NCEH/ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC, NCEH/ATSDR announces the following subcommittee meeting:

Name: Program Peer Review Subcommittee (PPRS).

Time and Date: 8:30 a.m.–10:30 a.m. Eastern Standard Time, November 22, 2006.

Place: The teleconference will originate at NCEH/ATSDR in Atlanta, Georgia. To participate, dial 877/315-6535 and enter conference code 383520.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the PPRS will provide the BSC, NCEH/ATSDR with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ATSDR program peer review.

Matters To Be Discussed: A review of the previous meeting; an update on the planning of the Site Specific Activities Peer Review; a discussion of the revised Peer Review Conflict-of-Interest form; a discussion of Terrorism Preparedness and Emergency Response Peer Review in February 2007: Divisions included in the review, areas of expertise required for the review, and nominations for a PPRS panel member, chairperson and peer reviewers.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This meeting is scheduled to begin at 8:30 a.m. Eastern Standard Time. To participate, please dial 877/315-6535 and enter conference code 383520.

Public comment period is scheduled for 9:40–9:50 a.m.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E-28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498-0622.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR.

Dated: October 20, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6-18006 Filed 10-26-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10198 and CMS-10203]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections 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 function; (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.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Creditable Coverage Disclosure To CMS Instructions contained in 42 CFR 423.56; *Use:* Section 1860D-13 of the Medicare Modernization Act requires

certain entities that provide prescription drug coverage to Medicare Part D eligible individuals to disclose to CMS whether such coverage meets the actuarial requirements specified in the guidelines provided by CMS. The actuarial determination measures whether the expected amount of paid claims under the entity's prescription drug coverage is at least as much as the expected amount of paid claims under the standard Medicare prescription drug benefit. This information will be used for research, program evaluation and to verify whether or not beneficiaries are subject to a late enrollment penalty; *Form Number:* CMS-10198 (OMB#: 0938—New); *Frequency:* Recordkeeping, third party disclosure and reporting—On occasion and Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions and Federal, State, local or tribal government; *Number of Respondents:* 446,160; *Total Annual Responses:* 450,660; *Total Annual Hours:* 37,555.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Health Outcome Survey (HOS) and supporting regulations at 42 CFR 422.152; *Use:* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 mandates the collection, analysis and reporting of health outcomes information. The collection of Medicare health outcomes information is necessary to hold Medicare managed care contractors accountable for the quality of care they are delivering. This reporting requirement allows CMS to obtain the information necessary for the proper oversight of the program. *Form Number:* CMS-10203 (OMB#: 0938—New); *Frequency:* Recordkeeping, reporting: Annually; *Affected Public:* Individuals or households, business or other for-profit and not-for-profit institutions; *Number of Respondents:* 320,040; *Total Annual Responses:* 320,040; *Total Annual Hours:* 105,613.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch,

Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number: (202) 395-6974.

Dated: October 19, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6-17909 Filed 10-26-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-R-204, CMS-10208, and CMS-301]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections 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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Data Collection for the Second Generation Social Health Maintenance Organization Demonstration; *Use:* The purpose of the Second Generation Social Health Maintenance Organization Demonstration (S/HMO-II) is to refine the targeting and financing methodologies, and benefit design of the Social Health Maintenance Organization Demonstration model. Four primary components of the S/HMO-II demonstration are: (1) A geriatric care approach that will be applied across the entire spectrum of S/HMO-II enrollees; (2) expanded community care

coordination through links between chronic care case-management and acute care providers; (3) provision of long-term-benefits; and (4) an adjusted average per capita costs based risk-adjusted payment methodology. *Form Number:* CMS-R-204 (OMB#: 0938-0709); *Frequency:* Reporting—yearly; *Affected Public:* Individuals or households; *Number of Respondents:* 17,624; *Total Annual Responses:* 17,624; *Total Annual Hours:* 3,425.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Assessing Degrees of Health Care Involvement Survey; *Use:* It is not sufficient to merely mail information about the Medicare program to each beneficiary. CMS needs to know that the beneficiaries received the information, understood the information and found the information useful in making choices about their Medicare participation. To this end, CMS must have measure(s) over time of what beneficiaries know and understand about the Medicare program now to be able to quantify and attribute any changes to their understanding or behavior to information/education initiatives. Measuring beneficiary information needs and knowledge over time will help CMS to evaluate the impact of information/education and other initiatives, as well as to understand how the population is changing separate from such initiatives. *Form Number:* CMS-10208 (OMB#: 0938-NEW); *Frequency:* Reporting—weekly; *Affected Public:* Individuals or households; *Number of Respondents:* 4,000; *Total Annual Responses:* 3,500; *Total Annual Hours:* 1,200.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Certification of Medicaid Eligibility Control (MEQC) Payment Error Rates and Supporting Regulations at 42 CFR 431.800-431.865; *Use:* Medicaid Eligibility Quality Control (MEQC) is operated by Title XIX agencies to monitor and improve the administration of its Medicaid program. The traditional MEQC program is based on State reviews of Medicaid beneficiaries identified through a statistically reliable statewide sample of cases selected from the eligibility files. These reviews are conducted to determine whether the sampled cases meet applicable Title XIX eligibility requirements. State agencies are required to submit the Payment Error Rate form to their respective CMS Regional Office. Regional Office staff will review these forms for completeness and will forward these

forms to central office for compilation of error rate charts for projected quarterly withholdings and/or fiscal disallowances. *Form Number:* CMS-301 (OMB#: 0938-0246); *Frequency:* Recordkeeping and reporting—semi-annually; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 51; *Total Annual Responses:* 102; *Total Annual Hours:* 22,515.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on December 26, 2006. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated October 19, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6-17910 Filed 10-26-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-4126-PN]

Medicare and Medicaid Programs; Reapproval of Deeming Authority of the Accreditation Association for Ambulatory Health Care, Inc. for Medicare Advantage Health Maintenance Organizations and Local Preferred Provider Organizations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces our proposal to reapprove Medicare Advantage Deeming Authority of the Accreditation Association for Ambulatory Health Care, Inc. for health maintenance organizations and local preferred provider organizations for a

term of 6 years. This new term of approval begins July 12, 2006, and ends July 11, 2012. This notice also announces a 30-day period for public comments on renewal of the application.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 27, 2006.

ADDRESSES: In commenting, please refer to file code CMS-4126-PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/regulations/ecomments>. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4126-PN, P.O. Box 8017, Baltimore, MD 21244-8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Shaheen Halim, (410) 786-0641.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a managed care organization (MCO) that has a Medicare Advantage (MA) (formerly, Medicare+Choice) contract with the Centers for Medicare & Medicaid Services (CMS). The regulations specifying the Medicare requirements that must be met in order for an MCO to enter into an MA contract with CMS are located at 42 CFR part 422. These regulations implement Part C of Title XVIII of the Social Security Act (the Act), which specifies the services that an MCO must provide and the requirements that the organization must meet to be an MA contractor. Other relevant sections of the Act are Parts A and B of Title XVIII and Part A of Title XI pertaining to the provision of services by Medicare certified providers and suppliers. Generally, for an MCO to be an MA organization, the MCO must be licensed by the State as a risk bearing organization as set forth in part 422 of our regulations. Additionally, the MCO must file an application demonstrating that it meets other Medicare requirements in part 422 of our regulations.

Following approval of the MA contract, we engage in routine monitoring and oversight audits of the MA organization to ensure continuing compliance. The monitoring and oversight audit process is comprehensive and uses a written protocol that itemizes the Medicare requirements the MA organization must meet. As an alternative for meeting some Medicare requirements, an MA organization may be exempt from CMS monitoring of certain requirements in subsets listed in section 1852(e)(4)(B) of the Social Security Act (the Act) as a result of an MA organization's accreditation by a CMS-approved accrediting organization (AO). In essence, the Secretary "deems" that the Medicare requirements are met based on a determination that the AO's standards are at least as stringent as Medicare requirements. Therefore, MA organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs) and are accredited by an approved accrediting organization may receive, at their request, deemed status for the MA requirements in the following six areas: Quality Improvement, Information on Advance Directives, Antidiscrimination, Confidentiality and Accuracy of Enrollee Records, Access to Services, and Provider Participation Rules. At this

time, Deeming does not include the Part D areas of review listed in § 422.156(b).

Organizations that apply for MA deeming authority are generally recognized by the industry as entities that accredit MCOs that are licensed as an HMO or a PPO. As we specify at § 422.157(b)(2) of our regulations, the term for which an AO may be approved by CMS may not exceed 6 years. For continuing approval, the AO must re-apply to CMS.

Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) was approved as an authorized AO for Medicare Advantage deeming on June 15, 2002. AAAHC was granted a term of approval of 4 years beginning June 15, 2002, and ending on June 14, 2006. On June 13, 2006, we issued a letter to AAAHC with instructions regarding application for a renewal of term. On June 14, 2006, AAAHC submitted a letter of intent to renew its MA deeming authority, and subsequently submitted all materials requested by CMS for a complete renewal application. The materials requested by CMS included updates and/or changes to items listed in Federal regulations at 42 CFR 422.158(a) that are prerequisites for receiving deeming program approval by CMS, and which were furnished to CMS by AAAHC as part of its initial application for deeming authority in 2002.

II. Deeming Applications Approval Process

Section 1852(e)(4)(C) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. At the end of the 210-day period, we must publish an approval or denial of the application in the **Federal Register**.

III. Deeming Approval Review and Evaluation

As set forth in section 1852(e)(4) of the Act and our regulations at § 422.158, the review and evaluation of the AAAHC's accreditation program (including its standards and monitoring protocol) were compared to the requirements set forth in part 422 for the MA program.

A. Components of the Review Process

The review of AAAHC's application for approval of MA deeming authority included the following components:

1. Desk-Top Review

We conducted a desk-top review of updated materials regarding AAAHC's managed care accreditation program, including—

- A description of AAAHC's survey process for managed care plans, including the frequency of surveys performed, whether the surveys are announced or unannounced, surveyor instructions, the review and accreditation status decision-making process, procedures used to notify accredited MA organizations of deficiencies and monitoring of the correction of deficiencies, and the procedures used to enforce compliance with accreditation requirements;
- Information about the individuals who perform network accreditation reviews, including the size and composition of the survey team, the methods of compensation, the education and experience requirements, the content and frequency of the in-service training, the evaluation system used to monitor performance, and conflict of interest requirements governing AAAHC staff and surveyors;
- A description of the data management and analysis system, the types (full, partial, or denial) and categories (provisional, conditional, temporary) of accreditation offered by AAAHC, the duration of each category of accreditation, and a statement identifying the types and categories that would serve as a basis for accreditation, if we grant AAAHC organization deeming authority;
- The procedures used to respond to and investigate complaints or identify other problems with accredited organizations, including coordination of these activities with licensing bodies and ombudsmen programs;
- A description of how AAAHC provides accreditation information to the general public;
- The policies and procedures for (1) withholding, denying and removing accreditation status, and the other actions AAAHC may take in response to noncompliance with their standards and requirements, and (2) how AAAHC treats accreditation of organizations that are acquired by another organization, have merged with another organization, or that undergo a change of ownership or management;
- Lists of all AAAHC-accredited MA organizations, managed care plans surveyed by AAAHC in the past 3 years, and managed care plans that were scheduled to be surveyed by AAAHC within 3 months of submitting their application.

2. Assessment of AAAHC's Standards and Methods of Evaluation

As part of the application for renewal of term, AAAHC submitted a crosswalk that compared its standards and methods of evaluations with corresponding MA audit requirements in six areas: Quality Improvement, Access to Services, Antidiscrimination, Information on Advance Directives, Provider Participation Rules, and Confidentiality and Accuracy of Enrollee Records.

3. Past Performance and Results of Deeming Validation Review (Look-behind Audit)

We also considered AAAHC's past performance in the deeming program and results of recent deeming validation reviews, or look-behind audits conducted as part of continuing Federal oversight of the deeming program under § 422.157(d).

B. Results of the Review Process

Using the information listed in section III.A. of this notice, we determined that AAAHC's current accreditation program for managed care plans continues to be at least as stringent as the MA requirements contained in the six categories set forth in section 1852(e)(4)(C) of the Act and our methods of evaluation for those areas.

IV. Term of Approval

Based on the review and observations described in section III of this proposed notice, we have determined that AAAHC's requirements for HMOs and local PPOs continue to meet or exceed our requirements. Therefore, we are proposing to recognize AAAHC as a national accreditation organization for HMOs and PPOs that request participation in the Medicare program. As a result, we are proposing to approve AAAHC's deeming program effective July 12, 2006 through July 11, 2012.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 (Pub. L. 96-354)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for

major rules with economically significant effects (\$100 million or more in any 1 year). This notice would not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this notice would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this notice would not have a significant impact on the operations of a substantial number of small rural hospitals.

This notice merely recognizes AAAHC as a national accreditation organization that has approval for deeming authority for HMOs or PPOs that are participating in the MA program.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This notice would have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this notice would not impose any costs on State or local governments, the

requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Secs. 1851 and 1855 of the Social Security Act (42 U.S.C. 1395w-21 and 42 U.S.C. 1395w-25).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 20, 2006.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E6-18044 Filed 10-26-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3174-N]

Medicare Program; Meeting of the Medicare Coverage Advisory Committee—December 13, 2006

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Medicare Coverage Advisory Committee ("MCAC" or "the Committee"). MCAC provides guidance and advice to CMS on specific clinical topics under review for Medicare coverage. This meeting concerns reconsideration of the Medicare clinical trial policy.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting Date:* The public meeting will be held on Wednesday, December 13, 2006 from 8 a.m. until 4:30 p.m., e.s.t.

Registration Deadline: For security reasons, registration must be made no later than 5 p.m. on November 29, 2006. Requests for special accommodations must be received by 5 p.m. on November 29, 2006.

Presentation and Written Comments Deadline: Written comments and presentations must be received by November 13, 2006, e.s.t. Presentations once submitted are final. No further changes to the presentation can be accepted after submission.

ADDRESSES: *Meeting Location:* The meeting will be held in the main

auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244.

Registration: Individuals who intend to register may register by contacting Maria Ellis at (410) 786-0309; e-mail to Maria.Ellis@cms.hhs.gov; or by regular mail to Maria Ellis, Centers for Medicare & Medicaid Services, OCSQ-Coverage and Analysis Group, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244.

Presentation and Comment

Submission: Interested persons may present data, information, or views orally or in writing on issues pending before the Committee. Presentation and written comments can be submitted by e-mail or by regular mail to Kimberly Long or Janet Brock, Executive Secretary for MCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244.

Web Site Address for Additional Information: You may access up-to-date information on this meeting at http://www.cms.hhs.gov/FACA/02_MCAC.asp#TopOfPage.

FOR FURTHER INFORMATION CONTACT: Kimberly Long or Janet Brock, Executive Secretaries for MCAC; Kimberly Long at 410-786-5702 or e-mail at Kimberly.Long@cms.hhs.gov or Janet Brock at 410-786-2700 or e-mail at Janet.Brock@cms.hhs.gov; or contact by regular mail to Kimberly Long or Janet Brock, Executive Secretary for MCAC, Centers for Medicare & Medicaid Services, OCSQ-Coverage and Analysis Group, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION:

I. Meeting Topic

In the December 14, 1998 **Federal Register** (63 FR 68780), we published a notice to describe the Medicare and Coverage Advisory Committee ("MCAC" or "the Committee"), which provides guidance and advice to CMS on specific clinical topics under review for Medicare coverage.

This notice announces the December 13, 2006 public meeting of the Committee. During this meeting, the Committee will discuss evidence and hear presentations and public comments concerning the clinical trial policy National Coverage Determination (NCD) reconsideration. On July 10, 2006, CMS posted on its Web site for a 30-day public comment period, information to initiate the NCD reconsideration and we received numerous comments.

The MCAC will discuss three important proposed changes to the Medicare clinical trial policy: (1) Review the set of standards for qualified studies; (2) recommend processes through which a trial is determined to meet those standards; and (3) advise on the items and services provided to Medicare beneficiaries in qualified studies. In addition to evaluating the available data, the Committee will provide recommendations on the content and implementation of the clinical trial policy National Coverage Determination (NCD) reconsideration.

Background information about this topic, including panel materials, are available at <http://www.cms.hhs.gov/coverage>.

II. Meeting Procedures

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify one of the Executive Secretaries for MCAC and submit the following to the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice: (1) A brief statement of the general nature of the evidence or arguments you wish to present; (2) the names and addresses of proposed participants; and (3) a written copy of your presentation. Your presentation should consider the questions we have posed to the Committee and focus on the issues specific to the topic. The questions will be available on the following Web site: http://www.cms.hhs.gov/FACA/02_MCAC.asp#TopOfPage. We require that you declare at the meeting information pertinent to your relationship with the topic, such as, for example, financial involvement or institutional support. The Committee will also allow a 15 minute unscheduled open public session for any attendee to address issues specific to the topic.

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. At the conclusion of the day, the members will vote and the Committee will make its recommendation.

III. Registration Instructions and Requests for Special Accommodations

The Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. All persons interested in attending must register by contacting Maria Ellis at the address specified in the **ADDRESSES** section of this notice by November 29, 2006.

Please provide your name, address, organization, telephone number(s), fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex. You will be notified if the seating capacity has been reached.

Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, must submit their request with their registration information to one of the Executive Secretaries listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal Government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend that you arrive reasonably early to allow additional time to clear security.

In order to gain access to the building and grounds, individuals must present photographic identification to the Federal Protective Service or Guard Service personnel before being allowed entrance.

Security measures also include a full inspection of vehicles, inside and exterior areas, at the entrance to the grounds. In addition, all individuals entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of or support of a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Parking permits and instructions will be issued upon arrival.

Note: *Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.* The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting. Visitors must be escorted in all areas except for the lower and first floor levels of the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).
(Catalog of Federal Domestic Assistance
Program No. 93.774, Medicare—
Supplementary Medical Insurance Program)

Dated: October 17, 2006.

Barry M. Straube,

*Chief Medical Officer and Director, Office
of Clinical Standards and Quality, Centers
for Medicare & Medicaid Services.*

[FR Doc. E6-18058 Filed 10-26-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1381-N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council, December 4, 2006

AGENCY: Centers for Medicare &
Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Council will meet to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary of Health and Human Services (the Secretary). This meeting is open to the public.

DATES: *Meeting Date:* Monday, December 4, 2006, from 8:30 a.m. to 5 p.m. e.s.t.

Deadline for Registration without Oral Presentation: Friday, December 1, 2006, 12 noon, e.s.t.

Deadline for Registration of Oral Presentations: Friday, November 17, 2006, 12 noon, e.s.t.

Deadline for Submission of Oral Remarks and Written Comments: Wednesday, November 22, 2006, 12 noon, e.s.t.

Deadline for Requesting Special Accommodations: Monday, November 27, 2006, 12 noon, e.s.t.

ADDRESSES: *Meeting Location:* The meeting will be held in the Multi-purpose Room, 1st floor, at the CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland, 21244.

Submission of Presentations: Presentations should be mailed to Kelly Buchanan, DFO, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Mail stop C4-13-07, Baltimore, MD 21244-1850, or contact the DFO via e-mail at PPAC@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT: Kelly Buchanan, the Designated Federal Official (DFO), (410) 786-6132, or e-mail PPAC@cms.hhs.gov. News media representatives must contact the CMS Press Office, (202) 690-6145. Please refer to the CMS Advisory Committees' Information Line (1-877-449-5659 toll free), (410) 786-9379 local) or the Internet at <http://www.cms.hhs.gov/home/regsguidance.asp> for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Secretary is mandated by section 1868(a)(1) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the Council's consultation must occur before **Federal Register** publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) not later than December 31 of each year.

The Council consists of 15 physicians, including the Chair. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before its termination.

Section 1868(a)(2) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Section 1868(a)(3) of the Act provides for payment of expenses and per diem for Council members in the same manner as members of other advisory committees

appointed by the Secretary. In addition to making these payments, the Department of Health and Human Services and CMS provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs in a manner to ensure appropriate balance of the Council's membership.

The Council held its first meeting on May 11, 1992. The current members are: Anthony Senagore, M.D., Chairperson; Jose Azocar, M.D.; M. Leroy Sprang, M.D.; Karen S. Williams, M.D.; Peter Grimm, D.O.; Carlos R. Hamilton, M.D.; Dennis K. Iglar, M.D.; Joe Johnson, D.C.; Vincent J. Bufalino, M.D.; Tye J. Ouzounian, M.D.; Geraldine O'Shea, D.O.; Laura B. Powers, M.D.; Gregory J. Przybylski, M.D.; Jeffrey A. Ross, DPM, M.D.; and Robert L. Urata, M.D.

II. Meeting Format and Agenda

The meeting will commence with the Council's Executive Director providing a status report, and the CMS responses to the recommendations made by the Council at the August 28, 2006 meeting, as well as prior meeting recommendations. Additionally, an update will be provided on the Physician Regulatory Issues Team. In accordance with the Council charter, we are requesting assistance with the following agenda topics:

- Durable Medical Equipment (DME) Update;
- Physician Fee Schedule: Final Rule with Comment;
- Outpatient Prospective Payment System (OPPS)/ Ambulatory Surgical Center (ASC): Final Rule;
- Medicare Contractor Provider Satisfaction Survey (MCPSS) Update-2006 Results;
- Pay for Voluntary Reporting Update; and
- Transparency Initiative.

For additional information and clarification on these topics, contact the DFO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make a 5-minute oral presentation on agenda issues must register with the DFO by the date listed in the **DATES** section of this notice. Testimony is limited to agenda topics only. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to the DFO for distribution to Council members for review before the meeting by the date listed in the **DATES** section of this notice.

Physicians and medical organizations not scheduled to speak may also submit written comments to the DFO for distribution by the date listed in the **DATES** section of this notice.

III. Meeting Registration and Security Information

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at (410)786-6132 by the date specified in the **DATES** section of this notice.

Since this meeting will be held in a Federal Government Building, CMS Central Office, Federal security measures are applicable. As noted above, in planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building, participants will be required to show a government-issued photo identification (for example, driver's license, or passport), and must be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will

not be permitted into the CMS Central Office and will not be permitted to attend the Council meeting.

All persons entering the building must pass through a metal detector. In addition, all items brought to the CMS Central Office, whether personal or for the purpose of presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for the purpose of presentation.

Individuals requiring sign language interpretation or other special accommodation must contact the DFO via the contact information specified in the **FOR FUTHER INFORMATION CONTACT** section of this notice by the date listed in the **DATES** section of this notice.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, section 10(a)).)

Dated: October 5, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E6-17386 Filed 10-26-06; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: 45 CFR 1304 Head Start Program Performance Standards.

OMB No.: 0970-0148.

Description: Head Start Program Performance Standards require Head Start and Early Head Start Programs and Delegate Agencies to maintain program records. The Administration for Children and Families, Office of Head Start, is proposing to renew, without changes, the authority to require certain recordkeeping in all programs as provided for in 45 CFR 1304 Head Start Program Performance Standards. These standards prescribe the services that Head Start and Early Head Start programs provide to enrolled children and their families.

Respondents: Head Start and Early Head Start grantees and delegate agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
	2,590	16	41.8	1,732,192

Estimated Total Annual Burden Hours: 1,732,192.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the

proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 23, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06-8941 Filed 10-26-06; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Native Employment Works (NEW) Program Plan Guidance and Program Report.

OMB No.: 0970-0174.

Description: The Native Employment Works (NEW) program plan is the application for NEW program funding. As approved by the Department of Health and Human Services (HHS), it documents how the grantee will carry out its NEW program. The NEW program plan guidance specifies the information needed to complete a NEW program and explains the process for plan submission every third year. The NEW program report provides information on the activities and accomplishments of grantees' NEW programs. The NEW program report and

instructions specify the program data that NEW grantees report annually.

Respondents: Federally recognized Indian Tribes and Tribal organizations that are NEW program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NEW program plan guidance	26	1 every 3 years	29	754
NEW program report	48	1 annually	15	720

Estimated Total Annual Burden Hours: 1,474.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork

Reduction Project 725 17, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address:
Katherine_T._Astrich@omb.eop.gov.

Dated: October 23, 2006.
Robert Sargis,
Reports Clearance Officer.
[FR Doc. 06-8942 Filed 10-26-06; 8:45 am]
BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State Self-Assessment Review and Report.

OMB No.: 0970-0223.

Description: Section 454(15)(A) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, requires each State to annually assess the performance of its child support enforcement program in accordance with standards specified by the Secretary of the Department of Health and Human Services, and to provide a report of the findings to the Secretary. This information is required to determine if States are complying with Federal child support mandates and providing the best services possible. The report is also intended to be used as a management tool to help States evaluate their programs and assess performance.

Respondents: State Child Support Enforcement Agencies or the Department/Agency/Bureau responsible for Child Support Enforcement in each State.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Self-Assessment Report	54	1	4	216

Estimated Total Annual Burden Hours: 216.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 23, 2006.
Robert Sargis,
Reports Clearance Officer.
[FR Doc. 06-8943 Filed 10-26-06; 8:45 am]
BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Procedures to Use the Child Care and Development Fund (CCDF) for Construction or Major Renovation.
OMB No.: 0970-0160.
Description: The Child Care and Development Block Grant Act, as

amended, allows Indian Tribes to use the CCDF grant awards for construction and renovation of child care facilities. A Tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the

statutorily mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update the procedures that were originally issued

in August 1997 and last updated in January 2004. Respondents will be CCDF Tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: Tribal Child Care Lead Agencies acting on behalf of Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction or Renovation	10	1	20	200

Estimated Total Annual Burden Hours: 200.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: Katherine_T._Astrich@omb.eop.gov.

Dated: October 23, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06-8944 Filed 10-26-06; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, November 9, 2006, 8 a.m. to November 10, 2006, 5 p.m. Bethesda Marriott, 5151 Pooks Hill Road,

Bethesda, MD 20814 which was published in the **Federal Register** on September 14, 2006, FR 06-7626.

This meeting is being cancelled. The meeting is closed to the public.

Dated: October 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8924 Filed 10-26-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, November 16, 2006, 8 a.m. to November 17, 2006, 5 p.m., DoubleTree Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on September 14, 2006, FR 06-7626.

The November 16-17, 2006 meeting dates were changed to two 1-day meetings and the meeting locations were changed from the DoubleTree Rockville to the Bethesda Marriott. The meeting is closed to the public.

Dated: October 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8925 Filed 10-26-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, November 9, 2006, 8 a.m. to November 10, 2006, 6 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on September 14, 2006, FR 06-7626.

The November 9-10, 2006 meeting location was changed from Bethesda Marriott to Holiday Inn and Suites, Chicago, IL. The meeting is closed to the public.

Dated: October 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8926 Filed 10-26-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: November 15–16, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Mona R. Trempe, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–3998, trempe@nih.gov.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

Date: November 16–17, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel Bethesda, 8120 Wisconsin Avenue, Pennsylvania Room, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2886, zacharya@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8916 Filed 10–26–06; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders C, October 30, 2006, 8 a.m. to October 31, 2006, 5 p.m. The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037 which was published in the **Federal**

Register on September 21, 2006, 71 FR: 06–8344.

The meeting will be held on October 30, 2006 for a one day meeting. The meeting is closed to the public.

Dated: October 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8917 Filed 10–26–06; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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, National Institute of Dental and Craniofacial Research.

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 Dental & Craniofacial Research, 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, National Institute of Dental and Craniofacial Research.

Date: December 6–7, 2006.

Time: December 6, 2006, 7 p.m. to 9 p.m.

Agenda: To review and evaluate program documents.

Place: Hilton Chicago O'Hare Airport, Chicago, IL 60666.

Time: December 7, 2006, 8 a.m. to 3 p.m.

Agenda: To review and evaluate program documents.

Place: Hilton Chicago O'Hare Airport, Chicago, IL 60666.

Contact Person: Norman S Braveman, Assistant to the Director NIH–NIDOR 31 Center Drive, Bldg. 31, Room 5B55, Bethesda, MD 20892. 301 594–2089.

Norman.Braveman@Nih.Gov.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about/CouncilCommittees.asp>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and

Disorders Research, National Institutes of Health, HHS)

Dated: October 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8918 Filed 10–26–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Mentored Patient-Oriented Research Career Development Award.

Date: November 9, 2006.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919/541–1307.

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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Research and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8919 Filed 10-26-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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: Environmental Health Sciences Review Committee.

Date: November 8, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-24, Research Triangle Park, NC 27709, (919) 541-1307.

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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8920 Filed 10-26-06; 8:45am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, Mentoring Programs to Diversify HIV/AIDS Workforce.

Date: November 3, 2006.

Time: 11 a.m. to 2 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: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301-443-0004, sechu@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 Mental Health Special Emphasis Panel, Training Grant Review.

Date: November 15, 2006.

Time: 2 p.m. to 3 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: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Rockville, MD 20892, 301-443-1959, csarampo@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Centers for Innovation in Services and Intervention Research.

Date: November 17, 2006.

Time: 8 a.m. to 5 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: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301-443-0004, sechu@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Minority Undergraduate Honors Training.

Date: November 17, 2006.

Time: 9 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: Agu Pert, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Rockville, MD 20892-9608, 301-443-0811, apert@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8921 Filed 10-26-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Tissue Engineering and Regenerative Medicine.

Date: December 15, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles H. Washabaugh, PhD, Scientific Review Administrator, Review Branch, NIAMS/NIH, 6701 Democracy Blvd., Room 816, Bethesda, MD 20892, 301-496-9568, washabac@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-8922 Filed 10-26-06; 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, Calcium Channels and Calcium Signaling.

Date: November 2, 2006.

Time: 4 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: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435-1239, guthriep@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, Neurobiology 1.

Date: November 3, 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: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435-1239, guthriep@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, Neurobiology 2.

Date: November 3, 2006.

Time: 4 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: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435-1239, guthriep@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, Neural and Embryonic Stem Cells.

Date: November 8, 2006.

Time: 3:30 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: Lawrence Baizer, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435-1257, baizerl@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, Glia and Hemichannels.

Date: November 13, 2006.

Time: 2 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: Toby Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435-4433, behart@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships.

Date: November 15, 2006.

Time: 11 a.m. to 1 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 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: Center for Scientific Review Special Emphasis Panel, Neurotechnology and Neuroengineering.

Date: November 16, 2006.

Time: 8 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: Robert C. Elliott, 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 Circadian Rhythms and Sexual Behavior.

Date: November 16, 2006.

Time: 1:15 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: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435-1257, baizerl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Case Member SEP.

Date: November 21, 2006.

Time: 1 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: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892, (301) 435-1712, krosnics@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member

Conflicts: Neurological, Aging, and Musculoskeletal Epidemiology.

Date: November 27, 2006.

Time: 1:30 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: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435-3554, durrantv@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship—Physiology and Pathobiology of Organ Systems.

Date: November 28–29, 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, Cabinet Judiciary, Bethesda, MD 20814.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, (301) 435-2365, abdelouahaba@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, KNOD—Member SEP.

Date: November 28, 2006.

Time: 4 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: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892, (301) 435-1712, krosnics@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Linking Environments, Behaviors, and HIV/AIDS.

Date: November 30, 2006.

Time: 8 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: Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028A, MSC 7770, Bethesda, MD 20892, (301) 435-1712, krosnics@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Protein Modifications.

Date: November 30, 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: 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, Neuroaids Conflict.

Date: November 30, 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: Hillary D. Sigmon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 435-2211, sigmonh@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 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8923 Filed 10–26–06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were

reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for “off-site use only” recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has

decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Energy*: Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME-90, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586-0072; *GSA*: Mr. John Kelly, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501-0084; *Interior*: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 513-0747; *Navy*: Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9305; (these are not toll-free numbers).

Dated: October 19, 2006

Mark R. Johnston,

Acting Deputy Assistant, Secretary for Special Needs.

**Title V, Federal Surplus Property Program
Federal Register Report for 10/27/06**

Suitable/Available Properties

Buildings (by State)

Iowa

Federal Bldg./P.O./Courthouse
8 South 6th Street
Council Bluffs Co: Pottawattamie IA 51501-
Landholding Agency: GSA
Property Number: 54200640001
Status: Excess
Comment: 67,298 sq. ft., to be vacant 12/31/
08, needs rehab—estimated cost \$2 million
GSA Number: 7-G-IA-0468-1

Oklahoma

Bldg.
Foss Reservoir Master Conservancy
Clinton Co: Custer OK 73601-
Location: 635 North 6th Street
Landholding Agency: Interior
Property Number: 61200640002
Status: Excess
Comment: 1200 sq. ft., most recent use—
storage/office, not ADA accessible

Texas

Bldgs. 5, 6, 7
Federal Center
501 West Felix Street
Ft. Worth Co: Tarrant TX 76115-
Landholding Agency: GSA
Property Number: 54200640002
Status: Excess
Comment: 3 warehouses with concrete
foundation, off-site use only
GSA Number: 7-G-TX-0767-3

Unsuitable Properties

Buildings (by State)

South Carolina

Bldgs. 108-1P, 108-2P
Savannah River Site
Aiken Co: SC 29802-
Landholding Agency: Energy
Property Number: 41200640001
Status: Excess
Reason: Secured Area

Virginia

Bldgs. 500, 501
Naval Weapon Station
Yorktown Co: VA 23691-
Landholding Agency: Navy
Property Number: 77200640012
Status: Excess
Reason: Extensive deterioration

Bldg. 628
Naval Weapon Station
Yorktown Co: VA 23691-
Landholding Agency: Navy
Property Number: 77200640013
Status: Excess
Reason: Extensive deterioration

Bldg. CA-486
Naval Support Activity
Norfolk Co: VA 23551-
Landholding Agency: Navy
Property Number: 77200640026
Status: Excess
Reason: Extensive deterioration

Washington

Bldgs. 0304, 0305
22416 Road F NE
Soap Lake Co: Grant WA 98851-
Landholding Agency: Interior
Property Number: 61200640003
Status: Excess
Reason: Extensive deterioration
Bldgs. 0801, 0804
Frontage Road
West Quincy Co: Grant WA 98848-
Landholding Agency: Interior
Property Number: 61200640004
Status: Excess
Reason: Extensive deterioration
Bldgs. 1202, 1203
S. Maple
Warden Co: Grant WA 98857-

Landholding Agency: Interior
Property Number: 61200640005
Status: Excess
Reason: Extensive deterioration
Bldgs. 1702, 1707
Highway Heights
Mesa Co: Franklin WA 99343-
Landholding Agency: Interior
Property Number: 61200640006
Status: Excess
Reason: Extensive deterioration
Bldg. 1806
Klamath Road
Mesa Co: Franklin WA 99343-
Landholding Agency: Interior
Property Number: 61200640007
Status: Excess
Reason: Extensive deterioration
Bldgs. 407, 447
Naval Base
Bremerton Co: Kitsap WA 98310-
Landholding Agency: Navy
Property Number: 77200640014
Status: Excess
Reason: Secured Area
Bldg. 867
Naval Base
Bremerton Co: Kitsap WA 98310-
Landholding Agency: Navy
Property Number: 77200640015
Status: Excess
Reason: Secured Area
Bldgs. 937, 975
Naval Base
Bremerton Co: Kitsap WA 98310-
Landholding Agency: Navy
Property Number: 77200640016
Status: Excess
Reason: Secured Area
Bldg. 1449
Naval Base
Silverdale Co: Kitsap WA 98315-
Landholding Agency: Navy
Property Number: 77200640017
Status: Unutilized
Reason: Secured Area
Bldg. 1670
Naval Base
Silverdale Co: Kitsap WA 98315-
Landholding Agency: Navy
Property Number: 77200640018
Status: Unutilized
Reason: Secured Area
Bldgs. 2007, 2801
Naval Base
Silverdale Co: Kitsap WA 98315-
Landholding Agency: Navy
Property Number: 77200640019
Status: Unutilized
Reason: Secured Area
Bldgs. 6021, 6095
Naval Base
Silverdale Co: Kitsap WA 98315-
Landholding Agency: Navy
Property Number: 77200640020
Status: Unutilized
Reason: Secured Area
Bldgs. 6606, 6661
Naval Base
Silverdale Co: Kitsap WA 98315-
Landholding Agency: Navy
Property Number: 77200640021
Status: Unutilized
Reason: Secured Area

Bldgs. 726, 727, 734
 Naval Undersea Warfare
 Keyport Co: Kitsap WA 98345–
 Landholding Agency: Navy
 Property Number: 77200640022
 Status: Unutilized
 Reasons: Within 2000 ft. of flammable or
 explosive material; Secured Area
 Bldgs. 901, 911
 Naval Undersea Warfare
 Keyport Co: Kitsap WA 98345–
 Landholding Agency: Navy
 Property Number: 77200640023
 Status: Unutilized
 Reasons: Within 2000 ft. of flammable or
 explosive material; Secured Area
 Bldgs. 925, 938
 Naval Undersea Warfare
 Keyport Co: Kitsap WA 98345–
 Landholding Agency: Navy
 Property Number: 77200640024
 Status: Unutilized
 Reasons: Within 2000 ft. of flammable or
 explosive material; Secured Area
 Bldg. 1020
 Naval Undersea Warfare
 Keyport Co: Kitsap WA 98345–
 Landholding Agency: Navy
 Property Number: 77200640025
 Status: Unutilized
 Reasons: Within 2000 ft. of flammable or
 explosive material; Secured Area

Land (by State)
 Colorado
 0.21 acre
 Section 20
 Bayfield Co: La Plata CO 81122–
 Landholding Agency: Interior
 Property Number: 61200640001
 Status: Excess
 Reason: Not accessible

[FR Doc. E6–17817 Filed 10–26–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–EL, WYW173369]

Coal Lease Exploration License, WY; Notice of Invitation for Coal Exploration License Application, Powder River Coal, LLC, WYW173369, Wyoming

AGENCY: Bureau of Land Management,
 Interior.

ACTION: Notice of invitation.

SUMMARY: Pursuant to Section 2(b) of the Mineral Leasing Act of 1920, as amended by Section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201 (b), and to the regulations adopted as 43 Code of Federal Regulations (CFR) 3410, all interested qualified parties, as provided in 43 CFR 3472.1, are hereby invited to participate with Powder River Coal, LLC on a pro rata cost sharing basis in its

program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

- T. 48 N., R. 70 W., 6th P.M., Wyoming
 Sec. 5: Lots 5 through 11;
 Sec. 6: Lots 8 through 23;
 Sec. 8: Lots 1 through 16;
 Sec. 17: Lots 1 through 16;
 Sec. 18: Lots 13, 14, 19 and 20;
 Sec. 19: Lots 5 through 14;
 Sec. 20: Lots 1 through 11.
- T. 48 N., R. 71 W., 6th P.M., Wyoming
 Sec. 6: Lots 9, 10, 13, 14 (W2), 17, 18, 21,
 and 22;
 Sec. 7: Lots 6, 7, 10, 11, 13, 14, 17, and 18.
- T. 48 N., R. 72 W., 6th P.M., Wyoming
 Sec. 1: Lots 6 through 11, 14 through 19;
 Sec. 2: Lots 5, 12, 13, and 20;
 Sec. 11: Lots 1 and 7;
 Sec. 12: Lots 2 through 7.
- T. 49 N., R. 70 W., 6th P.M., Wyoming
 Sec. 30: Lots 17 through 19;
 Sec. 31: Lots 5 through 20.
- T. 49 N., R. 71 W., 6th P.M., Wyoming
 Sec. 20: Lots 13 through 16;
 Sec. 21: Lots 13 through 16;
 Sec. 22: Lots 13 through 15;
 Sec. 25: Lots 13 through 16;
 Sec. 26: Lots 13 through 16;
 Sec. 27: Lots 2 through 7, 10 through 16;
 Sec. 28: Lots 1 through 16;
 Sec. 29: Lots 1 through 16;
 Sec. 31: Lots 5, 6, 11 through 13, 16
 through 19;
 Sec. 32: Lots 1 through 6, 11 through 14;
 Sec. 33: Lots 1 through 4;
 Sec. 34: Lots 1 through 10, 16;
 Sec. 35: Lots 1 through 15.

Containing 10,188.825 acres, more or less.

DATES: Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Powder River Coal, LLC, as provided in the **ADDRESSES** section below, which must be received within 30 days after publication of this Notice of Invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW173369): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604. The written notice should be sent to the following addresses: Powder River Coal, LLC, Attn: Robbie Willson, Caller Box 3034, Gillette, WY 82717, and the Bureau of Land Management, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, P.O. Box 1828, Cheyenne, WY 82003.

SUPPLEMENTARY INFORMATION: All of the coal in the above-described land consists of unleased Federal coal within

the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to obtain information concerning coal quantity, quality and seam structure for the Wyodak-Anderson coal seam.

This notice of invitation will be published in The News-Record of Gillette, WY, once each week for two consecutive weeks beginning the week of October 23, 2006, and in the **Federal Register**. The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: September 28, 2006.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. E6–18064 Filed 10–26–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Proposed Coeur d'Alene Resource Management Plan and Final Environmental Impact Statement; Idaho

AGENCY: Bureau of Land Management,
 Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the Coeur d'Alene Field Office, Idaho.

DATES: The BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest which is or may be adversely affected, may protest BLM's approval of a resource management plan. You must file a protest within 30 days of the date that the Environmental Protection Agency publishes their notice of availability in the **Federal Register**. Instructions for filing of protests are described in the PRMP/FEIS and in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott Pavey, 3815 Schreiber Way Coeur d'Alene, Idaho 83815; (208) 769–5059; scott_pavey@blm.gov.

SUPPLEMENTARY INFORMATION: The planning area covers approximately 96,770 acres of public lands within the following Idaho Counties: Benewah, Bonner, Boundary, Kootenai, and

Shoshone. The Coeur d'Alene PRMP, when completed, will provide management guidance for use and protection of the resources managed by the Coeur d'Alene Field Office. The draft Coeur d'Alene RMP/EIS was published for public comment on January 13, 2006. During the 90-day public comment period, BLM received 68 comment letters, e-mails, and faxes. These submissions included almost 700 individual comments, which BLM responded to in the PRMP/FEIS. Public comments resulted in the addition of clarifying text and minor changes to the Preferred Alternative, but did not significantly change land use decisions in the draft. The planning issues addressed in the PRMP/FEIS include: recreational travel management, management of forest products and protection of other resources, adjustments to Federal land ownership, invasive plants, protection of property from wildfire, and protection and restoration of watersheds and riparian areas.

Copies of the Coeur d'Alene PRMP/FEIS have been sent to affected Federal, State, and local government agencies and to interested parties. Interested persons may review the PRMP/FEIS on the Internet at <http://www.blm.gov/rmp/id/cda/>. You may also obtain a copy on CD-ROM, or paper copy at the BLM Coeur d'Alene Field Office at the address listed above, or by contacting Scott Pavay at (208) 769-5059.

Instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found at 43 CFR 1610.5-2. A protest may only raise those issues which were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail and it is postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202-452-5112, and e-mails to Brenda_Hudgens-Williams@blm.gov. Please direct the follow-up letter to the appropriate address provided below. The protest must contain:

- a. The name, mailing address, telephone number, and interest of the person filing the protest.
- b. A statement of the part or parts of the PRMP and the issue or issues being protested.

c. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record.

d. A concise statement explaining why the protestor believes the State Director's decision is wrong.

All protests must be in writing and mailed to one of the following addresses: Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your protest. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director is the final decision of the Department of the Interior.

Dated: July 21, 2006.

John V. Martin,

Acting Branch Chief, Resources and Science.

[FR Doc. 06-8862 Filed 10-26-06; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-039-1020-PK]

Cancellation of Notice of Public Meeting, Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of cancellation of public meeting.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), Dakotas Resource Advisory Council scheduled for October 26 and 27, 2006, at the Bureau of Land Management and U.S. Forest Service Lands and Minerals Center at 99 23rd Avenue West, Dickinson, ND 58601, has

been cancelled. A new meeting date and time will be rescheduled and published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Marian Atkins, Field Manager, South Dakota Field Office, 310 Roundup St., Belle Fourche, South Dakota, 605.892.7000, or Lonny Bagley, Field Manager, North Dakota Field Office, 99 23rd Ave., W. Dickinson, North Dakota, 701-227-7700.

Dated: October 16, 2006.

Michael Nash,

Acting Field Manager.

[FR Doc. E6-18010 Filed 10-26-06; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-330-1430-EU-2710; IDI-35095]

Notice of Realty Action; Non-Competitive Sale of Public Land, Custer County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and determined that one parcel of public land, 0.75 acres, located in Custer County, Idaho is suitable for disposal by direct (non-competitive) sale to First Fruits Foundation Trust, Christopher James Trustee/Representative, pursuant to Section 203 and 209 of the Federal Land Policy Management Act of 1976, as amended, at no less than the appraised fair market value.

DATES: Interested parties may submit comments to the BLM Challis Field Office Manager, at the below address. Comments must be received by not later than December 11, 2006. Only written comments will be accepted.

ADDRESSES: Address all written comments concerning this Notice to David Rosenkrance, BLM Challis Field Manager, 801 Blue Mountain Rd, Challis Idaho 83226-9304.

FOR FURTHER INFORMATION CONTACT: Tim Vanek, Realty Specialist, at the above address or call: (208) 879-6218.

SUPPLEMENTARY INFORMATION: The following described public land in Custer County, Idaho has been determined to be suitable for sale at not less than fair market value under Section 203 and 209 of the Federal Land Policy Management Act of 1976, as amended (43 U.S.C. 1713 and 1719). It has been determined that this land is difficult to economically manage as part

of the public lands. BLM has determined that resource values will not be affected by the disposal of this parcel of public land. The parcel is identified for disposal in the Challis Resource Management Plan (1999). In accordance with 43 CFR 2711.3-3(a)(5), this parcel is being offered by direct (non-competitive) sale to First Fruits Foundation Trust, Christopher James Trustee/representative, based on historic use and value of added improvements. The parcel is fenced, has an improved driveway, entrance gate, maintained lawn, portion of septic field and portion of a garage. Failure or refusal by Christopher James to submit the required fair market appraisal amount within 180 days of the sale of the parcel will constitute a waiver of this preference consideration and this parcel may be offered for sale on a competitive or modified competitive basis.

The parcel is described as follows:

Boise Meridian, Idaho

T. 14 N., R. 18 E.,
Section 35, lot 4

The area described contains 0.75 acres, more or less. The market value for this land, utilizing direct sale procedures, at not less than the current appraised fair market value, is determined to be \$2,600.00.

The patent, when issued, will contain a reservation to the United States for ditches and canals under the Act of March 30, 1890. The patent will be made subject to the following existing rights of record:

1. IDI-16458—Those rights for a buried telephone cable granted to Custer Telephone Cooperative Inc., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

2. IDI 0 08308—Those rights for an overhead 24.9kv power line granted to Salmon River Electric Cooperative Inc., its successors or assigns, pursuant to the Act of February 15, 1901, as amended (formerly 43 U.S.C. 959).

Continued use of the land by valid rights-of-way holders is proper, subject to the terms and conditions of their grants. Administrative responsibility previously held by the United States will be assumed by the patentee.

It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously with the surface. A separate non-refundable filing fee of \$50.00 is required from the purchaser for the conveyance of the mineral interest.

Upon publication of this notice in the **Federal Register**, the land described

above will be segregated from appropriation under the public land laws, including the general mining laws. The segregation will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Comments must be received by the BLM Challis Field Manager, Idaho Falls District Office, at the address stated above, on or before the date stated above. Any adverse comments will be reviewed by the Idaho Falls District Manager, who may sustain, vacate or modify this realty action. In the absence of any objections, or adverse comments, this proposed realty action will become the final determination of the Department of the Interior.

Dated: September 21, 2006.

Joe Kraayenbrink,

District Manager, Idaho Falls District.

[FR Doc. E6-18008 Filed 10-26-06; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

National Park Service

Route 66 Corridor Preservation Program Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Route 66 Corridor Preservation Program Advisory Council will be held November 8 and 9, 2006, at Best Western Saddleback Inn, 4300 Southwest Third Street, Oklahoma City, OK 73108. The meeting will begin at 9 a.m. on November 8 and will end by 3 p.m. on November 9.

The Route 66 Corridor Preservation Program Advisory Council was established to consult with the Secretary of the Interior on matters relating to the Route 66 Corridor Preservation Program, including recommendations for ways to best preserve important properties along Route 66, recommendations for grant and cost-share awards to eligible applicants owning or administering historic properties along the Route 66 Corridor, and recommendations for technical assistance provided by the National Park Service to partners along the route.

The matters to be discussed include:

- Committee report on accountability and measurement
- Committee report on education and outreach

- Committee report on preservation management
- Strategic media initiative.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. The public comment period is scheduled from 9–10 a.m. on Thursday, November 9. Any member of the public may file a written statement concerning the matters to be discussed with Michael Taylor, Route 66 Corridor Preservation Program Manager.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Michael Taylor, Route 66 Corridor Preservation Program Manager, National Trails System—Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504-0728, telephone 505/988-6742. Minutes of the meeting will be available for public inspection at the Route 66 Corridor Preservation Program Office, located in room 122, Old Santa Fe Trail Building, 1100 Old Santa Fe Trail, Santa Fe New Mexico.

Dated: October 10, 2006.

Bernard C. Fagan,

Acting Chief, Office of Policy.

[FR Doc. 06-8960 Filed 10-26-06; 8:45 am]

BILLING CODE 4310-EM-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-06-056]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 3, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA-1105 and 1106 (Preliminary) (Lemon Juice from Argentina and Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before November 6, 2006; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before November 14, 2006.)
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not

disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 24, 2006.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06-8957 Filed 10-25-06; 12:06 pm]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on September 21, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), DVD Copy Control Association (“DVD CCA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 2GeeksinaLab, Inc., Palmdale, CA; Advanced Duplication Services, LLC, Plymouth, MN; Capgemini US LLC, Irving, TX; Giant Video Electronics Co., Ltd., Hong Kong, Hong Kong-China; Marubun/Arrow(S) Pte Ltd., Singapore, Singapore; Novatron Co. Ltd., Seongnam-si, Gyeonggi-do, Republic of Korea; OVK Optics Technology Co., Ltd., Shenzhen, People’s Republic of China; Premium Disc Corp., Mississauga, Ontario, Canada; Shunde Xiongfeng Electric Industrial Company, Guangdong, People’s Republic of China; and Xiamen Punch Video Co., Ltd., Xiamen, People’s Republic of China have been added as parties to this venture. Also, Cal-Comp Electronics, Bangkok, Thailand has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on June 22, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 20, 2006 (71 FR 41257).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06-8912 Filed 10-26-06; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Radio Work Order Collaboration

Notice is hereby given that, on September 22, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Radio Work Order Collaboration (“RWOC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of the antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: BMW of North America, LLC, Woodcliff Lake, NJ; DaimlerChrysler Research and Technology North America, Inc., Palo Alto, CA; TechnoCom Corporation, Encino, CA; TransCore, LP, Hummelstown, PA; Mark IV IVHS, Inc., Flemington, NJ; Sirit Technology, Inc., Carrollton, TX; and DENSO International America, Inc., Southfield, MI. The general area of RWOC’s planned activity is the development of radio subsystems as part of the development and deployment of a national infrastructure to enable data collection and exchange in real time between vehicles and between vehicles and the roadway.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06-8911 Filed 10-26-06; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Guidelines for Measurement Error Caused by Buckled Orifice Plates

Notice is hereby given that, on September 26, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Southwest Research Institute: Guidelines for Measurement Error Caused by Buckled Orifice Plates (“SwRI: Orifice Plates”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Atmos Energy, Dallas, TX; Centerpoint Energy Gas Transmission Company, Shreveport, LA; ConocoPhillips Company, Houston, TX; Enbridge Energy Partners, L.P., Houston, TX; Enterprise Products Operating L.P., Houston, TX; Kinder Morgan Inc., Houston, TX; National Fuel Gas Distribution Corporation, Williamsville, NY; Southern Star Central Gas Pipeline, Owensboro, KY; and Tennessee Gas Pipeline Company, Houston, TX.

The general area of SwRI: Orifice Plates’ planned activity is to investigate the flow measurement error caused by orifice plates that have undergone permanent, plastic deformation. Guidelines will be developed for the measurement error produced by orifice plates as a function of orifice bore diameter and deflection angle. The program will include a literature survey, the development of an experimental test plan, and the acquisition and inspection of existing deformed orifice plates. The program will also include the testing of new orifice plates before and after mechanical deformation. Data obtained in this project and from the literature will be used to revise guidelines for estimating measurement error for buckled orifice plates.

Membership in this group research project remains open, and SwRI: Orifice Plates intends to file additional written

notification disclosing all changes in membership or planned activities.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–8913 Filed 10–26–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—SwRI Biodiesel Fuel/Water Separation Cooperative R&D Program

Notice is hereby given that on September 27, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), SwRI Biodiesel Fuel/Water Separation Cooperative R&D Program (“SwRI”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, John Deere Product Engineering Center, Waterloo, IA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On December 6, 2005, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 22, 2005 (70 FR 76080).

The last notification was filed with the Department on February 7, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 10, 2006 (71 FR 27280).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–8914 Filed 10–26–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of the Availability of the Record of Decision for Proposed Federal Correctional Institution—Berlin, NH

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Notice of a Record of Decision.

SUMMARY: The U.S. Department of Justice, Federal Bureau of Prisons (BOP) announces the availability of the Record of Decision (ROD) concerning the Environmental Impact Statement (EIS) for the proposed development of a Federal Correctional Institution to be located in Berlin, Coos County, New Hampshire.

Background Information: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and the Council of Environmental Quality Regulations (40 CFR Parts 1500–1508), BOP has prepared Draft and Final EISs for the development of a medium-security Federal Correctional Institution to house approximately 1,230 adult male inmates, a satellite work camp to house approximately 128 minimum-security inmates, staff training facilities, and ancillary facilities in Berlin, New Hampshire.

Project Information: The BOP is responsible for carrying out judgements of the Federal courts whenever a period of confinement is ordered. Subsequently, the mission of the BOP is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. Approximately 162,200 inmates are currently housed within the 114 federal correctional institutions that have levels of security ranging from minimum to maximum; a number exceeding the combined rated capacities of all federal correctional facilities. Measures being taken to manage the growth of the federal inmate population include construction of new institutions, acquisition and adaptation of facilities originally intended for other purposes, expansion and improvement of existing correctional facilities, and expanded use of contract beds. Adding capacity through these various means allows the BOP to work toward the long-term goal of reduced system-wide crowding.

The proposed action in Berlin, New Hampshire, is part of the BOP’s comprehensive expansion effort and

would consist of construction and operation of a medium-security Federal Correctional Institution, a satellite work camp to house minimum-security inmates, staff training facilities, along with ancillary facilities. The principal function of the correctional facility would be to provide a safe, secure and humane environment for the care and custody of federal inmates, primarily from the Northeast region of the country. Upon activation, the facility would have a staff of approximately 300 to 350 full-time employees who would provide 24-hour supervision. Development of the proposed facility will necessitate the acquisition of approximately 700 acres of land by the BOP exclusive of lands which may be acquired for mitigation purposes.

The BOP evaluated alternatives as part of the EIS including the No Action Alternative, development of the proposed project at alternative locations nationwide, development of the proposed project at alternative locations within the Northeast United States, and development of the proposed project at one of four alternative sites located in Berlin, New Hampshire. Each of the four alternative sites located in Berlin, New Hampshire, is examined in detail in the Draft and Final EISs with development of the proposed project at Site A1 located northeast of downtown Berlin identified by the Draft and Final EISs as the Preferred Alternative.

The BOP issued a Draft EIS in March 2006 with publication of the Notice of Availability (NOA) in the **Federal Register** on March 24, 2006. The NOA provided for a 45-day public comment period which began on March 24, 2006, and ended on May 8, 2006. During the public comment period, the BOP held a public hearing concerning the proposed action and the Draft EIS on April 19, 2006. Approximately 200 individuals attended the public hearing which was held in Berlin, New Hampshire.

The Final EIS addressed comments received on the Draft EIS and publication of the NOA in the **Federal Register** concerning the Final EIS occurred on August 11, 2006. The 30-day review period for receipt of public comments concerning the Final EIS ended on September 11, 2006. Approximately 500 comment letters, post cards, and other forms of communication were received by the BOP during the Final EIS public review period. The comment letters received on the Final EIS are similar to comments received by the BOP on the Draft EIS and were considered in the decision presented in the ROD.

BOP provided written notices of the availability of the Draft EIS and Final

EIS in the **Federal Register**, two newspapers with local and regional circulations, and through three local public libraries. The BOP also distributed approximately 175 copies (each) of the Draft EIS and Final EIS to federal and state agencies, state and local governments, elected officials, interested organizations, and individuals.

Availability of Record of Decision: The Record of Decision and other information regarding this project are available upon request. To request a copy of the Record of Decision, please contact: Pamela J. Chandler, Chief, or Issac J. Gaston, Site Selection Specialist, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534 Tel: 202-514-6470 Fax: 202-616-6024 / E-mail: pchandler@bop.gov—igaston@bop.gov
FOR FURTHER INFORMATION CONTACT: Pamela J. Chandler, or Issac J. Gaston, Federal Bureau of Prisons.

Dated: October 24, 2006.

Issac J. Gaston,

Site Specialist, Site Selection and Environmental Review Branch.

[FR Doc. E6-18039 Filed 10-26-06; 8:45 am]

BILLING CODE 4410-05-P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of the ETA 9048, Worker Profiling and Reemployment Services Activity and the ETA 9049, Worker Profiling and Reemployment Services Outcomes; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments

concerning the proposed extension of the collection of the ETA 9048, Worker Profiling and Reemployment Services Activity, and the ETA 9049, Worker Profiling and Reemployment Services Outcomes. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing: <http://www.doleta.gov/OMBCN/OMBControlNumber.cfm>.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 26, 2006.

ADDRESSES: Diane Wood, Office of Workforce Security, 200 Constitution Ave. NW., Room S-4231, Washington, DC 20210; telephone 202-693-3212; fax 202-693-3975 (these are not toll-free numbers) or e-mail wood.diane@dol.gov.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Worker Profiling and Reemployment Services (WPRS) program allows for the targeting of reemployment services to those most in need of services. The ETA 9048 and ETA 9049 are the only means of tracking the activities in the WPRS program. The ETA 9048 reports on the numbers and flows of claimants at the various stages of the WPRS system from initial profiling through the completion of specific reemployment services. This allows for evaluation and monitoring of the program. The ETA 9049 gives a limited, but inexpensive, look at the reemployment experience of profiled claimants who were referred to services by examining the state's existing wage record files to see in which quarter the referred individuals became employed, what wages they earned and whether they have changed industries.

II. *Desired Focus of Comments:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions:* This collection continues to be needed to evaluate and monitor the WPRS program.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Worker Profiling and Reemployment Services Activity, and Worker Profiling and Reemployment Services Outcomes.

OMB Number: 1205-0353.

Agency Number: ETA 9048 and ETA 9049.

Affected Public: State Governments.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 424.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 106 hours.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request and will become a matter of public record.

Dated: October 18, 2006.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E6-18030 Filed 10-26-06; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR-1218-0216(2007)]

Aerial Lifts; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirement contained in the Aerial Lifts Standard.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by December 26, 2006.

Facsimile and electronic transmission: Your comments must be received by December 26, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0216(2007), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA’s TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through Internet at <http://ecommments.osha.gov>. Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA’s Web page at <http://www.OSHA.gov>. In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Michael Buchet at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the “Public Participation” section in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Michael Buchet, Directorate of Construction, OSHA, U.S. Department of Labor, Room N3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2020.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA’s estimate of the information collection burden is accurate.

The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et*

seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Employers who modify an aerial lift for uses other than those provided by the manufacturer must obtain a certificate from the manufacturer or equivalent entity certifying that the modification is in conformance with applicable ANSI standards and this Standard, and the equipment is as safe as it was prior to the modification. The manufacturer’s certification demonstrates to interested parties that the manufacturer or an equally qualified entity assessed a modified aerial lift and found that it was safe for use by, or near, employees, and would provide employees with a level of protection equivalent to the protection afforded by the lift prior to modification.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirement is necessary for the proper performance of the Agency’s functions, including whether the information is useful;
- The accuracy of OSHA’s estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting OMB to extend their approval of the collection of information requirement contained in the Aerial Lifts Standard. The Agency is requesting a nine hour decrease as a result of reestimating the number of inspections where employers will provide OSHA these certificates. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB.

Type of Review: Extension of currently approved information collection requirements.

Title: Manufacturer’s Certification of Modifications Made to Construction Aerial Lifts (29 CFR 1926.453).

OMB Number: 1218–0216.

Affected Public: Business or other for-profit.

Number of Respondents: 62.

Frequency: On occasion.

Average Time Per Response: Six minutes (.06 hour).

Estimated Total Burden hours: 6 hours.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) Hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, and courier service.

All comments, submissions, and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA’s Web page are available at <http://www.OSHA.gov>. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA’s Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of labor’s Order No. 5–2002 (67 FR 65008).

Dated: Signed at Washington, DC, on October 20, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. 06-8931 Filed 10-26-06; 8:45 am]

BILLING CODE 4510-26-M

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service; Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Janice Bradley, HR Director, Finance and Administrative Management, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). Deborah Miron will serve as Chair of the PRB. Lynore Carnes and An-Ming "Tommy" Hwang will serve as new members. Gail T. Lovelace, General Services Administration, will serve as a member.

Dated: October 24, 2006.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. E6-18037 Filed 10-26-06; 8:45 am]

BILLING CODE 7401-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (06-081)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358-1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The LIST System form is used primarily to support services at GSFC dependent upon accurate locator type information. The Personal Identifiable Information (PII) is maintained, protected, and used for mandatory security functions. The system also serves as a tool for performing short and long-term institutional planning.

II. Method of Collection

Approximately 46% of the data is collected electronically by means of the data entry screen that duplicates the Goddard Space Flight Center form GSFC 24-27 in the LISTS system. The remaining data is keyed into the system from hardcopy version of form GSFC 24-27.

III. Data

Title: Locator and Information Services Tracking System (LISTS) Form.
OMB Number: 2700-0064.

Type of review: Extension of currently approved collection.

Affected Public: Federal government, individuals or households, and business or other for-profit.

Responses per Respondent: 1.

Annual Responses: 8,455.

Hours per Request: 0.08 hours/5 minutes.

Annual Burden Hours: 702.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information

on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E6-18054 Filed 10-26-06; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06-082)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant Partially Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive, worldwide license to practice the inventions described in NASA Case Numbers LAR-16383-1-NP entitled "Electrically Conductive, Optically Transparent Polymer/Carbon Nanotube Composites and Process for Preparation Thereof," LAR-17126-1 entitled "A Method for Producing Stable Dispersions of Single Walled Carbon Nanotubes in Polymer Matrices Using Noncovalent Interactions," and LAR-17366-1 entitled "A Method for Producing Stable Dispersions of Single Walled Carbon Nanotubes in Polymer Matrices Using Dispersion Interaction," to Kolon Industries, Inc., having its principal place of business in Gwacheon City, Gyeonggi-do, Korea. The fields of use may be limited to laser printers and copiers. The patent rights in these inventions have been or will be assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration or jointly to the National Institute of Aerospace Associates and the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives

written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681-2199. Telephone (757) 864-9260; Facsimile (757) 864-9190.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 141. Telephone (757) 864-3230; Facsimile (757) 864-9190. Information about other NASA inventions available for licensing can be found online at <http://techtracs.nasa.gov/>.

Dated: October 20, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6-18056 Filed 10-26-06; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-275]

Pacific Gas and Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-80, issued to Pacific Gas and Electric Company (PG&E/the licensee), for operation of the Diablo Canyon Power Plant, Unit No. 1, located in San Luis Obispo County, California.

The proposed amendment would revise Technical Specification (TS) Section 3.8.4, "DC Sources—Operating," Condition B to extend the completion time (CT) to restore an inoperable battery from 2 hours to 12

hours, provided certain required actions are taken. The extended CT would allow sufficient time to correct a degraded condition (e.g., either bypass or replace an inoperable battery cell) without introducing time pressure as an error precursor. PG&E has requested that this amendment be processed on a one-time exigent basis to support timely corrective action for the degraded condition affecting a single cell that impacts the long-term reliability of Vital Battery 1-1. This amendment is being requested on an exigent basis so that the plant will avoid the risk of a TS-required shutdown should the degraded battery cause the Vital Battery 1-1 to be inoperable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes add provisions to increase the completion time (CT) from two hours to twelve hours, on a one-time basis for Diablo Canyon Power Plant Unit 1 Vital Battery 1-1. Additional Required Actions are specified when this battery, associated with the plant Class 1E Direct Current (DC) electrical power subsystem, is inoperable. The proposed changes do not physically alter any plant structures, systems, or components, and are not accident initiators; therefore, there is no effect on the probability of accidents previously evaluated. As part of the single failure design feature, loss of any one DC electrical power subsystem does not prevent the minimum safety function from being performed. Also, the proposed changes do not affect the type or amounts of radionuclides release following an accident, or affect the initiation and duration of their release. Therefore, the consequences of

accidents previously evaluated, which rely on the Class 1E battery to mitigate, are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different [kind of] accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a change in design, configuration, or method of operation of the plant. The proposed changes will not alter the manner in which equipment is initiated, nor will the functional demands on credit equipment be changed. The proposed changes do not impact the interaction of any systems whose failure or malfunction can initiate an accident. There are no identified redundant components affected by these changes and thus there are no new common cause failures or any existing common cause failures that are affected by extending the CT. The proposed changes do not create any new failure modes.

Therefore, the proposed changes do not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are based upon both a deterministic evaluation and a risk-informed assessment.

The deterministic evaluation concluded that though one battery associated with the Class 1E DC electrical power subsystem is inoperable, the redundant operable Class 1E DC electrical power subsystems will be able to perform the safety function as described in the accident analysis.

The risk assessment performed to support this license amendment request concluded that with additional Required Actions the increase in plant risk is small and consistent with the NRC's Safety Goal Policy Statement, "Use of Probabilistic Risk Assessment Methods in Nuclear Activities: Final Policy Statement," and guidance contained in Regulatory Guides (RG) 1.174, "An Approach for using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and RG 1.177, "An Approach for Plant-Specific Risk-Informed Decisionmaking: Technical Specifications."

Together, the deterministic evaluation and the risk-informed assessment provide assurance that the plant Class 1E DC electrical power subsystem will be able to perform its design function with a longer CT for an inoperable Unit 1 Vital Battery 1-1 and risk is not significantly impacted by the change.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings and

Issuance of Orders" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show

that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966.

A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated October 18, 2006, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site <http://www.nrc.gov/>

reading-rm.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 20th day of October 2006.

For the Nuclear Regulatory Commission.

Alan Wang,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6-18022 Filed 10-26-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export High-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following request for an

export license. Copies of the request can be accessed through the Public Electronic Reading Room (PERR) link <http://www.nrc.gov/reading-rm/adams.html> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export special nuclear material as defined in 10 CFR Part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION FOR HIGH-ENRICHED URANIUM

Name of Applicant Date of Application	Description of material		End use	Recipient country
	Material type	Total quantity		
DOE/NNSA-Y12 National Security Complex October 5, 2006 October 10, 2006 XSNM03473 11005654	High-Enriched Uranium (93.35%)	Up to 15.5 kg Uranium (14.46925 kg U-235)	To fabricate targets for irradiation in the National Research Universal (NRU) Reactor to produce medical radioisotopes.	Canada.

Dated this 17th day of October 2006 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Deputy Director, Office of International Programs.

[FR Doc. E6-18021 Filed 10-26-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[EA-06-248]

In the Matter of Holders of Material Licenses Authorized to Use Sealed Sources in Panoramic and Underwater Irradiators and Possess Greater Than 370 Terabecquerels (10,000 Curies); Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material and Modification of the Compensatory Measures (Effective Immediately)

I

The Licensees identified in Attachment 1¹ to this Order hold licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission) or Agreement States, authorizing possession of greater than 370 Terabecquerels (10,000 curies) of byproduct material, in the form of sealed sources, either in panoramic irradiators that have dry or wet storage of the sealed sources, or in underwater irradiators in which both the source and the product being irradiated are underwater. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted unescorted access to radioactive materials subject to regulation by the Commission, and which the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks. NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking to implement the provisions under the EPAct, which is underway, because a deliberate malevolent act by an individual with unescorted access to these radioactive materials has a potential to result in significant adverse

¹ Attachment 1 contains sensitive information and will not be released to the public.

impacts to the public health and safety or the common defense and security. Those exempted, from fingerprinting requirements under 10 CFR 73.59 (71 FR 33,989 (June 13, 2006)) for access to Safeguards Information² (SGI) are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have a favorably-decided U.S. Government criminal history record check within the last five (5) years, or individuals who have an active federal security clearance (provided in each case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Individuals who have been fingerprinted and granted access to SGI by the reviewing official under Order EA-06-155 do not need to be fingerprinted again.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued a security Order requiring certain large panoramic and underwater irradiator licensees to implement Compensatory Measures (CMs) for radioactive materials. The requirements imposed by that Order (Irradiator Order), and measures licensees have developed to comply with that Order, were designated by the NRC as SGI and were not released to the public. One specific CM imposed by the Irradiator Order required licensees to conduct local criminal history checks to determine the trustworthiness and reliability of individuals needing unescorted access to the panoramic or underwater irradiator sealed sources. "Access," means that an individual could exercise some physical control over the material or device. At that time, the NRC did not have the authority, except in the case of power reactor licensees, to require licensees to submit fingerprints for FBI criminal history records checks of individuals being considered for unescorted access to radioactive materials subject to NRC regulations. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing the FBI criminal history records check requirements, as set forth in this Order, including Attachment 2 to this Order, on all Licensees identified in Attachment 1 to this Order, that possess greater than 370 Terabecquerels (10,000 curies) of byproduct material in the

² Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

form of sealed sources. These requirements will remain in effect until the Commission determines otherwise.

In addition, pursuant to 10 CFR 2.202, find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR Part 36, *it is hereby ordered*, effective immediately, that all licensees identified in attachment 1 to this order shall comply with the requirements set forth in this order.

A. All licensees identified in Attachment 1 to this Order shall comply with the following requirements:

1. The Licensee shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order, for unescorted access to the panoramic or underwater irradiator sealed sources.

2. The Licensee shall, in writing, within twenty (20) days of the date of this Order, notify the Commission (1) receipt and confirmation that compliance with the Order will be achieved, or (2) if it is unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from, or variation of, any specific requirement.

B. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information" (EA-06-155) issued on August 21, 2006, only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to the panoramic or underwater irradiator sealed sources that equal or exceed 370 Terabecquerels (10,000 curies). Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.59 [71 FR 33,989 (June 13, 2006)] for access to SGI. In addition, individuals who have a favorably decided U.S. Government criminal

history records check within the last five (5) years, or have an active federal security clearance, (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official) have satisfied the EPAAct fingerprinting requirement and need not be fingerprinted again.

C. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official under Order EA-06-155 do not need to be fingerprinted again.

D. The Licensee may allow any individual who currently has unescorted access to the panoramic or underwater irradiator sealed sources, in accordance with the Irradiator Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to the panoramic or underwater irradiator sealed sources. The licensee shall complete implementation of the requirements of Attachment 2 to this Order by January 15, 2007.

E. The CMs of the Irradiator Order are modified as follows:

1. The requirement for a local criminal history check in CM 2.A.ii. is superseded by the FBI criminal history records check. All other requirements in CM 2.A.ii are still applicable.

Licensee responses to Condition A.2. shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. In addition, Licensee responses shall be marked as "Security-Related Information—Withhold Under 10 CFR 2.390."

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit

an answer or request a hearing must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, *Attn: Rulemakings and Adjudications Staff*, Washington, DC 20555. Copies also shall be sent to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301)-415-1101, or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel, either by means of facsimile transmission to (301)-415-3725, or by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an

extension of time in which to request a hearing, the provisions as specified above in Section III shall be final twenty (20) days from the date of this Order, without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 17th day of October 2006.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1—List of Applicable Materials Licensees Redacted

Attachment 2—Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Unescorted Access to the Panoramic or Underwater Irradiator Sealed Sources Subject to EA-06-248

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted unescorted access to the panoramic or underwater irradiator sealed sources. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to Safeguards Information, has a favorably-decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter

two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the Irradiator Order, in making a determination whether to grant, or continue to allow, unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to the panoramic or underwater irradiator sealed sources.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to the panoramic or underwater irradiator sealed sources.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to the panoramic or underwater irradiator sealed sources, to the Director of the Division of Facilities and Security, marked for the attention of the

Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-5877, or by e-mail to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submissions and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7404]. Combined payment for multiple applications is acceptable. The application fee (currently \$27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from

the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on unescorted access to the panoramic or underwater irradiator sealed sources based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to the panoramic or underwater irradiator sealed sources, the Licensee shall provide the individual its documented basis for denial. Unescorted access to the panoramic or underwater irradiator sealed sources shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than

the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the panoramic or underwater irradiator sealed sources. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to the panoramic or underwater irradiator sealed sources. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E6-18052 Filed 10-26-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[EA-06-250]

In the Matter of Holders of Material Licenses Authorized To Manufacture or Distribute Items Containing Radioactive Material of Concern; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material and Modification of the Additional Security Measures (Effective Immediately)

I

The Licensees identified in Attachment 1¹ to this Order hold licenses issued in accordance with the

¹ Attachment 1 contains sensitive information and will not be released to the public.

Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission) or Agreement States, authorizing them to manufacture or initially transfer items containing radioactive materials for sale or distribution. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted unescorted access to radioactive materials subject to regulation by the Commission, and which the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks. NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking to implement the provisions under the EPAct, which is underway, because a deliberate malevolent act by an individual with unescorted access to these radioactive materials has a potential to result in significant adverse impacts to the public health and safety or the common defense and security. Those exempted from fingerprinting requirements under 10 CFR 73.59 (71 FR 33,989 (June 13, 2006)) for access to Safeguards Information² (SGI) are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have a favorably-decided U.S. Government criminal history record check within the last five (5) years, or individuals who have an active Federal security clearance (provided in each case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Individuals who have been fingerprinted and granted access to SGI by the reviewing official under Order EA-06-155 do not need to be fingerprinted again.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued a security Order requiring certain Manufacturing and Distribution (M&D) Licensees to implement Additional Security Measures (ASMs) for certain radioactive materials. The requirements imposed by that Order (M&D Order),

² Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

and measures licensees have developed to comply with that Order, were designated by the NRC as Safeguards Information (SGI) and were not released to the public. One specific ASM, imposed by the M&D Order, required licensees to conduct local background checks to determine the trustworthiness and reliability of individuals needing unescorted access to radioactive materials. "Access," to these radioactive materials means that an individual could exercise some physical control over the material or device. At that time, the NRC did not have the authority, except in the case of power reactor licensees, to require licensees to submit fingerprints for an FBI criminal history records checks of individuals being considered for unescorted access to radioactive materials subject to NRC regulations. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing the FBI criminal history records check requirements, as set forth in this Order, including Attachment 2 to this Order, on all Licensees identified in Attachment 1 to this Order, who possess risk-significant radioactive materials equal to or greater than the quantities listed in Attachment 3 to this Order. These requirements will remain in effect until the Commission determines otherwise.

This Order also modifies the M&D Order (EA-03-225 or EA-05-126M), to reflect recent Commission regulatory actions. The ASMs for M&D Licensees are modified to be consistent with (1) the "Order Imposing Additional Security Measures on the Transportation of Radioactive Materials Quantities of Concern" (EA-05-006), (2) the final rule on the Export and Import of Radioactive Material: Security Policies (70 FR 37985 and 46066), dated July 1, 2005, (3) the Order Imposing Increased Controls (EA-05-090), and (4) the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources.

In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR Part 32, *It is hereby ordered*, effective immediately, that all licensees identified in Attachment 1 to this order

shall comply with the requirements set forth in this order.

A. All licensees identified in Attachment 1 to this Order shall comply with the following requirements:

1. The Licensee shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order, for unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment 3 to this Order.

2. The Licensee shall, in writing, within twenty (20) days of the date of this Order, notify, the Commission, (1) receipt and confirmation that compliance with the Order will be achieved, or (2) if it is unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

B. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information" (EA-06-155), issued on August 21, 2006, only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment 3 to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals that are exempted from fingerprinting requirements under 10 CFR 73.59 [71 FR 33989 (June 13, 2006)] for access to SGI. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or individuals who have an active Federal security clearance, (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official) have satisfied the EPA's fingerprinting requirement and need not be fingerprinted again.

C. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official under Order EA-06-155 do not need to be fingerprinted again.

D. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with the M&D Order, to continue to have unescorted access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment 3 to this Order. The licensee shall complete implementation of the requirements of Attachment 2 to this Order by January 15, 2007.

E. The ASMs of the M&D Order are modified as follows:

1. ASM 7.d. is superseded in its entirety by Order EA-05-006.

2. ASM 8. is superseded by 10 CFR Part 110—Export and Import of Nuclear Equipment and Material [*see also* Final Rule 10 CFR Part 110, dated July 1, 2005 (70 FR 37985 and 46066)—Export and Import of Radioactive Material: Security Policies].

3. "Table 1: Radionuclides of Concern" is superseded by Attachment 3 to this Order.

4. The requirement for a local criminal history check in ASM 5.a. is superseded by the FBI criminal history records check. All other requirements in ASM 5.a. are still applicable.

Licensee responses to Condition A.2. shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee responses shall be marked as "Security-Related Information—Withhold Under 10 CFR 2.390."

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in Section III shall be final twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions as specified above in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 17 day of October 2006.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1—List of Applicable Materials Licensees (Redacted)

Attachment 2—Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official Is Determining Unescorted Access to Radioactive Material Subject to EA-06-250

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted unescorted access to risk significant radioactive materials equal to, or greater than, the quantities listed in Attachment 3 to EA-06-250. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to Safeguards Information, has a favorably-decided U.S. Government criminal history check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to

radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the M&D Order, in making a determination whether to grant, or continue to allow, unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to risk-significant radioactive materials equal to or greater than the quantities used in Attachment 3 to EA-06-250.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to risk-significant radioactive materials equal to or greater than the quantities used in Attachment 3 to EA-06-250.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to the risk-significant radioactive materials equal to or greater than the quantities used in Attachment 3 to EA-06-250, to the Director of the Division

of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-5877, or by e-mail to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7404]. Combined payment for multiple applications is acceptable. The application fee (currently \$27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents

of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the

record is made available for his/her review. The Licensee may make a final determination on unescorted access to risk-significant radioactive materials equal to or greater than the quantities used in Attachment 3 to EA-06-250, based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to risk-significant radioactive materials equal to or greater than the quantities used in Attachment 3 to EA-06-250, the Licensee shall provide the individual its documented basis for denial. Unescorted access to risk-significant radioactive materials equal to or greater than the quantities used in Attachment 3 to EA-06-250, shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to risk-significant radioactive materials equal to or greater than the quantities listed in Attachment 3 to EA-

06-250. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to risk-significant radioactive materials equal to or greater than the quantities listed in Attachment 3 to EA-06-250. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

Attachment 3—Radionuclides of Concern

TABLE A.—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern ¹ (TBq)	Quantity of concern ² (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226 ³	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above ⁴	See Footnote Below ⁵ .	

¹ The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

² The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

³The Atomic Energy Act, as amended by the Energy Policy Act of 2005, authorizes NRC to regulate Ra-226 and NRC is in the process of amending its regulations for discrete sources of Ra-226.

⁴Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

⁵If several radionuclides are aggregated, the sum of the ratios of the activity of each source, I of radionuclide n , $A_{(i,n)}$, to the quantity of concern for radionuclide n , $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc. * * * ≥ 1 .

Guidance for Aggregation of Sources

NRC supports the use of the International Atomic Energy Association's (IAEA) source categorization methodology as defined in IAEA Safety Standards Series No. RS-G-1.9, "Categorization of Radioactive Sources," (2005) (see http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, "When are sources considered collocated for purposes of aggregation?" For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be

continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci), and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: $(0.12 \div 0.2) + (0.18 \div 0.3) + (0.3 \div 0.6) = 0.6 + 0.6 + 0.5 = 1.7$. Therefore, the sources would require additional security measures.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage—"operations" (active source usage) and "shutdown" (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the Additional Security Measures (ASMs):

- Include any single source equal to or greater than the quantity of concern in Table A.
- Include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern.
- For combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) ÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B) ÷ (quantity of concern of radionuclide B)] + etc. . . . ≥ 1 .

[FR Doc. E6-18066 Filed 10-26-06; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Safety Evaluation on Technical Specification Improvement To Modify Requirements Regarding LCO 3.10.1, Inservice Leak and Hydrostatic Testing Operation Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the modification of shutdown testing requirements in technical specifications (TS) for Boiling Water Reactors (BWR). The NRC staff has also prepared a model no-significant-hazards-consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to modify LCO 3.10.1. The proposed changes would revise LCO 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200] °F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to their reactors.

DATES: The NRC staff issued a **Federal Register** notice on August 21, 2006 (71 FR 48561) that provided a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination relating to modification of requirements regarding LCO 3.10.1, "Inservice Leak and Hydrostatic Testing Operation." The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to adopt the changes. The staff will post a model application on the NRC web site to assist licensees in using the consolidated line item

improvement process (CLIP) to revise the TS on LCO 3.10.1, "Inservice Leak and Hydrostatic Testing Operation."

FOR FURTHER INFORMATION CONTACT: Tim Kobetz, Mail Stop: O-12H2, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-1932.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000-06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIP) is intended to improve the efficiency of NRC licensing processes by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIP includes an opportunity for the public to comment on a proposed change to the STS after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. The CLIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees.

This notice involves the modification of LCO 3.10.1. The proposed changes would revise LCO 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200] °F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4. This change was proposed for incorporation into the standard technical specifications by the owners groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF-484. TSTF-484 can be viewed on the NRC's web page utilizing the Agencywide Documents Access and Management System (ADAMS). ADAMS accession numbers are ML052930102 (TSTF-484 Submittal), ML060970568 (NRC Request for Additional Information, RAI), ML061560523 (TSTF Response to NRC RAIs), and ML062650171 (TSTF Response to NRC Notice for Comment).

Applicability

Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

Public Notices

In a notice in the **Federal Register** dated August 21, 2006 (71 FR 48561), the staff requested comment on the use of the CLIP to process requests to revise the TS regarding LCO 3.10.1, "Inservice Leak and Hydrostatic Testing Operation." In addition, there have been several plant-specific amendment requests to adopt changes similar to those described in TSTF-484 and notices have been published for these applications. TSTF-484, as well as the NRC staff's safety evaluation and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

The staff received one response with seven comments following the notice published August 21, 2006 (71 FR 48561), soliciting comments on the model SE and NSHC determination related to TSTF-484, Revision 0. The comments were offered by the TSTF in a letter dated September 20, 2006 (ADAMS# ML062650171). The comments are administrative in nature in that they provide clarification and do not have a material impact on the model SE and NSHC determination published August 21, 2006 (71 FR 48561). TSTF comments that were incorporated include the comment on the **Federal Register** Notice for Comment and comments 1, 3, 4, and 5 on the Model Safety Evaluation. The TSTF has been informed of NRC staff decision not to incorporate comments 2 and 6. Comment 2 provides for additional information about TSTF-484 regarding scram time testing to be included in paragraph one of section 3.0. In the original Model Safety Evaluation published for comment on August 21, 2006 (71 FR 48561), the first half of section 3.0 discusses hydrostatic and leakage testing, while the second half of section 3.0 discusses scram time testing. NRC staff believe that there may be confusion if the comment is

incorporated into the first section of 3.0 while scram time testing is not discussed until the second half of section 3.0. The information provided in the comment is captured in the second half of section 3.0. Comment 6 was not incorporated due to possible confusion regarding the term "conservatively". In reviewing the TSTF-484, Revision 0 submittal, the NRC has concluded that there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, such activities will be conducted in compliance with the Commission's regulations, and the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. Therefore, it was decided that comment 6 was not needed in order to justify TSTF-484, Revision 0 approval. The revised model SE is included in this notice for use by licensees. As described in the model application prepared by the staff, licensees may reference in their plant-specific applications to adopt TSTF-484, the SE and NSHC determination.

Model Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force Change TSTF-484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities

1.0 Introduction

By application dated [Date], [Name of Licensee] (the licensee) requested changes to the Technical Specifications (TS) for the [Name of Facility].

The proposed changes would revise Limiting Condition for Operation (LCO) 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than [200] °F as a consequence of inservice leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an inservice leak or hydrostatic test, while considering operational conditions to be in Mode 4.

2.0 Regulatory Evaluation

2.1 Inservice Leak and Hydrostatic Testing. The Reactor Coolant System (RCS) serves as a pressure boundary and also serves to provide a flow path for the circulation of coolant past the fuel. In order to maintain RCS integrity, Section XI of the American Society of Mechanical Engineers (ASME) Pressure Vessel Code requires periodic hydrostatic and leakage testing. Hydrostatic tests are required to be

performed once every ten years and leakage tests are required to be performed each refueling outage. Appendix G to 10 CFR Part 50 states that pressure tests and leak tests of the reactor vessel that are required by Section XI of the American Society of Mechanical Engineers (ASME) Pressure Vessel Code must be completed before the core is critical.

NUREG-1433, General Electric Plants, BWR/4, Revision 3, Standard Technical Specifications (STS) and NUREG-1434, General Electric Plants, BWR/6, Revision 3, STS both currently contain LCO 3.10.1, "Inservice Leak and Hydrostatic Testing Operation." LCO 3.10.1 was created to allow for hydrostatic and leakage testing to be conducted while in Mode 4 with average reactor coolant temperature greater than [200] °F provided certain secondary containment LCOs are met.

TSTF-484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities, modifies LCO 3.10.1 to allow a licensee to implement LCO 3.10.1, while hydrostatic and leakage testing is being conducted, should average reactor coolant temperature exceed [200] °F during testing. This modification does not alter current requirements for hydrostatic and leakage testing as required by Appendix G to 10 CFR Part 50.

2.2 Control Rod Scram Time Testing. Control rods function to control reactor power level and to provide adequate excess negative reactivity to shut down the reactor from any normal operating or accident condition at any time during core life. The control rods are scrambled by using hydraulic pressure exerted by the control rod drive (CRD) system. Criterion 10 of Appendix A to 10 CFR part 50 states that the reactor core and associated coolant, control, and protection systems shall be designed with appropriate margin to assure that specified acceptable fuel limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. The scram reactivity used in design basis accidents (DBA) and transient analyses is based on an assumed control rod scram time.

NUREG-1433, General Electric Plants, BWR/4, Revision 3, STS and NUREG-1434, General Electric Plants, BWR/6, Revision 3, STS both currently contain surveillance requirements (SR) to conduct scram time testing when certain conditions are met in order to ensure that Criterion 10 of Appendix A to 10 CFR Part 50 is satisfied. SR 3.1.4.1 requires scram time testing to be conducted following a shutdown greater

than 120 days while SR 3.1.4.4 requires scram time testing to be conducted following work on the CRD system or following fuel movement within the affected core cell. Both SRs must be performed at reactor steam dome pressure greater than or equal to [800] psig and prior to exceeding 40 percent rated thermal power (RTP).

TSTF-484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities, would modify LCO 3.10.1 to allow SR 3.1.4.1 and SR 3.1.4.4 to be conducted in Mode 4 with average reactor coolant temperature greater than [200] °F. Scram time testing would be performed in accordance with LCO 3.10.4, "Single Control Rod Withdrawal—Cold Shutdown." This modification to LCO 3.10.1 does not alter the means of compliance with Criterion 10 of Appendix A to 10 CFR Part 50.

3.0 Technical Evaluation

The existing provisions of LCO 3.10.1 allow for hydrostatic and leakage testing to be conducted while in Mode 4 with average reactor coolant temperature greater than [200] °F, while imposing Mode 3 secondary containment requirements. Under the existing provision, LCO 3.10.1 would have to be implemented prior to hydrostatic and leakage testing. As a result, if LCO 3.10.1 was not implemented prior to hydrostatic and leakage testing, hydrostatic and leakage testing would have to be terminated if average reactor coolant temperature exceeded [200] °F during the conduct of the hydrostatic and leakage test. TSTF-484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities, modifies LCO 3.10.1 to allow a licensee to implement LCO 3.10.1, while hydrostatic and leakage testing is being conducted, should average reactor coolant temperature exceed [200] °F during testing. The modification will allow completion of testing without the potential for interrupting the test in order to reduce reactor vessel pressure, cool the RCS, and restart the test below [200] °F. Since the current LCO 3.10.1 allows testing to be conducted while in Mode 4 with average reactor coolant temperature greater than [200] °F, the proposed change does not introduce any new operational conditions beyond those currently allowed.

SR 3.1.4.1 and SR 3.1.4.4 require that control rod scram time be tested at reactor steam dome pressure greater than or equal to [800] psig and before exceeding 40 percent rated thermal power (RTP). Performance of control rod scram time testing is typically scheduled concurrent with inservice leak or hydrostatic testing while the

RCS is pressurized. Because of the number of control rods that must be tested, it is possible for the inservice leak or hydrostatic test to be completed prior to completing the scram time test. Under existing provisions, if scram time testing can not be completed during the LCO 3.10.1 inservice leak or hydrostatic test, scram time testing must be suspended. Additionally, if LCO 3.10.1 is not implemented and average reactor coolant temperature exceeds [200] °F while performing the scram time test, scram time testing must also be suspended. In both situations, scram time testing is resumed during startup and is completed prior to exceeding 40 percent RTP. TSTF-484, Revision 0, Use of TS 3.10.1 for Scram Time Testing Activities, modifies LCO 3.10.1 to allow a licensee to complete scram time testing initiated during inservice leak or hydrostatic testing. As stated earlier, since the current LCO 3.10.1 allows testing to be conducted while in Mode 4 with average reactor coolant temperature greater than [200] °F, the proposed change does not introduce any new operational conditions beyond those currently allowed. Completion of scram time testing prior to reactor criticality and power operations results in a more conservative operating philosophy with attendant potential safety benefits.

It is acceptable to perform other testing concurrent with the inservice leak or hydrostatic test provided that this testing can be performed safely and does not interfere with the leak or hydrostatic test. However, it is not permissible to remain in TS 3.10.1 solely to complete such testing following the completion of inservice leak or hydrostatic testing and scram time testing.

Since the tests are performed with the reactor pressure vessel (RPV) nearly water solid, at low decay heat values, and near Mode 4 conditions, the stored energy in the reactor core will be very low. Small leaks from the RCS would be detected by inspections before a significant loss of inventory occurred. In addition, two low-pressure emergency core cooling systems (ECCS) injection/spray subsystems are required to be operable in Mode 4 by TS 3.5.2, ECCS-Shutdown. In the event of a large RCS leak, the RPV would rapidly depressurize and allow operation of the low pressure ECCS. The capability of the low pressure ECCS would be adequate to maintain the fuel covered under the low decay heat conditions during these tests. Also, LCO 3.10.1 requires that secondary containment and standby gas treatment system be operable and capable of handling any

airborne radioactivity or steam leaks that may occur during performance of testing.

The protection provided by the normally required Mode 4 applicable LCOs, in addition to the secondary containment requirements required to be met by LCO 3.10.1, minimizes potential consequences in the event of any postulated abnormal event during testing. In addition, the requested modification to LCO 3.10.1 does not create any new modes of operation or operating conditions that are not currently allowed. Therefore, the staff finds the proposed change acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [Name of State] State official was notified of the proposed issuance of the amendment. The State official had [no] comments. [If comments were provided, they should be addressed here].

5.0 Environmental Consideration

The amendment changes a requirement with respect to installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been no public comment on such finding issued on [Date] ([] FR []). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. NUREG-1433, "General Electric Plants, BWR/4, Revision 3, Standard Technical Specifications (STS)", August 31, 2003.
2. NUREG-1434, General Electric Plants, BWR/6, Revision 3, Standard Technical Specifications (STS)", August 31, 2003.
3. Request for Additional Information (RAI) Regarding TSTF-484, April 7, 2006, ADAMS accession number ML060970568.
4. Response to NRC RAIs Regarding TSTF-484, June 5, 2006, ADAMS accession number ML061560523.
5. TSTF-484 Revision 0, "Use of TS 3.10.1 for Scram Times Testing Activities", May 5, 2005, ADAMS accession number ML052930102.
6. TSTF Response to NRC Notice for Comment, September 20, 2006, ADAMS accession number ML062650171.

Principal Contributor: Aron Lewin.

Dated at Rockville, Maryland this 12th of October 2006.

For the Nuclear Regulatory Commission.
Timothy Kobetz,
Branch Chief, Technical Specifications Branch, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. E6-18076 Filed 10-26-06; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS350]

WTO Dispute Settlement Proceeding Regarding Measures Related to Zeroing and Certain Investigations, Administrative Reviews and Sunset Reviews Involving Products From the European Communities

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 European Communities (EC) has requested consultations with the United States under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") concerning various measures relating to zeroing and antidumping duty orders on certain products from the EC. The EC alleges that determinations made by U.S. authorities concerning these products, and certain related matters, are inconsistent with Articles 1, 2.1, 2.4, 2.4.2, 5.8, 9.1, 9.3, 9.5, 11, 18.3 and 18.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement"), Article VI of the General Agreement on Tariffs and Trade 1994

("GATT 1994"), and Article XVI:4 of the WTO Agreement. That request may be found at <http://www.wto.org> contained in documents designated as WT/DS350/1 and WT/DS350/1/Add.1. USTR invites written comments from the public concerning the issues raised in this dispute. In connection with the issues raised in the request for consultations, the public should be aware that on March 6, 2006, the Department of Commerce announced that it will no longer use "zeroing" when making average-to-average comparisons in an antidumping investigation. See 71 FR 11189.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 15, 2006 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to FR0702@ustr.eop.gov, Attn: "EC Zeroing II (DS350)" 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: Elissa Alben, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-9622.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the EC

With respect to the measures at issue, the EC's request for consultations refers to the following:

1. The implementing regulations of the U.S. Department of Commerce ("DOC"), § 19 CFR Part 351, in particular § 351.414(c)(2);
2. The methodology of the DOC for determining the dumping margin in reviews on the basis of the comparison of a weighted average normal value with individual export prices;
3. The determinations of dumping by the DOC, the determinations of injury by the U.S. International Trade Commission ("ITC"), the DOC notices

for the imposition of the antidumping duty, and any automatic assessment instructions issued pursuant to them, in the following investigations:¹

- Purified carboxymethylcellulose from Switzerland, DOC Case No. A-401-808, ITC Case No. 731-TA-1087;
- Purified carboxymethylcellulose from the Netherlands, DOC Case No. A-421-811, ITC Case No. 731-TA-1086;
- Purified carboxymethylcellulose from Finland, DOC Case No. A-405-803, ITC Case No. 731-TA-1084;
- Chlorinated isocyanurates from Spain, DOC Case No. A-469-814, ITC Case No. 731-TA-1083;

4. The final results of the administrative reviews by the DOC in the following proceedings, and any assessment instructions issued pursuant to them:

- Ball Bearings from France, DOC Case No. A-427-801, 68 FR 35623 (June 16, 2003), amended 68 FR 43712 (July 24, 2003);
- Ball Bearings from Germany, DOC Case No. A-428-801, 68 FR 35623 (June 16, 2003);
- Ball Bearings from Italy, DOC Case No. A-475-801, 68 FR 35623 (June 16, 2003);
- Stainless Steel Sheet and Strip Coils from Italy, DOC Case No. A-475-824, 68 FR 69382 (December 12, 2003);
- Certain Pasta from Italy, DOC Case No. A-475-818, 69 FR 6255 (February 10, 2004), amended 69 FR 81 (April 27, 2004);
- Stainless Steel Sheet and Strip Coils from Germany, DOC Case No. A-428-825, 69 FR 6262, (February 10, 2004);
- Certain Hot-rolled Carbon Steel Flat Products from Netherlands, DOC Case No. A-421-807, 69 FR 115, (June 16, 2004), amended 69 FR 43801 (July 22, 2004);
- Stainless Steel Bar from Germany, DOC Case No. A-428-830, 69 FR 113 (June 14, 2004);
- Stainless Steel Bar from Italy, DOC Case No. A-475-829, 69 FR 113 (June 14, 2004);
- Antifriction Bearings and Parts thereof from France, DOC Case No. A-427-801, 69 FR 55574 (September 15, 2004), amended 69 FR 62023 (October 22, 2004);
- Antifriction Bearings and Parts thereof from Germany, DOC Case No. A-428-801, 69 FR 55574 (September 15, 2004), amended 69 FR 63507 (November 2, 2004);

- Antifriction Bearings and Parts thereof from Italy, DOC Case No. A-475-801, 69 FR 55574 (September 15, 2004), amended 69 FR 62023 (October 22, 2004);
- Antifriction Bearings and Parts thereof from the United Kingdom, DOC Case No. A 412-801, 69 FR 55574 (September 15, 2004), amended 69 FR 62023 (October 22, 2004);
- Stainless Steel Plate in Coils from Belgium, DOC Case No. A-423-808, 69 FR 74495 (December 14, 2004), amended 70 FR 2999 (January 19, 2005);
- Stainless Steel Sheet and Strip in Coils from Germany, DOC Case No. A-428-825, 69 FR 75930, (December 20, 2004);
- Steel Concrete Reinforcing Bars from Latvia, DOC Case No. A-449-804, 69 FR 74498 (December 14, 2004);
- Certain Pasta from Italy, DOC Case No. A-475-818, 70 FR 6832 (February 9, 2005);
- Certain Hot-rolled Carbon Steel Flat Products from the Netherlands, DOC Case No. A-421-807, 70 FR 18366 (April 11, 2005);
- Stainless Steel Bar from Germany, DOC Case No. A-428-830, 71 FR 42802 (July 28, 2006), amended 71 FR 52063 (September 1, 2006);
- Stainless Steel Bar from France, DOC Case No. A-427-820, 70 FR 46482 (August 10, 2005);
- Ball Bearings and parts thereof from France, DOC Case No. A-427-801, 70 FR 54711 (September 16, 2005);
- Ball Bearings and parts thereof from Germany, DOC Case No. A-428-801, 70 FR 54711 (September 16, 2005);
- Ball Bearings and parts thereof from Italy, DOC Case No. A-475-801, 70 FR 54711 (September 16, 2005);
- Ball Bearings and parts thereof from the United Kingdom, DOC Case No. A-412-801, 70 FR 54711 (September 16, 2005);
- Certain Pasta from Italy, DOC Case No. A-475-818, 70 FR 71464 (November 29, 2005);
- Stainless Steel Plate in Coils from Belgium, DOC Case No. A-423-808, 70 FR 72789 (December 7, 2005);
- Stainless Steel Sheet and Strip in Coils from Germany, DOC Case No. A-428-825, 70 FR 73729 (December 13, 2005);
- Steel Concrete Reinforcing Bars from Latvia, DOC Case No. A-449-804, 71 FR 7016 (February 10, 2006);
- Stainless Steel Bar from France, DOC Case No. A-427-820, 71 FR 30873 (May 31 2006);
- Ball Bearings and parts thereof from France, DOC Case No. A-427-801, 71 FR 40064 (July 14, 2006);
- Ball Bearings and parts thereof from Germany, DOC Case No. A-428-801, 71 FR 40064 (July 14, 2006);

- Ball Bearings and parts thereof from Italy, DOC Case No. A-475-801, 71 FR 40064 (July 14, 2006);

- Steel Concrete Reinforcing Bars from Latvia, DOC Case No. A-449-804, 71 FR 45031 (August 8, 2006);
- Stainless Steel Sheet and Strip in Coils from Italy, DOC Case No. A-475-824, 70 FR 7472 (February 14, 2005), amended 70 FR 13009 (March 17, 2005);
- Stainless Steel Sheet and Strip in Coils from Germany, DOC Case No. A-428-825, 71 FR 45024 (August 8, 2006); and

5. The final results of the sunset review in the following proceeding:

- Brass Sheet and Strip from Germany, DOC Case No. A-428-602, ITC Case No. 731-TA-317.

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 FR0702@ustr.eop.gov, Attn: "EC Zeroing II (DS350)" 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 For the precise EC description of these determinations and notices, including the dates of publication in the *Federal Register*, see Annex I of the EC's consultation request, which is available on the WTO Web site's document distribution facility as document "WT/DS350/1" and document "WT/DS350/Add.1".

(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; if a dispute settlement panel is convened or in the event of an appeal from such a panel, 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/DS-350, EC Zeroing II) 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. E6-17988 Filed 10-26-06; 8:45 am]

BILLING CODE 3190-W7-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27521; 812-13191]

Investment Technology Group, Inc.; Notice of Application

October 23, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY: Applicant requests an exemption from section 9(a) of the Act with respect to a securities-related injunction entered in 1987.

Applicant: Investment Technology Group, Inc. ("ITG").

Filing Dates: The application was filed on May 24, 2005 and amended on June 23, 2006.

Hearing or Notification of Hearing: Interested persons may request a hearing by writing to the Commission's

Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 17, 2006 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary. An order granting the application will be issued unless the Commission orders a hearing.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicant, 380 Madison Avenue, 4th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Emerson Davis, Sr., Senior Counsel, or Stacy L. Fuller, Branch Chief, at (202) 551-6821, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549-1580 (202-551-8090).

Applicant's Representations

1. ITG, a Delaware corporation, provides electronic execution, technology-based equity trading, and research services to a number of large institutional clients. ITG began operations in 1987 as a division of Jefferies & Company, Inc. ("Jefferies Broker-Dealer"), a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act") and a wholly owned subsidiary of Jefferies Group, Inc. ("Jefferies Group"). In 1991, ITG was incorporated separately as a wholly owned subsidiary of Jefferies Group. In 1994, ITG made an initial public offering of its common stock, with Jefferies Group continuing to own approximately 80% of ITG's outstanding common stock. In 1999, Jefferies Group transferred all of its assets and liabilities relating to its full-service brokerage and investment banking business, including Jefferies Broker-Dealer (and not including ITG, which remained as Jefferies Group's sole asset), to a new corporation ("New Jefferies Group"), and distributed shares of New Jefferies Group to Jefferies Group's shareholders. Jefferies Group then merged with and was renamed ITG. New Jefferies Group and ITG are not affiliated persons

within the meaning of the Act. The Chairman of the Board, President and Chief Executive Officer of ITG, Mr. Raymond L. Killian, was an Executive Vice President of Jefferies Group at the time of, but was not involved in the conduct underlying, the 1987 Injunction, as defined below.

2. On March 19, 1987, the United States District Court for the Southern District of New York entered a permanent injunction against Mr. Boyd L. Jefferies ("Mr. Jefferies"), Jefferies Broker-Dealer, and Jefferies Group, prohibiting them from violating, or aiding and abetting violations of, certain provisions of the 1934 Act ("1987 Injunction").¹ The violations involved manipulating the market in certain securities and engaging in "parking" during the period 1985-86. The Commission also instituted and settled administrative proceedings against Mr. Jefferies and Jefferies Broker-Dealer.²

Applicant's Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits any person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, and any other company of which the person is or hereafter becomes an affiliated person, from acting, among other things, as a principal underwriter or investment adviser for registered investment companies ("funds"). Applicant states that the 1987 Injunction prohibits it from serving funds in the manner described in section 9(a). Applicant further states that, although it has not served and does not serve in any such capacity with respect to any fund, as a financial services company, applicant in the future may determine to become an investment adviser or principal underwriter to funds, or an affiliated person of such an adviser or underwriter.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of applicant has been such as not to make it against the public interest or the protection of investors to grant the application. Applicant seeks an order under section 9(c) with respect to the 1987 Injunction.

¹ *Securities and Exchange Commission v. Boyd L. Jefferies, et al.*, Litigation Release No. 11370 (March 19, 1987).

² In the Matter of Jefferies & Company, Inc. and Boyd L. Jefferies, Exchange Act Release No. 24231 (March 19, 1987).

Applicant acknowledges that any such order will not extend to New Jefferies Group, or any person of which New Jefferies Group is or becomes an affiliated person. Applicant states that Mr. Jefferies died in 2001.

3. Applicant states that the prohibitions of section 9(a) as applied to it would be unduly and disproportionately severe. Applicant states that none of the persons involved in the conduct underlying the 1987 Injunction was or is a director, officer, or employee of ITG. Applicant also states that it has not been the subject of any other injunction or any disciplinary proceeding brought by the Commission, any state securities regulator, or any self-regulatory organization. Applicant further states that New Jefferies Group has no ownership interest in ITG, ITG has no ownership interest in New Jefferies Group, and the two entities are independent enterprises.

By the Commission.

Nancy M. Morris,
Secretary.

[FR Doc. E6-17997 Filed 10-26-06; 8:45 am]
BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of October 30, 2006:

A Closed Meeting will be held on Thursday, November 2, 2006 at 2 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Thursday, November 2, 2006 will be:

formal orders of investigation;
institution and settlement of injunctive actions;

institution and settlement of administrative proceedings of an enforcement nature; adjudicatory matters; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: October 25, 2006.

Nancy M. Morris,
Secretary.

[FR Doc. 06-8963 Filed 10-25-06; 3:44 pm]
BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54629; File No. SR-Amex-2006-88]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendments to the Exchange's Generic Listing Standards for Index-Linked Securities

October 19, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 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. 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 to Section 107D(b) of the Amex Company Guide to extend the maximum duration of index-linked securities ("Index-Linked Securities") from ten (10) years to thirty (30) years. The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary of the Amex and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 107A of the Amex Company Guide, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants.³ In February 2005, the Commission approved the Exchange's proposal to add Section 107D to the Amex Company Guide for the purpose of adopting generic listing standards pursuant to Rule 19b-4(e)⁴ in connection with Index-Linked Securities.⁵

The Exchange states that Section 107D of the Amex Company Guide currently sets forth eleven (11) criteria that the issue and the issuer must meet in order to list and trade Index-Linked Securities at the Exchange.⁶ One of the criteria the Exchange considers for the listing and trading of Index-Linked Securities pursuant to 107D is that the term of the issue must be a minimum term of one (1) year but not greater than (10) years. The Exchange currently proposes to amend Section 107D(b) to extend the duration of the term of the issue from ten (10) years to thirty (30) years. The Exchange believes this amendment to Section 107D is appropriate due to increased demand from issuers to list and trade Index-Linked Securities that are greater than ten (10) years in duration. In addition, the Exchange notes that corporate bonds

³ See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29).

⁴ 17 CFR 240.19b-4(e).

⁵ See Securities Exchange Act Release No. 51258 (February 25, 2005), 70 FR 10700 (March 4, 2005) (SR-Amex-2005-001).

⁶ The Exchange may submit a rule filing pursuant to section 19(b)(2) of the Act to permit the listing and trading of index linked securities that do not otherwise meet the generic listing criteria set forth in Section 107D.

and other fixed-income products have historically been issued with terms of up to, or greater than, thirty (30) years.

The Exchange believes expanding the duration for Index-Linked Securities subject to generic listing standards in Section 107D of the Company Guide will help to foster quote competition and promote enhanced efficiency in the marketplace. Incorporating these guidelines into the Exchange's generic listing standards for Index-Linked Securities will allow Index-Linked Securities that satisfy the listing standards to begin trading pursuant to Rule 19b-4(e), without constituting a proposed rule change within the meaning of section 19(b) of the Act and Rule 19b-4, for which notice and comment and Commission approval is necessary.⁷ The Exchange's ability to rely on Rule 19b-4(e) to list such Index-Linked Securities potentially reduces the time frame for bringing these securities to the market, thereby promoting competition and making such products available to investors more quickly. The Exchange also notes that the Commission has approved amendments to the generic listing standards for equity-linked notes that removed the maximum term limits for those securities.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act⁹ in general and furthers the objectives of section 6(b)(5)¹⁰ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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-2006-88 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-2006-88. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2006-88 and should be submitted on or before November 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,
Secretary.

[FR Doc. E6-17995 Filed 10-26-06; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54631; File No. SR-CBOE-2006-81]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Minor Rule Violations in Connection With Trade Reporting

October 20, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 4, 2006, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. On October 17, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹¹ 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, CBOE replaced the statutory basis section of the original proposal.

⁷ Telephone Conference on October 12, 2006 among Richard A. Mikalunas, Senior Vice President, Amex and Nyieri Nazarian, Assistant General Counsel, Amex and Rebekah Liu, Special Counsel, Division of Market Regulation ("Division"), Commission and Mitra Mehr, Special Counsel, Division, Commission (Telephone Conference).

⁸ Telephone Conference. See Securities Exchange Act Release No. 42110 (November 5, 1999), 64 FR 61677 (November 12, 1999) (SR-Amex-99-33); 41992 (October 7, 1999), 64 FR 56007 (October 15, 1999) (SR-NYSE-99-22); 42313 (January 4, 2000), 65 FR 2205 (January 13, 2000) (SR-CHX-99-19).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 17.50—Imposition of Fines for Minor Rule Violations, particularly the provisions of CBOE Rule 17.50(g)(4) for Failure to Submit Trade Information on Time and Failure to Submit Trade Information to the Price Reporter.

The text of the proposed rule change is available on CBOE's Web site at <http://www.cboe.com>, at CBOE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of this proposal is to increase and strengthen the sanctions imposed pursuant to its Minor Rule Violation Plan in connection with the failure to submit timely trade information. Additionally, the Exchange also proposes to amend the surveillance "look-back" period for the aforementioned conduct from a rolling 18-month period to a rolling 24-month period. CBOE Rule 6.51 provides, in relevant part, that a participant in each transaction to be designated by the Exchange must report or ensure the transaction is reported to the Exchange within 90 seconds of the execution in a form and manner prescribed by the Exchange so that the trade information may be disseminated. Transactions not reported within 90 seconds after execution in accordance with CBOE Rule 6.51(a)(i) are designated as late. The Exchange believes that the proposed rule change, by increasing fine levels and lengthening the rolling surveillance period to a 24-month period, would serve as an effective deterrent to such violative conduct.

2. Statutory Basis

The Exchange believes that the proposed rule change would strengthen its ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its surveillance and enforcement functions. The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,⁴ in general, and furthers the objectives of section 6(b)(5) of the Act,⁵ in particular, in that it would promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and 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 would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(6).

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2006-81 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-CBOE-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 such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2006-81 and should be submitted on or before November 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris,
Secretary.

[FR Doc. E6-17994 Filed 10-26-06; 8:45 am]

BILLING CODE 8011-01-P

⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54638; File No. SR-NYSEArca-2006-58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Regulatory Oversight Committee

October 23, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 21, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Arca. The Exchange filed Amendment No. 1 to the proposed rule change on October 20, 2006.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 3.3 to provide that the Exchange’s Regulatory Oversight Committee (the “ROC”) shall be comprised of at least three Public Directors. The text of the proposed rule change is available on the Exchange’s Internet Web site (<http://www.nysearca.com>), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change NYSE Arca Rule 3.3 to provide that the ROC shall be comprised of at least three Public Directors.⁴ The current rule provides that the ROC must be comprised of all of the Public Directors of the NYSE Arca, Inc.

The Exchange believes that setting the number of Public Directors on the ROC to three is appropriate given the recent merger of New York Stock Exchange, Inc. and Archipelago Holdings, Inc. pursuant to which the Exchange became an indirect wholly owned subsidiary of a newly formed entity, NYSE Group, Inc. (“NYSE Group”). It is the current intent of NYSE Arca to populate the NYSE Arca ROC with three NYSE Arca directors who are also directors of both the NYSE Group and NYSE Regulation, Inc.,⁵ a wholly owned subsidiary of NYSE Group that provides regulatory services to both the Exchange and the other registered securities exchange that is a subsidiary of NYSE Group, New York Stock Exchange LLC. The Exchange believes that this particular overlap of directors will allow the Exchange to better manage regulatory issues across the organization.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)⁶ of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5)⁷ in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSEArca-2006-58 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-NYSEArca-2006-58. 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2006-58 and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, NYSE Arca revised the purpose section of the proposal to clarify the changes being proposed.

⁴ Section 3.02 of the Bylaws of NYSE Arca defines “Public Directors” as person from the public who will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.

⁵ All of these persons meet the requirements of a Public Directors under the NYSE Arca rules.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

should be submitted on or before November 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Nancy M. Morris,

Secretary.

[FR Doc. E6-17992 Filed 10-26-06; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54636; File No. SR-NYSEArca-2006-70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Exchange's Generic Listing Standards for Index-Linked Securities

October 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 2, 2006, NYSE Arca, Inc. ("Exchange"), through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Arca Equities Rule 5.2(j)(6) to extend the maximum duration of index-linked securities ("Index-Linked Securities") from ten (10) years to thirty (30) years. The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

NYSE Arca Equities

Rule 5.2(j)(6). Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount.

The Corporation may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("Act") to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (a) through (k). The Corporation will consider for listing and trading pursuant to Rule 19b-4(e) under the Act, index-linked securities provided:

* * * * *

(b) The issue has a minimum term of one (1) year but no greater than [ten (10)] *thirty (30)* years.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that the purpose of the proposed rule change is to amend the Exchange's rules to extend the maximum duration of Index-Linked Securities from ten (10) years to thirty (30) years.

Pursuant to NYSE Arca Equities Rule 5.2(j)(6), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants. In August 2005, the Commission approved the Exchange's proposal to add NYSE Arca Equities Rule 5.2(j) (which was a PCX rule at the time) to the NYSE Arca Equities rule for the purpose of adopting generic listing standards pursuant to Rule 19b-4(e)³ in connection with Index-Linked Securities.⁴

³ 17 CFR 240.19b-4(e).

⁴ See Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63). Telephone Conference on October 20, 2006 between John Carey, Assistant General Counsel, Exchange, and Hong-anh Tran, Special Counsel, Division of Market Regulation ("Division"), Commission (Telephone Conference).

NYSE Arca Equities Rule 5.2(j)(6) sets forth criteria that the issuer and the issuer must meet in order to list and trade Index-Linked Securities at the Exchange.⁵ Currently, one of the criteria the Exchange considers for the listing and trading of Index-Linked Securities, pursuant to NYSE Arca Equities Rule 5.2(j)(6), is that the term of the issue must be a minimum term of one (1) year but not greater than ten (10) years. The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(b) to extend the duration of the term of the issue from ten (10) years to thirty (30) years. The Exchange believes this amendment to NYSE Arca Equities Rule 5.2(j)(6)(b) is appropriate due to the increase demand from issuers to list and trade Index-Linked Securities that are greater than ten (10) years in duration. In addition, the Exchange notes that corporate bonds and other fixed-income products have historically been issued with terms of up to, or greater than, thirty (30) years.

The Exchange believes expanding the duration for Index-Linked Securities, subject to generic listing standards in NYSE Arca Equities Rule 5.2(j)(6), will help to foster competition and promote enhanced efficiency in the marketplace. Incorporating these guidelines into the Exchange's generic listing standards for Index-Linked Securities will allow Index-Linked Securities that satisfy the listing standards to begin trading pursuant to Rule 19b-4(e), without constituting a proposed rule change within the meaning of Section 19(b) of the Act and Rule 19b-4, for which notice and comment and Commission approval is necessary.⁶ The Exchange's ability to rely on Rule 19b-4(e) to list such Index-Linked Securities potentially reduces the time frame for bringing these securities to the market, thereby promoting competition and making such products available to investors more quickly. The Exchange also notes that the Commission has approved amendments to the generic listing standards for equity-linked notes that removed the maximum term limits for those securities.⁷

⁵ NYSE Arca Equities Rule 5.2(j)(6) permits the Exchange to submit a rule filing pursuant to Section 19(b)(2) of the Act to allow the listing and trading of Index-Linked Securities that do not otherwise meet the generic listing criteria.

⁶ Telephone Conference on October 19, 2006 between John Carey, Assistant General Counsel, Exchange, and Hong-anh Tran, Special Counsel, Division, Commission.

⁷ Telephone Conference. See Securities Exchange Act Release Nos. 42110 (November 5, 1999), 64 FR 61677 (November 12, 1999) (SR-Amex-99-33); 41992 (October 7, 1999), 64 FR 56007 (October 15, 1999) (SR-NYSE-99-22); and 42313 (January 4, 2000), 65 FR 2205 (January 13, 2000) (SR-Chx-99-19).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanism of a free and open market, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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 the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2006-70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to file Number SR-NYSEArca-2006-70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also 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-NYSEArca-2006-70 and should be submitted by November 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris,

Secretary.

[FR Doc. E6-17996 Filed 10-26-06; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice 5596]

30-Day Notice of Proposed Information Collection: DS-3052, Nonimmigrant V Visa Application, OMB Control Number 1405-0128

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Nonimmigrant V Visa Application.
- OMB Control Number: 1405-0128.
- Type of Request: Extension of Currently Approved Collection.
- Originating Office: Bureau of Consular Affairs, Office of Visa Services (CA/VO).
- Form Number: DS-3052.
- Respondents: Applicants for a V nonimmigrant visa.
- Estimated Number of Respondents: 1,500.
- Estimated Number of Responses: 1,500.
- Average Hours per Response: 1 hour.
- Total Estimated Burden: 1,500 hours.
- Frequency: Once per application.
- Obligation to Respond: Required to Obtain Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from October 27, 2006.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202-395-4718. You may submit comments by any of the following methods:

- E-mail: Katherine_T._Astrich@omb.eop.gov. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD-ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 200.30-3(a)(12).

for copies of the proposed information collection and supporting documents, to Andrea Lage of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L-603, Washington, DC 20522, who may be reached at (202) 663-1221 or lageab@state.gov.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: The V visa application (Form DS-3052) is used to collect information on second preference spouses and children of permanent residence for whom petitions were filed on or before December 12, 2000, and who have been waiting for three or more years for petition approval, adjustment of status, or an immigrant visa, who are applying for a nonimmigrant visa to enter the United States. The form request biographical information on the applicant and information on the immigrant petition that was filed on the applicant's behalf. Consular officer use the information on this form to determine eligibility for V visa status.

Methodology: DS-3052 is submitted to U.S. embassies and consulates overseas and is available online at <http://www.travel.state.gov>. The form can be filled out online and then printed.

Dated: October 2, 2006.

Stephen A. Edson,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6-18032 Filed 10-26-06; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Baker & Miller PLLC on behalf of the Kansas City Southern (WB595-4-10/12/2006) for permission to use certain data from the Board's 2005 Carload Waybill Sample. A copy of the requests may be obtained from the Office of Economics,

Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565-1541.

Vernon A. Williams,

Secretary.

[FR Doc. E6-18007 Filed 10-26-06; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 23, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 27, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-2004.

Type of Review: Revision.

Title: Deduction for Energy Efficient Commercial Buildings.

Description: This notice sets forth a process that allows the owner of energy efficient commercial building property to certify that the property satisfies the requirements of Section 179D(c)(1) and (d). This notice also provides a procedure whereby the developer of computer software may certify to the Internal Revenue Service that the software is acceptable for use in calculating energy and power consumption for purposes of Section 179D of the Code.

Respondents: Businesses and for-profit institutions.

Estimated Total Burden Hours: 3,761 hours.

Clearance Officer: Glenn P. Kirkland (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6-18046 Filed 10-26-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Survey for the Practitioner Attitudinal Survey

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 the Survey for the Practitioner Attitudinal Survey.

DATES: Written comments should be received on or before December 26, 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 survey 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: Practitioner Attitudinal Survey.
OMB Number: 1545-1587.

Abstract: This is a survey for quantitative research to establish changes to baseline measures of public knowledge and acceptance of Electronic Tax Administration (ETA) programs. The results of the survey will provide the level of detail needed to guide decisions related to development and

quality improvements of future e-submissions products and services and effective marketing techniques.

Current Actions: There are no changes being made to the survey at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 1 hour, 41 minutes.

Estimated Total Annual Burden

Hours: 2,370.

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: October 17, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6-17986 Filed 10-26-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

VA Directive and Handbook 5021, Employee/Management Relations

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: The Department of Veterans Affairs is making a technical amendment to VA Handbook 5021, Employee/Management Relations, dated April 15, 2002, to correct the citation for the Secretary's authority to issue regulations. Section 7421 of Title 38 provides the authority for the Secretary to prescribe by regulation the hours and conditions of employment and leaves of absence of employees appointed under any provisions of this chapter in positions in the Veterans Health Administration listed in subsection (b). Section 7304 of Title 38 provides the authority for the Under Secretary for Health to prescribe all regulations necessary to the administration of the Veterans Health Administration. VA Directive and Handbook 5021 was issued pursuant to the Secretary's authority under Section 7421. Two technical amendments are needed in VA Handbook 5021 to properly reflect the authority of the Secretary to issue regulations under 38 U.S.C. 7421. The first revision in Part II, Chapter 1, section 2, will replace the citation to 38 U.S.C. 7304 with the citation to 38 U.S.C. 7421 as the Secretary's authority to issue these regulations. The second revision in Part II, Chapter 2, section 2, will add the citation to the Secretary's authority. The current citation to 38 U.S.C. 7304 remains appropriate and unchanged as this Chapter issues delegations of authority by the Under Secretary for Health. The words or phrases that are proposed to be added to the regulations are shown in brackets. Only those sections of the existing regulations that contain proposed changes are included in this notice.

DATES: Comments must be received on or before November 27, 2006. Comments will be available for public inspection October 27. The proposed effective date

of these amendments is 30 days after publication of this notice.

ADDRESSES: Send written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Catherine Baranek, Employee Relations Specialist, Department of Veterans Affairs, Office of Human Resources Management (051E), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Baranek may be reached at (336) 631-5019.

SUPPLEMENTARY INFORMATION: (none).

Proposed Revisions to VA Handbook 5021, Employee/Management Relations

Part II. Disciplinary Procedures Under Title 38

Chapter 1. Disciplinary and Major Adverse Actions

2. Authority

a. Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 Public Law (Pub. L.) 102-40.

b. 38 U.S.C. 501(a), 38 U.S.C. [7421].

c. Title 38, U.S.C., chapter 74.

Part II. Disciplinary Procedures Under Title 38

Chapter 2. Delegations

1. *Scope.* This chapter contains the authorities as delegated by the Under Secretary for Health for proposing and deciding on disciplinary and major adverse actions. The Under Secretary for Health retains the authority to appoint individuals as members of the Disciplinary Appeal Board Panel.

2. Authority

a. Title 38, U.S.C., Chapter 74.

b. [38 U.S.C. 7421] 38 U.S.C. 7304.

c. VA Directive 5021.

Dated: October 23, 2006.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E6-18060 Filed 10-26-06; 8:45 am]

BILLING CODE 8320-01-P

Corrections

Federal Register

Vol. 71, No. 208

Friday, October 27, 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 DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement (DEIS) and the Announcement of a Public Hearing for the Proposed Potash Corporation of Saskatchewan Phosphate Mine Continuation near Aurora, in Beaufort County, NC

Correction

In notice document 06-8812 beginning on page 61962 in the issue of Friday, October 20, 2006, make the following correction:

On page 61962, in the first column, in the **ADDRESSES** paragraph, in the third

line from the bottom, "Phodes" should read "Rhodes".

[FR Doc. C6-8812 Filed 10-26-06; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT90

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Perdido Key Beach Mouse, Choctawhatchee Beach Mouse, and St. Andrew Beach Mouse

Correction

In rule document 06-8481 beginning on page 60238 in the issue of Thursday, October 12, 2006 make the following correction:

On page 60238, in the first column, "RIN 1018-T90" is corrected to read as set forth above.

[FR Doc. C6-8481 Filed 10-26-06; 8:45 am]

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

RIN: 3245-AF41

Small Business Size Standards, Inflation Adjustment to Size Standards; Business Loan Program; Disaster Assistance Loan Program

Correction

In rule document 05-23435 beginning on page 72577 in the issue of Tuesday, December 6, 2005, make the following correction:

On page 72591, in the table, in the third column, under the heading "Size standards in millions of dollars", in the sixth entry, "¹⁰\$3.510" should read "¹⁰\$3.5".

[FR Doc. C5-23435 Filed 10-26-06; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Friday,
October 27, 2006**

Part II

Department of Transportation

Federal Railroad Administration

**49 CFR Parts 227 and 229
Occupational Noise Exposure for Railroad
Operating Employees; Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Parts 227 and 229**

[Docket No. FRA 2002–12357, Notice No. 2]

RIN 2130–AB56

Occupational Noise Exposure for Railroad Operating Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its occupational noise standards for railroad employees whose predominant noise exposure occurs in the locomotive cab. FRA's previous standard (issued in 1980) limited cab employee noise exposure to certain levels based on the duration of their exposure. This rule modifies that standard and also sets out additional requirements.

FRA is requiring railroads to conduct noise monitoring and to implement a hearing conservation program for railroad operating employees whose noise exposure equals or exceeds an 8-hour time-weighted average (TWA) of 85 decibels. FRA is also establishing design, build, and maintenance standards for new locomotives and maintenance requirements for existing locomotives. FRA expects that this rule will reduce the likelihood of noise-induced hearing loss for railroad operating employees.

DATES: This final rule is effective February 26, 2007. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 26, 2007. Any petitions for reconsideration with this final rule must be submitted no later than December 26, 2006.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Alan Misiaszek, Senior Industrial Hygienist, Office of Safety, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (e-mail: Alan.Misiaszek@dot.gov and telephone: 202–493–6002); Jeffrey Horn, Economist, Office of Safety, Federal

Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (e-mail: Jeffrey.Horn@dot.gov and telephone: 202–493–6283); or Jennifer Schwab, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (e-mail: Jennifer.Schwab@dot.gov and telephone: 202–493–6349).

SUPPLEMENTARY INFORMATION: Note that for brevity, all references to CFR parts will be to parts in Title 49 of the Code of Federal Regulations (49 CFR), unless otherwise noted.

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I. Background**A. Statutory and Regulatory Framework****1. Railroad Safety, in General**

FRA has broad statutory authority to regulate railroad safety. The Locomotive Inspection Act ("LIA") (formerly 45 U.S.C. 22–34, now 49 U.S.C. 20701–20703) was enacted in 1911. It prohibits

the use of unsafe locomotives and authorizes FRA to issue standards for locomotive maintenance and testing. In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 ("Safety Act") (formerly 45 U.S.C. 421, 431 *et seq.*, now found primarily in chapter 201 of Title 49 of the United States Code). The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49). (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in Title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into Title 49.)

The term "railroad" is defined in the Safety Act to include all forms of non-highway ground transportation that runs on rails or electromagnetic guideways, * * * other than rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

This definition makes clear that FRA has jurisdiction over (1) rapid transit operations within an urban area that are connected to the general railroad system of transportation, and (2) all freight, intercity, passenger, and commuter rail passenger operations regardless of their connection to the general railroad system of transportation or their status as a common carrier engaged in interstate commerce. FRA has issued a policy statement describing how it determines whether particular rail passenger operations are subject to FRA's jurisdiction.¹ That policy statement is located in Appendix A to part 209.

Pursuant to its statutory authority, FRA promulgates and enforces a comprehensive regulatory program to address railroad track, signal systems, railroad communications, rolling stock, rear-end marking devices, safety glazing, railroad accident/incident reporting, locational requirements for dispatching of U.S. rail operations, safety integration plans governing railroad consolidations, merger and acquisitions of control, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In the area of workplace safety, the agency has issued a variety of standards

¹ See 65 FR 42529 (July 2, 2000).

designed to protect the health and safety of railroad employees. For instance, FRA requires ladders and handholds to be installed on rail equipment in order to prevent employee falls (part 231). FRA requires locomotive cab floors and passageways to remain clear of debris and oil in order to prevent employee slips, trips, and falls (§ 229.119). FRA requires blue signal protection in order to protect employees working on railroad equipment from injuries due to the unexpected movement of the equipment (part 218). FRA has rules that provide for the protection of railroad employees working on or near railroad tracks in order to decrease the risk of employees falling from railroad bridges and of being struck by moving trains (part 214).

2. FRA-OSHA Jurisdiction for Occupational Safety and Health Issues

FRA and the U.S. Occupational Safety and Health Administration² (OSHA) have a complementary relationship with respect to occupational safety and health issues in the railroad industry. OSHA regulates conditions and hazards affecting the health and safety of employees in the workplace. OSHA's jurisdiction extends to working conditions in all types of employment, except where another Federal agency exercises statutory authority to prescribe or enforce standards or regulations covering the working conditions pursuant to § 4(b)(1) of the OSH Act. See 29 U.S.C. 653(b)(1). Section 4(b)(1) preempts OSHA's jurisdiction where another federal agency issues its own regulations or standards or articulates a formal position that a particular working condition should go unregulated.

In 1978, FRA issued a Statement of Policy setting out the respective areas of jurisdiction between FRA and OSHA in the railroad industry. See 43 FR 10583 (March 14, 1978). In that Policy Statement, FRA drew the jurisdictional line between "occupational safety and health" issues in the railroad industry and work related to "railroad operations," with FRA exercising authority over railroad operations and OSHA over occupational safety and health issues. Further, the Policy Statement pointed to FRA's "proper role" as concentrating its "limited resources in addressing hazardous working conditions in those traditional areas of railroad operations" (i.e.,

"movement of equipment over the rails") in which FRA has special competence and expertise. See 43 FR 10585. Often, railroad working conditions are so unique that a regulatory body other than FRA would not possess the requisite expertise to determine appropriate safety standards.

As a general rule, FRA exercises its statutory jurisdiction over railroad employee working conditions where employees are engaged in duties that are intrinsic to "railroad operations," where the identical conditions generally do not occur in typical industrial settings, and where the hazard falls within the scope of FRA's expertise. Historically, the concept of "railroad safety" has included the health and safety of employees when they are engaged in railroad operations. In its 1978 Statement concerning employee workplace safety, FRA stated:

The term "safety" includes health-related aspects of railroad safety to the extent such considerations are integrally related to operational safety hazards or measures taken to abate such hazards. 43 FR 10585.

Hazards that impact the health of railroad employees engaged in railroad operations may also result in adverse impacts on railroad safety, and so there is often a clear nexus between railroad safety and employee health. An example of this jurisdiction is seen in FRA's issuance of locomotive sanitation standards. See 67 FR 16032 (April 4, 2002). There, FRA promulgated regulations that address toilet and washing facilities for employees who work in locomotive cabs. See 49 CFR §§ 229.137 through 139.

FRA has also exercised this jurisdiction with regard to occupational noise in the locomotive cab. FRA issued its current standard for locomotive cab noise in 1980. While OSHA, in general, regulates occupational noise in the workplace,³ FRA is the more appropriate entity to regulate noise in the locomotive cab, because the locomotive cab is so much a part of "railroad operations." With respect to noise in the locomotive cab, FRA wrote, in its Policy Statement, that:

FRA views the question of occupational noise exposure of employees engaged in railroad operations, during their involvement in such operations, as a matter comprehended by the regulatory fields over which FRA has exercised its statutory jurisdiction. FRA is therefore responsible for determining what exposure levels are permissible, what further regulatory steps may be necessary in this area, if any, and what remedial measures are feasible when

evaluated in light of overall safety considerations. 43 FR 10588.

3. Federal Occupational Noise Standards

OSHA's occupational noise standard was promulgated under the Walsh-Healey Public Contracts Act of 1969⁴ for the purpose of protecting employees from workplace exposure to damaging noise levels. The Walsh-Healey Act contained very limited provisions. Its noise standard allowed for a permissible exposure level of 90 dB(A), a 5 dB exchange rate, and a 90 dB(A) threshold. OSHA adopted the Walsh-Healey standard as an OSHA standard pursuant to section 6(a) of the OSH Act.

In January 1981, OSHA promulgated a Hearing Conservation Amendment (HCA) to its occupational noise exposure standard. See 46 FR 4078 (January 16, 1981). The amendment consisted of requirements for noise measurements, audiometric testing, the use and care of hearing protectors, employee training, employee education, and recordkeeping. Portions of the amendment were subsequently stayed for reconsideration and clarification. See 46 FR 42622 (August 21, 1981). In 1983, OSHA finalized the provisions of its Hearing Conservation Amendment by revoking various stayed provisions, lifting the stay on other provisions, and making other technical corrections.⁵ OSHA's revised regulation included a detailed hearing conservation program (HCP).⁶ OSHA's occupational noise standard applies, for the most part, to all industry engaged in interstate commerce.⁷ OSHA's noise standard can be found at 29 CFR 1910.95. As will be discussed in subsequent sections, FRA's standard is quite similar to OSHA's standard.

While OSHA is the primary regulator of noise in the workplace, other federal agencies, in addition to FRA, regulate specific occupational settings. FRA regulates employee noise exposure in the locomotive cab. The U.S. Air Force regulates the noise environment of Air Force personnel.⁸ The Mine Safety and Health Administration (MSHA) regulates the occupational noise exposure of miners.

In 1999, MSHA issued a comprehensive rule that establishes uniform requirements for all miners. See

⁴ See 41 U.S.C. 35, *et seq.*

⁵ See 48 FR 9738 (March 8, 1983).

⁶ Throughout the rule, FRA uses "hearing conservation program" and HCP interchangeably.

⁷ OSHA has a separate occupational noise regulation that applies to the construction industry. See 29 CFR 1926.52.

⁸ See Air Force Occupational Safety and Health Standard 48-20, "Hearing Conservation Program."

² OSHA is an agency within the U.S. Department of Labor. Congress created OSHA with the Occupational Safety and Health Act of 1970 ("OSH Act"). Pursuant to the OSH Act, employers have a duty to protect workers from workplace hazards, including noise.

³ See 29 CFR 1910.95 and 29 CFR 1926.52 ("Occupational Noise Exposure").

64 FR 49548 (September 13, 1999). In that rule, MSHA adopted a permissible exposure level of 90 dB(A) as an 8-hour TWA. MSHA also requires employers to use all feasible engineering and administrative controls in order to reduce a miner's noise exposure to the permissible exposure level. Where a mine operator is unable to reduce the noise exposure to the permissible level, the mine operator must provide the miner with hearing protectors (HP) and is required to ensure that the miner uses them. In addition, where a miner is exposed at or above a TWA of 85 dB(A), the employer must place the miner in a hearing conservation program. The program must include exposure monitoring, the use of hearing protectors, audiometric testing, training, and recordkeeping. See 64 FR 49550.

B. History of FRA's Treatment of Occupational Noise

1. FRA's Past Noise Standard

In part 229, FRA establishes minimum federal safety standards for locomotives. These regulations prescribe inspection and testing requirements for locomotive components and systems. They also prescribe minimum locomotive cab safety requirements. In 1980, FRA issued standards for acceptable noise levels aboard a locomotive (49 CFR 229.121).⁹

Section 229.121 was promulgated to protect the hearing and health of cab occupants and to facilitate crew communication. It provided that noise level exposure in the cab may not exceed specific prescribed levels. The provision limited employee noise exposure to an eight-hour time-weighted average (TWA) of 90 dB(A) with a doubling rate of 5 dB(A). It also provided for an absolute upper noise limit of 115 dB(A). In addition, it established procedures for noise testing.

At the time of the promulgation of the rule, there was discussion as to the proposed noise exposure limits. One commenter to the 1980 proposed rule took exception to the proposed 90 dB(A) 8-hour time limit and suggested that 85 dB(A) was more appropriate. FRA explained that, in selecting the proposed noise exposure limits, it attempted to "strike a balance between that which is most desirable and that which is feasible." See 45 FR 21092, 21106 (March 31, 1980). FRA acknowledged that more crew members would be at a lower risk at 85 dB(A), but

also acknowledged that there would be problems with the technical feasibility of, and economic impact associated with, an 85 dB(A) requirement. Based on the information available and technology of the time, FRA determined that the 90 dB(A) 8-hour noise exposure limit would "provide adequate protection for the hearing, communication, and comfort of locomotive crews under presently accepted standards." See 45 FR 21092, 21106 (March 31, 1980).

The then-existing § 229.121 did not address hearing conservation for locomotive cab employees, including the use of personal protective equipment, ongoing hearing testing, employee training on the cause and prevention of hearing loss, and periodic noise monitoring in the workplace. These are standard components of an occupational hearing conservation program, and OSHA requires them of other general industry workplaces within its jurisdiction.

In 1992, Congress enacted section 10 of The Rail Safety Enforcement and Review Act (RSERA) (Pub. L. 102-365, September 3, 1992; codified at 49 U.S.C. 20103, note) in response to concerns raised by employee organizations, Congressional members, and recommendations of the National Transportation Safety Board (NTSB) concerning crashworthiness of and working conditions in locomotive cabs. Section 10 of RSERA, entitled *Locomotive Crashworthiness and Working Conditions*, required FRA "to consider prescribing regulations to improve the safety and working conditions of locomotive cabs" throughout the railroad industry. In order to determine whether regulations would be necessary, Congress required FRA to assess "the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect productivity, health, and the safe operation of locomotives."

In response to the Congressional mandate set forth in Section 10 of RSERA, FRA undertook steps to determine the health and safety effects of locomotive cab working conditions. FRA studied a variety of working conditions in locomotive cabs, including sanitation, noise, temperature, air quality, ergonomics, and vibration. FRA prepared the *Locomotive Crashworthiness and Cab Working Conditions Report to Congress* ("Report"), dated September 1996, which outlines the results of these studies. A copy of the Report is

included in the docket.¹⁰ With respect to noise, FRA conducted a comprehensive survey, reviewed historical data on noise-related incidents and investigations, and gathered information on hearing protection programs.

2. Studies of Noise

In the proposed rule, FRA provided an extensive discussion on studies related to noise in the locomotive cab. This includes a 1971 study on highway-rail grade crossings¹¹ and an addendum on the sound environment in the locomotive cab,¹² a 1980 study on in-cab occupational noise exposure,¹³ an FRA Report to Congress on cab working conditions,¹⁴ the Wyle Report (the Association of American Railroads' (AAR) review of FRA's Report to Congress),¹⁵ a 1997 Technical Memorandum on the FRA Report to Congress and subsequent review,¹⁶ and an FRA Administrator's Roundtable Discussion on Noise. Copies of these documents are included in the docket. In the interest of space, FRA is not republishing its discussion here. See 69 FR 35145, 35148-35151; June 23, 2004.

C. Fundamental Principles of Sound

FRA provided an extensive discussion in the proposed rule on fundamental principles of sound. The topics covered include sound, hearing, hearing loss, and instrumentation. See 69 FR 35145, 35152-35154.

D. Occupational Noise in the Railroad Industry

Noise is one of the most pervasive hazardous agents in the American

¹⁰ See document 4 of docket number 12357 on DOT's Docket Web site (dms.dot.gov).

¹¹ John Aurelius and Norman Korebor, "The Visibility and Audibility of Trains Approaching Rail-Highway Grade Crossings," Report No. FRA-RP-71-2, May 1971.

¹² John P. Aurelius, "The Sound Environment in Locomotive Cabs," Report No. FRA-RP-71-2A, July 1971.

¹³ Roger D. Kilmer, "Assessment of Locomotive Crew In-Cab Occupational Noise Exposure," National Bureau of Standards. Report No. FRA-ORD-80/91, December 1980.

¹⁴ FRA Report to Congress, "Locomotive Crashworthiness and Cab Working Conditions." September 1996.

¹⁵ Eric Stusnick for Wyle Laboratories, "A Review of the Noise and Vibration Sections of the Federal Railroad Administration's Report to Congress Entitled 'Locomotive Crashworthiness and Cab Working Conditions.'" December 1996. See document 6 of docket number 12357 on DOT's Docket Web site (dms.dot.gov).

¹⁶ Technical Memorandum from Hugh J. Saurenman and Lance D. Meister of Harris Miller, Miller & Hanson, Inc., "Comments on AAR Review of Chapter 6, FRA Report to Congress 'Locomotive Crashworthiness and Cab Working Conditions.'" June 1997. See document 7 of docket number 12357 on DOT's Docket Web site (dms.dot.gov).

⁹ For the Final Rule, see 45 FR 21092, 21105 and 21117 (March 31, 1980). For the Notice of Proposed Rulemaking, see 44 FR 29604, 29618 and 29627 (May 21, 1979).

workplace. In the 1980's, the National Institute for Occupational Safety and Health (NIOSH) identified noise-induced hearing loss (NIHL) as one of the ten leading work-related diseases and injuries.¹⁷ In the 1990's, NIOSH listed noise-induced hearing loss as one of the eight most critical occupational diseases and injuries requiring research and development activities within the framework of the National Occupational Research Agenda.¹⁸ Noise is also one of the most intrusive aspects of locomotive operations.¹⁹

There are many noise sources in a locomotive cab. The primary noise sources are engine noise, locomotive horns, and brake noise. The nature and level of noise generated by each source varies greatly. Diesel engine noise is continuous, but it varies according to the engine load and engine speed. The noise from locomotive horns (and other audible warning devices) is sporadic but can be very loud if the window is open and can be very frequent if there are many highway-rail grade crossings.

Brake noise results from the air exhaust that comes from the brake valves when the brakes are released. Air brake exhaust is a high frequency sound and can be very intense. In the past, air brake exhaust vented directly into the locomotive cab. By 1980, locomotive manufacturers, maintenance facilities, and railroads had started venting the exhaust below the cab floor. FRA noted this change in its 1980 locomotive cab noise rule. See 45 FR 21092 (March 31, 1980). FRA recognized the effectiveness of this redesign, noting that it reduced the cab occupant's noise dose by an estimated 15 to 20 percent while still providing an audible indication of brake performance. See 45 FR 21092, 21015 (March 31, 1980). Manufacturers continued to re-design locomotives accordingly, and today the vast majority of locomotives have their air brake exhaust vented below the floor and away from the crew. There are some older locomotives, though (such as the ones used by some short lines), which still use the older equipment that vents air brake exhaust into the cab.

Another noise source comes from vibrations which loosen cab components—such as loose cab sheet

metal, loose cab side windows, and miscellaneous loose and/or poorly fitted cab equipment—and cause them to resonate. Other potential noise sources include fans on dynamic brake systems; alerters; wheel/rail contact at cruising speed; rooftop or retrofitted air conditioning/cooling units; bells that are sounded to indicate that the train is about to move; and radios that are used for crew communication. Noise can also result from the cab structure, depending on the particular design of the locomotive as it pertains to noise or vibration isolation. Maintenance, or the lack thereof, can also impact noise. Engines in less than ideal condition will run rougher and noisier. Mountings can wear and loosen, which can create new vibrations or decrease vibration damping. Also, worn engine components (e.g., bearings) can create noise.

The locomotive is also subject to several external noise sources. Since the locomotive cab is a mobile workplace, the level of noise exposure varies greatly by the route traveled. Noise results from the sound that is reflected into the cab (especially if through open windows) from reflective surfaces such as tunnels, bridges, sheds, and close embankments. Other conditions that can also impact noise include the topography and grade of the work assignment and the use of locomotive horns to provide notice at highway-rail grade crossings.

Predicting and addressing noise exposures in the locomotive cab is difficult not only because of the wide variety of possible conditions, but because of the mobile railroad workforce. It is a challenge to create and implement effective training and testing programs, because locomotive crews are not on the same run or same locomotive from one day to the next. In addition, locomotive crews can work shifts that last up to twelve hours.

II. The Railroad Safety Advisory Committee (RSAC) Process

A. RSAC

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 railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)

American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Department (ATDD)
Association of American Railroads (AAR)
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSRM)
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employes Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
Federal Transit Administration (FTA)*
High Speed Ground Transportation Association
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
Secretaria de Comunicaciones y Transporte (Mexico)*
Sheet Metal Workers International Association (SMWIA)
Tourist Railway Association Inc.
Transport Canada*
Transport Workers Union of America (TWUA)
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, the RSAC may accept or reject the task. If the RSAC accepts the task, 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. The working group develops the recommendations by consensus. The working group may establish one or more task forces to develop the facts and options on a particular aspect of a given task. The task force reports to the working group. If a working group reaches unanimous consensus on recommendations for action, the working group presents the package to the RSAC for a vote. If a simple majority of the RSAC accepts the proposal, the RSAC formally recommends the proposal to FRA.

¹⁷ National Institute for Occupational Safety and Health (NIOSH), "Criteria for a Recommended Standard: Occupational Noise Exposure, Revised Criteria 1998," National Institute for Occupational Safety and Health, DHHS (NIOSH) Pub. No. 98-126, Cincinnati, OH (1998).

¹⁸ NIOSH, "National Occupational Research Agenda," National Institute for Occupational Safety and Health, DHHS (NIOSH), Pub. No. 96-115, Cincinnati, OH (1996).

¹⁹ Human Factors Guidelines for Locomotive Cabs, DOT/FRA/ORD-93/03 (November 1998).

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, and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, 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 June 24, 1997, FRA presented the subject of locomotive cab working conditions to the RSAC. The purpose of this task was defined as follows: "To safeguard the health of locomotive crews and to promote the safe operation of trains." The RSAC accepted this task (No. 97-2) and formed a Locomotive Cab Working Conditions Working Group ("Working Group").

B. Working Group

Task 97-2 addressed several issues, one of which was noise exposure. With respect to noise exposure, RSAC asked the Working Group to complete two items: (1) Revise existing cab noise limits to take into account current requirements of the OSHA standard, specifically as it relates to hearing conservation programs, and (2) Continue efforts to evaluate engineering controls and other measures used to minimize noise exposure in locomotive cabs.

The Working Group consisted of representatives of the following organizations, in addition to FRA:

AASHTO
 APTA
 ASLRRRA
 AAR
 BLET
 BMWED*
 IBEW
 AMTRAK
 RSI (formerly Railway Progress Institute)
 SMWIA
 TWUA
 UTU

* Indicates associate membership.

The Working Group's goal was to produce recommendations for locomotive cab noise exposure standards warranted by an assessment of available information on hearing loss, hearing conservation programs, existing federal standards, and occupational injury data. The Working Group decided that specific expertise would be needed to analyze pertinent information and so it formed the Noise Task Force.

The Noise Task Force, which was established in September 1997, was made up of industrial hygiene, safety, engineering, and medical staff from carriers, labor organizations, and FRA. The Noise Task Force met regularly over a period of several years to discuss several topics, including hearing loss and noise exposure among locomotive cab employees; existing railroad hearing loss prevention programs; OSHA's occupational noise standards; equipment changes and procedures that improve noise levels in the cab; hearing testing and training programs; and noise monitoring.

The Noise Task Force concluded that OSHA's standard for noise was an appropriate framework and starting point for an update and revision to FRA's existing noise regulation. The Noise Task Force also identified several areas where OSHA's regulation might be modified to create a FRA regulation that could better address the occupational noise exposure of the rail industry. The Noise Task Force forwarded these findings to the Working Group.

The Working Group conducted a number of meetings and discussed each of the matters proposed in the NPRM. FRA has placed the minutes of these meetings in the docket for this proceeding. Throughout this preamble, FRA frequently discusses issues that the Noise Task Force and Working Group raised and views that they shared. FRA discusses these points to show the origin of certain important issues and the course of discussion on these issues at the task force and working group levels. FRA believes that this helps illuminate the facts 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 is acting.

The Working Group, using the preliminary findings of the Noise Task Force, developed recommendations for reducing the likelihood of hearing loss for cab employees. In June 2003, the Working Group reached consensus on recommendations for the proposed rule and forwarded these recommendations

to the RSAC. On June 27, 2003, the RSAC accepted these recommendations, which had been reviewed and accepted by FRA.

On June 23, 2004, FRA published an NPRM containing the recommendations of the Working Group and the full RSAC. See 69 FR 35146. The NPRM provided for a 90-day comment period and provided interested parties the opportunity to request a public hearing. The comment period closed on September 21, 2004. FRA received comments from approximately 50 interested parties. There were a wide variety of commenters, including individual locomotive engineers; professional, scientific, and credentialing associations; congressmen; individual audiologists; an acoustical consulting firm; a commuter railroad; and a manufacturing company.

FRA reconvened the Task Force on March 1, 2005 and the Working Group on March 2-3, 2005 to discuss the comments that FRA received about the NPRM. The Task Force and the Working Group considered all the comments and again reached consensus on recommendations for a final standard. These recommendations were presented to the RSAC and on May 18, 2005, the RSAC accepted these recommendations. The RSAC voted to forward these recommendations to FRA as the basis for a final occupational noise standard. FRA has reviewed the RSAC's recommendations and has adopted the recommendations in this final rule.

FRA has worked closely with the RSAC in the development of its recommendations and believes that the RSAC effectively addressed occupational noise exposure for cab employees. FRA has greatly benefitted from the open, informed exchange of information that has taken place during meetings. There is general consensus among labor, management, and manufacturers concerning the primary principles FRA sets forth in this final rule. FRA believes that the expertise possessed by the RSAC representatives enhances the value of the recommendations, and FRA has made every effort to incorporate them in this rule.

III. FRA's Noise Standard

A. FRA's Approach to Cab Noise

As OSHA governs workplace safety, and OSHA has already issued regulations in the area of occupational noise, FRA used OSHA's standard as a foundation for its own standard. However, there are many areas in which the OSHA standard differs from the FRA standard. The purpose of this

rulemaking is to adapt the OSHA rule to the unique circumstances of the railroad environment. The working environment for railroad cab employees is quite different than that of the typical American worker. Also, the noise exposure of railroad employees is not uniform throughout the industry. Railroad employees may work in a different location each day, i.e., a different locomotive and/or a different route. Employee assignments and actual time in the cab may vary significantly during a typical week. The level of noise in any individual locomotive cab will vary greatly, depending on the locomotive model, locomotive age, condition of the locomotive, length of the route, traffic on the route, number of highway-rail grade crossings on the route, physical characteristics of the route, weather conditions during the run, and any one or more of several other factors. FRA's rule has taken into account these unique characteristics of the railroad operating environment and has modified OSHA's standard to fit the railroad industry.

Since FRA's rule is based on OSHA's rule, it is helpful to review OSHA's standard before explaining FRA's standard. OSHA's noise standard limits employee noise exposure to an 8-hour TWA of 90 dB(A). OSHA identifies a hierarchy of controls that should be used to limit noise exposure. If employee noise exposure exceeds the permissible exposure level, the employer must reduce the exposure (so that it is within permissible exposure limits) through the use of feasible engineering controls, administrative controls, or a combination of both. Where such controls cannot reduce employee exposure to permissible limits, employers are to supplement the engineering and administrative controls with hearing protection. The OSHA noise standard also requires that the employer administer a continuing effective hearing conservation program for employees who are exposed to levels that equal or exceed an 8-hour TWA of 85 dB(A).

OSHA places engineering and administrative controls at the top of its hierarchy and takes the position that these controls are the best method for controlling noise exposure. These controls reduce employee exposure to hazardous noise levels by eliminating (or at least reducing) the noise at the source, by modifying the noise path or by decreasing employee exposure time to the noise source. Engineering controls are generally understood to be the modification or replacement of equipment or any other related physical change at the noise source or along the

transmission path that reduces the noise level at the employee's ear (not including hearing protectors). They include such changes as the re-design of machinery or the use of different tools. Administrative controls involve efforts to limit worker noise exposure by modifying work schedules, work locations, or the operating schedule of noisy machinery. An example of Administrative Controls would be schedules for rotation of employees from tasks that are near noisy machinery to quieter areas. The objective is employee exposures with lower time weighted average levels of exposure. FRA's standard on locomotive cab noise is based very heavily on OSHA's standard. In this final rule, FRA requires railroads to limit employee noise exposure to an 8-hour TWA of 90 dB(A).²⁰ Also, FRA requires railroads to implement a hearing conservation program for those employees who are exposed to noise levels that equal or exceed an 8-hour TWA of 85 dB(A).

FRA's doubling, or exchange, rate is 5 dB(A). FRA's decision to use a 5 dB doubling rate is notable, because a 5 dB doubling rate is different than the scientific principle for a doubling rate. Technically, an increase of 3 dB represents a doubling of sound energy.²¹ In making its decision, FRA considered a doubling rate of 3 dB, 4 dB, and 5 dB. FRA ultimately decided on a 5 dB doubling rate. NIOSH recommends a 3 dB doubling rate, the Air Force uses a 3 dB doubling rate, and OSHA and MSHA use a 5 dB doubling rate.

In its 1999 rulemaking on occupational noise for miners, MSHA faced a similar decision, choosing between a 3 dB or 5 dB exchange rate. MSHA conducted a study and found that the exchange rate substantially affects the measured noise exposure; nonetheless, MSHA retained the 5 dB exchange rate because of feasibility concerns.²² In its final rule, MSHA concluded that

it would be extremely difficult and prohibitively expensive for the mining industry to comply with the existing permissible exposure level with a 3 dB exchange rate, using currently available engineering and administrative noise controls. MSHA therefore cannot demonstrate that implementation of such an exchange rate would be feasible. However,

²⁰ For a complete list of the permissible noise exposures, see Table 1 in § 227.103. According to Table 1, railroads must limit employee noise exposure to 85 dB(A) as a 16-hour TWA, 87 dB(A) as a 12-hour TWA, 90 dB(A) as an 8-hour TWA, and so on.

²¹ See discussion in § IV(A) of the background section.

²² 64 FR 49548, 49588–49589 (September 13, 1999).

[MSHA] will continue to monitor the feasibility of adopting a 3 dB exchange rate. 64 FR 49548, 49589 (September 13, 1999).

FRA, like MSHA, recognizes that the cost and feasibility of a 3 dB exchange rate is prohibitive. Furthermore, there was a consensus decision of the RSAC Working Group that 5 dB is most appropriate. Taking all of those factors into account, FRA has decided to use a doubling rate of 5 dB. Thus, a 5 dB increase in the time weighted average level reduces the permitted time of exposure duration by half.

FRA recognizes the same noise control measures as OSHA (i.e., engineering controls, administrative controls, and hearing protection); however, FRA uses different terms to describe some of those controls. OSHA uses the term, "administrative controls," while FRA uses the term "noise operational controls." These two terms are the functional equivalent. Also, OSHA uses the term "engineering controls," while FRA uses no equivalent term—FRA instead describes the specific actions which railroads and manufacturers must take when designing, building, and maintaining locomotives.

FRA's overall approach toward controls differs from that of OSHA. FRA does not explicitly adopt OSHA's hierarchy of controls. As explained above, OSHA places controls in a hierarchy and mandates their use according to that hierarchy. FRA has no such hierarchy. Rather, FRA has specific requirements that railroads must satisfy. FRA requires railroads to obtain and maintain locomotives built to meet the performance standard for maximum noise level in the cab defined by the standards in § 229.121. (This is somewhat equivalent to OSHA's "engineering controls"). FRA mandates that railroads require employees to use hearing protectors when employees are exposed to noise levels that exceed an 8 hour-TWA of 90 dB(A). (This is equivalent to OSHA's hearing protector requirement). And, FRA gives railroads the *option* of using noise operational controls when employees are exposed to noise levels that exceed 90 dB(A) as an 8 hour-TWA. (This is equivalent to OSHA's "administrative controls"). It is very important to note that FRA does not require the use of noise operational controls. Thus, when a railroad learns that an employee is exposed to noise levels that exceed an 8-hour TWA of 90 dB(A), the railroad must provide the employee with HP, but need only consider the use of noise operational controls. Using noise operational controls as an option rather than a requirement was done in recognition of

the nature of railroad operations and the impact of other federal laws, specifically the Hours of Service law. This law limits crew working hours to 12 hours, thus also permitting work shifts of up to 12 hours. Given the fact that administrative controls use periods of time removed from exposure to reduce the dose, and the fact that the only way to be removed from exposure on a train (except passenger trains) would be to leave the train, mandating administrative controls to reduce noise exposure would have the effect of changing the operating practices of the entire industry without regard to other issues such as where and how to get the exposed crews off the trains and how to get replacement crews on them.

The RSAC Working Group spent a great deal of time discussing options and developing the recommended requirements for § 229.121 and thus a discussion is warranted here. An Engineering Controls Task Force, a subgroup of the Noise Task Force, met to discuss the feasibility of engineering controls. Among its findings, the group identified certain items that might help reduce noise exposure in the locomotive cab. In identifying these items, FRA has given serious consideration to those items which are feasible and those items which are not feasible.

In developing the proposed and final rules, the RSAC Working Group participants noted that since the early 1990s, the industry has taken delivery of thousands of newer locomotives engineered to reduce noise levels. Original equipment manufacturers used a variety of strategies to sharply reduce the portion of noise dose derived from the prime mover and to filter out other noise sources. The cabs of most of these locomotives provide an environment where, for the great majority of operating circumstances, employees will not experience 8 hour TWA exposures approaching 90 dB(A), and under most circumstances, exposures are not expected to reach the action level. Railroads have also specified placement of horns in the center of the locomotive, rather than immediately over the cab, further reducing noise levels experienced by employees. Finally, as noted below, the practice of venting the airbrake system into the cab has been largely abandoned.

Accordingly, the challenges in this proceeding have principally to do with management of noise exposure in older locomotives, at least minimal standardization of hearing conservation programs that have grown up without regulation, ensuring the progress in engineering of locomotives is maintained, and addressing the needs of

employees of smaller railroads by providing basic guidance regarding noise monitoring, hearing conservation, training, and recordkeeping. To the extent that many comments filed by non-railroad parties assume a much more dire situation, those comments have missed the mark and, in many cases, have called for measures not warranted by the facts.

The RSAC Working Group also found that certain maintenance tasks—e.g., repair, replacement, or installation of cab insulation, door seals, window seals, weatherstripping, and electrical cabinet insulation and seals—can help reduce in-cab noise levels. The group also discussed other engineering controls and maintenance items which have been shown to reduce noise exposure in the cab, e.g., venting piping for air brake exhaust and power control devices out and under the locomotive; using air cooling devices so that windows can be closed; and using noise-dampening window glass which limits the penetration of noise and thereby limits the contribution of outside noise. In addition, the group discussed the location of locomotive horns and agreed that relocation of the horn to the center position had reduced crew noise exposure.

FRA recognizes that there are many benefits to using engineering and maintenance controls. First, they do not interfere with crew and radio communication, which personal Hearing Protection (HP) devices can do. HP can interfere with crew and radio communication by blocking out necessary sounds in addition to unwanted noise. Second, engineering and maintenance controls do not present the potential hazard of overprotection that HP may present. Engineering controls block out noise at its source, or along its transmission path, thus there is no concern that necessary sounds will be blocked out too. Third, engineering controls put less burden on the employee and as a result, are easier for employees to use. With HP, railroads must ensure that employees are properly trained on the use of the devices, and employees must ensure that they don and wear the devices properly. Due to the benefits of engineering controls, FRA did not want to exclude their use. However, due to burden that it would impose on railroads if there was a general requirement for the use of engineering controls, FRA did not include the requirement as found in OSHA's rule. The burden was recognized when it was made clear by experts in locomotive noise reduction engineering that imposing the requirement to first use

engineering controls to reduce exposure would require re-engineering the cab structure, the suspension and other elements of the locomotive to achieve the required noise reduction at a cost approaching that of buying a new locomotive. As a compromise, rather than imposing a general engineering controls requirement on railroads, FRA identified limited and specific engineering controls—the design and build requirements in § 229.121(a) and the maintenance requirements in § 229.121(b)—which railroads must use.

This background section has sought to provide an overview of FRA's rule, as well as a broad comparison to OSHA's rule. A more thorough discussion of the differences between OSHA's and FRA's standards is provided in the Section-by-Section Analysis below.

B. Responsibilities of Railroads and Employees

The primary responsibility for compliance with this regulation lies with employers, i.e., railroads. As such, railroads have several enumerated responsibilities. This regulation requires railroads to: Develop and implement a noise monitoring program; administer a hearing conservation program; establish and maintain an audiometric testing program; make audiometric testing available to employees; implement noise operational controls (if desired); require the use of hearing protection; make hearing protection available to employees at no cost; train employees in the use and care of hearing protection; ensure proper fitting of and supervise the correct use of hearing protection; give employees the opportunity to select hearing protection from a variety of suitable hearing protection; evaluate hearing protection attenuation; initiate and offer a training program, maintain and retain records; and obtain and maintain locomotives that meet specified standards for limiting in-cab noise.

The responsibilities of employees derive from those of the railroad. Employees' responsibilities come from railroad policies, which are issued pursuant to this regulation. This regulation would require employees²³ to: Use their hearing protection when mandated by the railroad; care for their hearing protection as trained by the railroad; and complete the training program which is offered by the railroad. There is one additional obligation for which employees have

²³ In their comments, the AAR pointed out that the preamble inaccurately used the term "employers" in place of "employees." FRA has corrected that typo in this final rule.

primary responsibility—employees must report for audiometric testing once every three years. While railroads have an affirmative obligation to offer testing, employees have an affirmative obligation to report for testing. Without adequate audiometric testing, a hearing conservation program will not succeed, and so FRA is identifying an employee's audiometric testing obligation as a primary responsibility.

Because employee responsibilities are, for the most part, derivative, compliance would generally take place through the railroad disciplinary process, rather than direct enforcement by FRA. FRA does, however, recognize one major exception. FRA may assess civil penalties for a wilful violation²⁴ for an employee who does not report for audiometric testing. Overall, FRA expects that employees will fully comply with all of their responsibilities. Railroads should perform required actions, and employees should reciprocate with their commensurate responsibilities. Railroads should set expectations of compliance, and employees should meet those expectations of compliance.

C. Compliance

FRA's principal method of enforcement will be through audits. With an industrial hygienist as team leader, an audit team will examine a railroad's hearing conservation program. The team will examine whether the railroad is adequately protecting its employees. The team will speak with the program manager, review records (e.g., noise monitoring records, audiograms, standard threshold shift records, etc.) and determine the extent to which the railroad is complying with the requirements of this regulation. If warranted, FRA will take enforcement action against the railroad.

In addition, if FRA has reason to believe that certain locomotive crews are being exposed to high noise doses, FRA inspectors will ride in the locomotive cab with those crews to measure the sound levels and determine the crews' exposure. FRA inspectors may also review maintenance records to determine whether railroads have corrected defective conditions (e.g., loose windows, deteriorated seals). Additionally, FRA will investigate employee complaints of excessive noise.

²⁴ Under the railroad safety laws, civil penalties may be assessed against individuals only for willful violations. See 49 U.S.C. 21304.

IV. Summary of Comments

A. In General

Overwhelmingly, the commenters to this rule applauded FRA for amending its noise standard. They commended FRA for taking the initiative to prevent noise-related hearing loss among railroad workers. They also expressed their support for FRA's effort to establish a uniform noise exposure rule for railroad operating employees, explaining that a uniform noise standard for the railroad industry will facilitate understanding of, and compliance with, regulatory requirements. One commenter was pleased to see that FRA had addressed both noise control (part 229 requirements) and hearing conservation (part 227 requirements) in this rule, because, based on their observations, the most successful hearing loss prevention programs are those that include both noise control and hearing conservation components.

The commenters acknowledged that FRA's rule would bring about some significant improvements in certain areas of hearing conservation and would significantly improve the health and safety conditions for cab occupants. However, several commenters felt that the proposed rule still fell short of an effective hearing conservation program. Chief among that concern, commenters felt that FRA was relying too heavily on OSHA's standard. Commenters agreed that OSHA's standard was a good starting point, but explained that OSHA's standard could use some updating.

They explained that OSHA's rule is over 20 years old and rooted in even older data. One commenter explained that the OSHA standard was based largely on the NIOSH recommended criteria from 1972, which was based on research in the 1950s and 1960s. The commenters went on to explain that, since that time, there have been new scientific findings (including advances in the fields of acoustics and bioacoustics), technological advancements, and years of field experience. The commenters felt that FRA should make more efforts to incorporate these advances into its standard. They explained that their comments tended to reflect this viewpoint. Along these lines, some commenters encouraged FRA to consider incorporating components of "stronger" standards such as MSHA's recent rule and the 1998 NIOSH revised criteria.

FRA was very cognizant of these issues in drafting the rule. While FRA modeled its rule after OSHA's standard

and not after an alternative standard such as NIOSH's 1998 revised criteria, FRA notes that FRA did not adopt each one of OSHA's provisions without question. FRA incorporated several new changes into its revised noise standard, including some changes at this final rule stage. Throughout the process, FRA has tried to strike a balance between deferring to OSHA, the lead federal agency in the field of occupational safety and health, and incorporating changes based on scientific advances, technological improvements, recognition of some of the unique circumstances present in the railroad operating environment, and field experiences. FRA believes that this rule strikes the proper balance at this time.

In the paragraphs below, FRA discusses several overarching comments. FRA discusses comments specific to the rule text in the section-by-section analysis.

B. Approaches Other Than the OSHA HCA

FRA modeled this rule after OSHA's Hearing Conservation Amendment (HCA). Several commenters strongly encouraged FRA to rewrite this rule based on the 1998 Revised Criteria for a Recommended Standard. They noted that NIOSH's more stringent standards, such as an exposure limit of 85 dB(A) or an exchange rate of 3 dB, will better protect railroad workers by significantly reducing their risk of noise-induced hearing loss. One commenter wrote that FRA, by choosing the OSHA model, had proposed what amounts to a watered down "hearing loss documentation program."

Another commenter, the doseBusters Company,²⁵ questioned why FRA gave little "consideration" to other prevention strategies. The doseBusters Company argued that OSHA's HCA is a flawed approach to the prevention of hearing loss and cited several reasons why it believes that FRA should have considered other prevention strategies: (1) The HCA is based on information, analyses, thinking, and technology that is 25 years old; (2) At the time of its adoption, the HCA represented a compromised approach; and (3) The prescriptive approach of the HCA may preclude more effective and/or conservative alternatives and stifle future innovation in prevention efforts.

The doseBusters Company suggested that FRA provide a performance-oriented framework for the prevention

²⁵ FRA notes that the doseBusters Company Web site no longer exists and that FRA has been unable to find the doseBusters Company through any other means on the Internet.

of noise-induced hearing loss by either adopting, or at least allowing, alternative strategies. As one of those alternate strategies, the doseBusters Company advocated for its own solution—a program of continuous monitoring using a proprietary device that also serves as a hearing protector. The Exposure Smart Protector (ESP) system simultaneously measures a workers's actual noise exposure and provides protection to the worker. This allows the employer to routinely determine the efficacy of the personal HP for individual users in real workplaces. It also provides the employee with individual feedback on his or her own daily noise exposure.

After discussion with the RSAC Working Group, FRA decided that it would not specify such alternate prevention strategies and that it would instead continue to model its rule after OSHA's HCA. FRA has chosen to follow OSHA's lead in this matter, because OSHA is the lead agency in the field of occupational safety and health. Presumably OSHA used its expertise and resources to determine that the HCA is the most appropriate method for hearing conservation. Moreover, the HCA approach is a proven and effective method in the work place environment.

With respect to the doseBuster Company's ESP System, FRA is unaware of any peer review or other scientific evaluation of that approach. As the doseBuster Company pointed out, the approach is still undergoing testing and review. In addition, there are several fundamental issues that the doseBusters Company did not address and would need to be addressed before FRA could employ this alternate prevention strategy. Among those issues are: Under what circumstances does the railroad decide to equip the employees with these devices? Should the railroad equip all potentially exposed employees or only a predefined group? What criteria would the railroad use to identify the predefined group?

Furthermore, these devices have the potential to create an unsafe operating environment. Railroad employees need to focus their attention on their jobs and the safe operation of trains. These devices, which depend on significant employee attention, would prevent employees from focusing all their attention on their jobs. Finally, FRA does not believe it is appropriate to identify a single commercial product as a means of meeting the requirements of the rule. This is of even greater concern given that the use of the ESP devices would impose a significant, increased burden on railroads in complying with other requirements of the rule (i.e.,

noise exposure monitoring and the associated recordkeeping requirements). While the doseBuster Company's concept is interesting, FRA does not believe that there is sufficient evidence that the device would be effective in increasing the protection of employees or that the system would be either practical or affordable for employers.

As explained above, FRA modeled this rule after the OSHA HCA. FRA chose not to use alternate prevention strategies such as NIOSH's Recommended Standard²⁶ or the doseBuster Company's ESP system. While FRA has not chosen to use these alternate strategies, there is nothing in the rule that precludes a railroad employer from using any individual components of these strategies, as long as the components are consistent with the requirements of FRA's rule. For example, if a railroad wished to use doseBuster Company's ESP hearing protectors, the railroad is free to do so, as long as the railroad satisfies all the requirements of this rule.

Finally, an individual engineer suggested that FRA consider another issue as part of its approach to hearing conservation. Specifically, the commenter wrote that FRA should mandate the use of air ride seats to address the problem of bone conduction whole body vibration. He asserted that vibration has an impact on hearing. FRA is not mandating the use air ride seats in this final rule, because the issue of vibration in locomotives is out of the scope of this rulemaking. It is possible that FRA will address this issue in the future. Vibration is listed as item number 3 on RSAC Task Statement 97-2 on Locomotive Cab Working Conditions and is discussed in Chapter 10 of FRA's September 1996 Report to Congress. However, FRA is not issuing regulations on the issue of vibration at this time.

C. Hierarchy of Controls

As explained above in section III(A), OSHA and FRA differ with respect to the controls each employs. OSHA identifies a hierarchy of controls that should be used to limit noise exposure—engineering controls and/or, administrative controls, and then hearing protection. FRA recognizes the same controls but utilizes a specific strategy to ensure cost effective

implementation of the controls in the railroad industry.

Several members of Congress submitted comments about the hierarchy of controls. Each of them expressed concern that FRA was using an approach different than OSHA and MSHA with respect to engineering controls. They explained that the primary tool under the OSHA and MSHA scheme is the elimination of noise from the workplace through engineering controls. They also pointed out that both OSHA and MSHA require the use of engineering controls only if they are commercially viable and economically feasible. In urging FRA to follow the lead of the other Federal agencies, one Congressman wrote that "OSHA is well-versed in the scientific and technical capabilities of engineering controls." He also wrote that "the OSHA standard has been proven to successfully protect the hearing of workers and the adoption of the OSHA standards will allow our nation's workplaces to have a consistent standard across all industries." These Congressmen and Senators urged FRA to consider revising the proposed rule so that, consistent with the other Federal noise standards, FRA's rule would require employers to use engineering controls as the primary method of reducing employee noise exposure.

Other commenters also expressed concern about FRA's approach. Several organizations wrote that FRA should base its rule on the "widely accepted concept of a hierarchy of controls." Cooper Tire and Rubber Company ("Cooper Tire"), which specializes in the manufacturing of transportation industry products, likewise disagreed with FRA's decision not to mandate the use of engineering controls as the primary strategy to combat workplace noise. Cooper Tire noted that FRA failed to follow OSHA's and MSHA's lead "due to unspecified concerns about the burden engineering controls would impose on railroads." Cooper Tire felt that it was "unclear how the FRA came to the conclusion regarding the costs of engineering controls." Cooper Tire explained that it has scientific and technological expertise in the area of noise reduction and control and that it is aware of current, off-the-shelf technology that will adequately address low-frequency locomotive noise. As a result, Cooper Tire believes that railroads can implement engineering controls at modest cost with maximum benefit to employees.

Cooper Tire also felt that FRA's approach to engineering controls (i.e., specific prescriptive requirements)

²⁶ Please note that while FRA has not adopted NIOSH's standard in whole (e.g., exposure limit based on 85 dB(A) limit and a 3 dB exchange rate, or annual training), FRA notes that it has adopted some components of the NIOSH standard (e.g., integrating sound levels up to 140 dB and conducting audiometric tests at 8000 Hz).

stifles the advancement of technology. Cooper Tire believes that by not allowing engineering controls generally, "FRA seems to presuppose that the proposed rule reflects all current technology and that no new technology will address the problem of workplace noise-induced hearing loss." Like the above commenters, Cooper Tire recommended that FRA adopt the same approach as OSHA and MSHA, "one which does not dictate specific engineering controls * * * but instead allows the employer to evaluate various engineering controls on the basis of their effectiveness, cost, technical feasibility, as well as their implications for equipment, use, service, and maintenance." Cooper Tire advocated that FRA use an Active Noise Reduction approach and discussed information on an actual installation of an Active Noise Reduction System tested by Cooper Tire.

In contrast, FRA also received comments indicating that FRA should be less reliant on engineering controls. The doseBusters Company wrote that "the role of engineering controls is always emphasized, yet in reality their impact on prevention of hearing loss is problematic." The doseBusters Company argued that engineering controls are not superior to hearing protection; that even if successfully implemented, engineering controls only prevent hearing loss for a fraction of workers (since few exposures are reduced to the action level through the use of engineering controls); and that engineering controls are not truly that effective (as evidenced by the fact that employers tend to rely on conventional hearing protection rather than engineering controls as the principal means of preventing hearing loss).

FRA appreciates the theoretical merit of active noise control ("noise cancellation") and has researched this subject in prior years in the context of community noise impacts. FRA believes that technology for active noise control may be useful in the future for reducing noise exposure in cab environments generally or in connection with audio headsets. Nothing in this rule prohibits use of this technology either in connection with initial qualification of locomotives or with respect to railroads' providing HP to employees. However, FRA is not aware of any rigorous demonstration that existing technology is feasible and "cost effective" for this purpose. The commenter provided no economic information supporting the claim that its proprietary technology is ready for application in the railroad environment, and FRA is not aware of any other supplier making such a claim.

FRA welcomes demonstration of the technology on locomotives in service, and FRA is prepared to assist in facilitating such a demonstration. However, FRA is not prepared to mandate an abstract requirement for engineering controls based upon a single supplier's representation that the technology is available and affordable. FRA believes that the more specific requirements for engineering controls embodied in this final rule are more suitable given existing knowledge.

With regard to the issue of freezing technology as asserted by Cooper Tire, FRA does not mandate any specific approach to manufacturing quieter locomotives, only that they meet a performance standard of a maximum permitted level of noise. Manufacturers and railroads are free to use any technology they wish to meet this requirement and FRA would expect the railroads and OEMs to continue to seek better (and perhaps cheaper) ways to do this.

Throughout the rulemaking process, FRA devoted a great deal of time to considering OSHA's rule and exploring alternative options. The RSAC Working Group engaged in extensive discussions on this issue and even formed a Task Force to solely consider the issue of engineering controls. The RSAC Working Group generally agreed that engineering controls should be emphasized as the first approach where feasible, but rather than leaving determinations of feasibility to later interpretation, the Working Group recommended that FRA specify the actions to be taken (i.e., new locomotives required to meet static testing requirements, protection of sound-insulating properties in existing locomotives, repair of certain noise sources as identified by crews). The RSAC Working Group had the confidence to take this approach because, over the past decade and a half, locomotive manufacturers have produced new locomotives that protect against excessive noise levels. At the same time, the RSAC Working Group recognized that there are operational conditions where, due to the limitations of glazing material or the need to run with windows open, occasional excessive doses might be encountered and that avoiding the need to employ HP under these circumstances might not be feasible. OSHA, by contrast, generally deals with fixed work places and needs a more general approach in order to address a wide range of industrial and commercial establishments.

As a result of these discussions, FRA and the RSAC Working Group decided

that the best approach for the railroad industry was the approach proposed in the NPRM—identify those specific engineering controls which were feasible and mandate them. FRA is further convinced of the appropriateness of that approach by the fact that it evolved out of the consensus process of the RSAC Working Group, which was comprised of representatives from railroads, manufacturers, unions, and others.

Given the number and nature of comments on engineering controls, FRA is reiterating its approach toward engineering controls specifically and controls generally.²⁷ FRA's overall approach toward controls differs from OSHA. Although OSHA and FRA both have the same three controls, FRA uses different terminology for two of them: (1) OSHA uses the term "administrative controls," and FRA uses the term "noise operational controls." (2) OSHA uses the term "engineering controls," and FRA uses no comparable term. FRA does however, require specific engineering controls. Those items are found in § 229.121. (3) Finally, both OSHA and FRA use the term "hearing protector."

OSHA places controls in a hierarchy and mandates their use according to that hierarchy—first engineering controls, and/or administrative controls, and finally hearing protectors. (Occupational noise exposure standard, administrative controls and engineering controls are on equal footing. See 29 CFR 1910.95(b)(1).) FRA has no such hierarchy. FRA expects that railroads *will* comply with the requirements in § 229.121 (equivalent to OSHA's engineering controls) and that railroads *will* comply with the requirements regarding hearing protectors. FRA gives railroads the *option* of using noise operational controls (OSHA's equivalent of administrative controls).

Engineering controls are generally understood to be the modification or replacement of equipment or any other related physical change at the noise source or along the transmission path that reduces the noise level at the employee's ear (not including hearing protectors). They include such changes as the re-design of machinery or the use of different tools.

Rather than impose the general requirement to "use engineering controls," FRA has identified the specific engineering controls which railroads must use. Specifically, railroads must buy locomotives manufactured such that they do not

²⁷ For a more detailed discussion, see the preamble to proposed rule at 69 FR 35145, 35155.

exceed a certain decibel level (see § 229.121(a)(1)), must maintain those “new” locomotives in such a way that alterations do not cause the sound level to increase beyond certain decibel levels (see § 229.121(a)(2)), and must maintain all pre-existing locomotives so that they do not reach excessive noise levels (see § 229.121(b)(1)). In maintaining locomotives, railroads must be cognizant of items, including but not limited to, defective cab window seals, defective cab door seals, broken or inoperative windows, deteriorated insulation or insulation that has been removed for other reasons, broken or inoperative doors, and air brakes that vent outside of the cab (see § 229.121(b)(2)).

In addition to the items unique to this rulemaking, FRA has several other pre-existing maintenance requirements that reduce cab noise levels. Conditions that can contribute to the noise dose, such as leaking manifolds, flat spots on wheels, insecurely attached components, and general conditions addressed in § 229.45 are already required to be maintained properly under FRA’s regulations or the Locomotive Inspection Act itself for other safety reasons.

In practice, all of these items, both the maintenance items listed in the final rule and pre-existing maintenance requirements in part 229, function like engineering controls, because they modify or replace equipment at the noise source so that it reduces the noise level at the employee’s ear. So, while FRA does not use the term “engineering controls,” FRA still employs engineering controls. Indeed, over the past decade and a half, the locomotive fleet has come to be dominated by cabs that are sufficiently quieter such that hearing protection is not required under most conditions of operation.

Finally, FRA’s standard is different from OSHA’s in the following way. OSHA imposes a general requirement that their regulated industries must use engineering controls where they are technically and economically feasible. By contrast, FRA imposes specific requirements with which railroads absolutely must comply. Railroads have much less leeway when it comes to these controls than do OSHA’s regulated industries.

D. Triggering Criteria

The rule has two triggering criteria levels. The first one, which is located in § 227.107, delineates when a railroad should place an employee in a hearing conservation program. It requires railroads to place employees in a hearing conservation program if employees are exposed to noise at or

above the action level (i.e., an 8-hour-TWA of 85 dB(A) with a 5dB exchange rate). The second one, which is located in § 227.105, delineates when a railroad should actively protect employee hearing. It requires railroads to provide appropriate protection to employees whose noise exposure exceeds the permissible limit of an 8-hour-TWA of 90 dB(A) with a 5 dB exchange rate.

Several commenters were displeased with these triggering criteria. They recommended that FRA lower the exchange rate to 3 dB and the criterion level to an 8-hour-TWA of 85 dB(A) and that FRA use this as the sole trigger for compliance. The commenters asserted that an exposure limit based on 90 dB(A) and a 5 dB exchange rate is not protective enough for employees. The National Hearing Conservation Association (NHCA) wrote that these limits “will expose workers to an unacceptably high risk of noise induced hearing loss.” Similarly, NIOSH wrote that the 90 dB(A) limit exposes “workers to a statistically significant increase in the risk of occupational hearing loss.” Likewise, a locomotive engineer wrote that “90 dBA over 8 hours is a ridiculously high amount of noise. Anyone exposed to this day in and day out will certainly suffer hearing loss * * *. The one thing I was hoping you would do was lower the allowable noise level in all of our locomotive cabs and you have not done that.”

NIOSH pointed to statistics, which show that there is a increased risk to employees exposed to noise at higher levels. NIOSH quoted a 1997 article by Stayner Prince and Gilbert Smith, which explained that, with at least 10 years of occupational noise exposure, eight percent of 65-year old workers would develop a material hearing impairment at 85 dB(A), twenty-two percent at 90 dB(A), thirty-eight percent at 95 dB(A), and forty-four percent at 100 dBA. A Minnesota audiologist with a 20-year career in audiology, Ted Madison, cited additional NIOSH statistics, in his attempt to show that FRA’s proposed standard would result in noise-induced hearing loss for an “unacceptably high percentage of railroad workers.” Mr. Madison wrote that the estimated excess risk of incurring material hearing impairment over a 40-year working lifetime with average daily noise exposure of 90 dB(A) is 20% while the estimated excess risk with an average daily noise exposure of 85 dB(A) is only 15%.

In addition, a number of commenters pointed out that many government, scientific, and professional organizations recommend (and in some cases, mandate the use of) an 85 dB(A)

permissible exposure limit and a 3 dB exchange rate. This includes organizations such as the U.S. Department of Defense, U.S. Environmental Protection Agency, and the National Institute for Occupational Safety and Health. The commenters also pointed out that most European countries use 85 dB(A) or less and that both the International Organization for Standards (ISO) and the American National Standards Institute (ANSI) have adopted standards that rely on a 3 dB exchange rate. One commenter asserted that “virtually all other industrialized countries use a 3 dB exchange rate.”

In suggesting a 3 dB exchange rate, commenters made several other arguments. American Speech-Language-Hearing Association (ASHA) and the American Industrial Hygiene Association (AIHA) asserted that a 3 dB exchange rate was “more appropriate and protective for railroad employees.” They rejected FRA’s decision to follow MSHA, arguing that the “noise exposure conditions, legacy of engineering controls, and other criteria surrounding MSHA’s adoption of the 5 dB rule are not necessarily germane to the railroad industry.” Theresa Schulz, who has spent more than 20 years as a hearing conservation audiologist in the U.S. military, wrote that the 3 dB exchange rate is “based on scientific principle and the physics of sound.” Cooper Tire explained that “US and international regulatory agencies have eschewed the 5 dB exchange rate because of certain inherent deficiencies * * * [and] have embraced a more scientifically-sound, worker-friendly 3 dB exchange rate that is based on much better data than existed in the 1970s when the 5 dB exchange rate was first utilized.”

Commenters proposed various alternatives. NHCA recommended that FRA revise the rule to include the Threshold Limit Values (TLVs) for noise established by the ACGIH. The TLVs are based on an 8-hour TLV of 85 dB(A) and a 3 dB exchange rate. NIOSH suggested that if FRA ultimately decided to retain the 90 dB(A) exposure limit and the 5 dB exchange rate, then FRA should include a non-mandatory appendix containing tables from the 1998 NIOSH revised criteria document. Those tables would be analogous to the existing OSHA/FRA tables, however, they would calculate the numbers with a 85 dB(A) exposure limit/3 dB exchange rate (L_{NIOSH}) in addition to calculating the numbers with a 90 dB(A) exposure limit/5 dB exchange rate (L_{OSHA}). Commenters explained that, by having both sampling protocols, railroad safety and health professionals would be able

to better understand the spectrum of hearing risks faced by railroad employees and could better choose the most relevant method for protecting employee hearing. Overwhelmingly, though, the commenters advocated for FRA to “follow the NIOSH expert advice” and adopt an 85 dB(A) exposure limit and a 3 dB exchange rate.

For several reasons, FRA has decided to leave the triggering criteria as proposed. First, with respect to the exchange rate, many commenters argue that the 3 dB rate is much more protective than the 5 dB rate that FRA proposed and now adopts. The issue, however, is not as clear as the commenters suggest. There are two major approaches that have been taken in attempts to develop a simple scheme for determining the appropriate level of protection: the equal-energy approach and the equal-TTS approach. “The equal-energy approach is an example of attempts to equate exposures on the basis of their physical characteristics directly, while the equal-TTS method is based on an assumed correlation between permanent and temporary effects of noise exposure.”²⁸

The equal energy approach “makes the assumption that damage depends only on the daily amount of A-weighted sound energy that enters the ear of the worker, and that the temporal pattern during the day is irrelevant.”²⁹ This approach ultimately leads to the “3 dB rule,” which is that one should reduce the permissible time of exposure by half for every 3 dB increase in dose level. Thus, the argument for a 3 dB exchange rate assumes that since 3 dB represents a doubling in the acoustical energy, it also represents a doubling of the damage risk based on the daily exposure rate. However, this is not necessarily true. A doubling in energy does not necessarily represent a doubling of the damage risk, because there is a serious shortcoming with this theory. This theory only applies to single steady uninterrupted exposures. This theory does not account well for exposures to noise environments where the noise levels vary widely in intensity and throughout the work shift. Where exposures vary widely in intensity and over time, there is an opportunity for some auditory recovery and so the damage risk is not

equivalent to exposures to steady state noise. The second theory is the equal-TTS theory. It “is based on the hypothesis that daily exposures that produce the same temporary effects will eventually produce the same permanent effects.”³⁰ This theory does not have the same problem as the equal-energy theory, for it does not make the mistake of ignoring temporal patterns.

Neither of these approaches, however, are well-suited for the locomotive cab noise environment. FRA experience has shown that exposures for crews of older and relatively “noisy” locomotive cabs are a mixture of periods of generally steady state noise at low to medium levels (80–90 dB(A)) interspersed with short periods with high noise levels (e.g., horn blowing, operations through tunnels and underpasses, and other relatively short term events). Given that crew exposures vary in intensity and over time, the equal energy approach (which ignores these temporal patterns) is not appropriate. As for the equal-TTS approach, it might be a seemingly more accurate method of assessing damage risk, but it is not suitable for regulatory compliance purposes, because its criteria are extremely complicated to apply.

During the development of the OSHA HCA, OSHA was likewise faced with the practical reality of these approaches. OSHA wanted a simplified approach to establishing an equivalent exposure, but one that would account for the intermittence of exposures inherent in many occupational noise settings. Accordingly, OSHA came up with the 5 dB exchange rate. They “decided that the best way to take into account the reduction of hazard associated with intermittence was to use a trading relation of 5 dB per halving of exposure time.”³¹ FRA, like OSHA, believes that the 5 dB exchange rate is the most appropriate one to use at this time.

Second, FRA does not feel comfortable changing the triggering criteria, since it would be a radical departure from the existing leading federal regulation on occupational noise exposure. The leading federal regulatory authority for occupational hearing loss is OSHA, and the leading federal regulation on occupational noise exposure is OSHA’s general industry standard. See 29 CFR 1910.95. The current OSHA permissible exposure limit, action level, and exchange rate are the same as those that FRA is using in this final rule. During this rulemaking proceeding, FRA sent a letter dated January 11, 2005 to OSHA and asked

whether OSHA’s position had changed since the issuance of the HCA and whether OSHA had any plans in the near future to modify its exchange rate. In referring to scientific and technical issues including the exchange rate, OSHA replied in a March 16, 2005 letter that “OSHA has not re-addressed these issues since [the issuance of the HCA] and our position remains essentially unchanged.” (Copies of the letters are included in the docket). In addition, FRA notes that in a 1999 rulemaking, MSHA adopted hearing conservation requirements for miners, using the same limits and exchange rate as OSHA. See 64 FR 49548 (September 13, 1999).

Third, FRA notes that the data supported by several of the commenters (to support a 3 dB exchange rate) fails to take into account the actual nature of employee exposure. Studies cited in the comments (that compare the risk of hearing loss over time based on the level of the employee’s noise exposure) presume that employees experience these exposures without any protective measures. That is not necessarily true. Employees who are included in a hearing conservation program are presumably educated about the risk of noise, have been offered HP at certain noise levels, and have been required to wear HP at certain levels. Thus, employees in a HCP are a “protected” population and their hearing loss will be less than that of the “unprotected populations” (that are cited in the studies). And so the risk of hearing loss with a 5 dB exchange rate is not as high as commenters suggest.

Fourth, even if FRA were to accept the argument that the 3 dB exchange rate is more protective and appropriate for the noise experienced by locomotive crews, FRA cannot adopt the lower limit given the implications that would result. While the railroads are subject to FRA’s noise standard for their noise-exposed employees in the locomotive cab, railroads are subject to OSHA’s noise standard for noise-exposed employees in areas outside of the locomotive cab. See § 227.101. If FRA adopted a 3 dB exchange rate and OSHA continued with its 5 dB exchange rate, railroads would have to comply with two different regulatory criteria for their employees. That would be overly burdensome, difficult, and costly. For example, it would most likely substantially increase the railroad’s recordkeeping burden and the railroad’s cost for medical services. There are limits to what technology permits and what the regulated industry can afford. FRA would be pushing those limits by imposing the 3 dB exchange rate.

²⁸ Berger, E.H. (2000). “Auditory and Non-auditory Effects of Noise” in *The Noise Manual*, 5th Edition, edited by E.H. Berger, L.H. Royster, J.D. Royster, D.P. Driscoll, and M. Layne, Am. Ind. Hyg. Assoc., Fairfax, VA, 137.

²⁹ Berger, E.H. (2000). “Auditory and Non-auditory Effects of Noise” in *The Noise Manual*, 5th Edition, edited by E.H. Berger, L.H. Royster, J.D. Royster, D.P. Driscoll, and M. Layne, Am. Ind. Hyg. Assoc., Fairfax, VA, 137.

³⁰ *Id.* at 138.

³¹ *Id.* at 139.

Fifth, the use of the 3 dB exchange rate is not as widespread as some commenters suggest. FRA believes there is a marked distinction between professional organizations that *recommend* a 3 dB exchange rate and Federal agencies that actually *enforce* a 3 dB exchange rate on a regulated community. Most of the entities that recommend the use of the 3 dB exchange rate are professional organizations like NIOSH, ACGIH, NHCA, ASHA, and the American Academy of Audiology (AAA), as well as standards organizations like ANSI and ISO. Few Federal regulatory agencies actually enforce a 3 dB exchange rate standard on a regulated community. OSHA and MSHA use a 5 dB exchange rate. DOD is one of the few federal agencies that has a 3 dB exchange rate, but even DOD is in a unique position, for they have internal guidelines, as opposed to regulations in the Code of Federal Regulations. (In addition, the Air Force is an especially unique situation since the Air Force's employees face unusually high noise levels, and so the 3 dB exchange rate is warranted). For the reasons listed above, FRA believes that the adopted triggering criteria is the best approach currently available to achieve the regulatory and occupational health objectives of this rule. Accordingly, in this final rule, FRA is using the same triggering criteria as proposed in the NPRM.

E. Weighting Filter

FRA used the A-weighted scale throughout the proposed rule. FRA explicitly acknowledges its use in § 227.105(a), where FRA writes "A railroad shall provide appropriate protection for its employees who are exposed to noise that exceeds the limits of those shown in Table 1 of this section, as measured on the dB(A) scale as set forth in Appendix A of this part." (A weighting filter is an electronic device in the sound measuring instrument that changes the way the instrument detects the intensity of different frequencies of sound. The A-weighting filter is designed to approximate the sensitivity of the human ear to the different sound frequencies.) Two commenters, Cooper Tire and an individual railroad employee, suggested that FRA should use the C-weighted scale instead of the A-weighted scale.

Cooper Tire asserts that the A-weighting scale is not appropriate for the locomotive cab noise environment. Cooper Tire explains that the noise generated by a locomotive is radically different than the noise found in other industrial environments (i.e., of a lower

frequency), and so FRA should use a weighting scale that appropriately measures low-frequency noise (i.e., the C-weighted scale). Cooper Tire explains that "A-weighted noise measurements filter out low-frequency noise content characteristic of locomotive noise prior to the noise measurement, giving an artificially low measure of an environment's likelihood of causing harm to the locomotive employee." By contrast, Cooper Tire believes that the C-weighted scale will better measure the low-frequency noise and thus "will afford railroad workers better protection against the negative hearing and health effects that low frequency noise can cause." Similarly, an individual BLET member submitted comments, requesting that FRA use a C-scale instead of an A-scale in order to better measure low frequency noise.

Consistent with its position in the proposed rule and OSHA's position in its general industry standard, FRA will require railroads to use the A-weighted scale for measuring occupational noise in the workplace. Not only is the A-weighted scale the most appropriate weighing filter for this purpose, but it is also the most widely accepted.

According to the AIHA Noise Manual, "As a result of investigations in which a variety of weighing filters have been compared, it has been concluded that empirically derived measures using A-weighting gives a better estimation of the threat to hearing * * * than do the other weightings. Because of simplicity and substantiated results, A-weighting has continued to receive wide acceptance."³² The Working Group members agreed with this position, as does FRA. Accordingly, FRA has not changed the weighting scale it uses in this rule.

F. Electronic Communication Headsets

During pre-NPRM Working Group meetings, the matter of electronic communication headsets generated extensive discussions. Railroad representatives strongly disfavor the use of these devices. They maintain that they are ineffective and have gained poor acceptance by crews. They also assert that it is expensive for them to purchase such devices and to apply the necessary wiring to locomotives to use them. Labor representatives, in response, agree that these devices have gained poor acceptance by crews, but assert that the poor acceptance is due to

the conditions of their use, i.e., non-temperature controlled locomotive cabs make for a warm cab environment with the resulting heat build-up under the headsets causing discomfort. Labor representatives believe that these hearing protection devices enhance communication and that crews would more widely and readily accept these devices if the circumstances of their use were improved.

In the NPRM, FRA sought comment from the public on the use of different types of hearing protection, including electronic communication headsets. Several commenters, all of whom appear to be railroad operating employees, questioned why FRA did not require the railroad industry to use noise canceling headsets with built-in communication microphones. The commenters explained that the headsets work well for airline pilots, and so would probably also work well for locomotive engineers. Another commenter explained that these headsets would keep out the locomotive noise and make it easier to hear the dispatcher. Overall, these commenters felt strongly that these headsets would make a significant difference and would decrease the noise level in locomotives. One individual, in particular, wrote that "[these headsets] would not be inexpensive, but [these headsets] are worth their weight in gold in an aircraft environment and would likely be the same in a locomotive."

The AAR, however, disagreed as to the value of these headsets when used as hearing protection. The AAR noted that several of their members have had extensive experience with radio headsets and have found that their use is limited. The AAR explained that the headsets have been poorly received by most crews and that many employees found the headsets to be uncomfortable. The AAR also explained that many employees lost their headsets or left them at home. The consensus of the AAR members is that "the disadvantages and cost of radio headsets far outweigh any benefits they might offer."

FRA considered this issue and decided to leave this provision the same as in the proposed rule. As noted above, the Working Group had discussed this issue at length in past meetings and reached the same conclusion. Absent any new information or justification to support a change, neither FRA nor the Working Group saw any reason to change its position. FRA thinks, at this time, that it is most appropriate that FRA allow the use of the electronic headset technology but not require it.

³² Earshen, John J. (2000). "Sound Measurement: Instrumentation and Noise Descriptors" in The Noise Manual, edited by Elliott H. Berger, Larry H. Royster, Dennis P. Driscoll, Julia Doswell Royster, and Martha Lane, American Industrial Hygiene Association, 54.

FRA has previously examined the issue of temperature control in locomotive cabs and came to the conclusion that it was not possible to mandate use of air conditioning during hot periods of the year. In reporting these findings to the RSAC, FRA did call attention to the importance of temperature control and urge railroads to include full temperature control in its specifications for new locomotives and to maintain the systems in service. Absent firm requirements that temperature control be provided, and given the long hours that employees work in the cab setting, FRA agrees it is not practical to require use of headsets in the normal course of business.³³

In sum, FRA will not require a railroad to offer electronic (or radio) communication headsets (wired or wireless), however FRA does not intend to discourage railroads from using this technology. Railroads are welcome to use this technology if they so wish. Of course, if a railroad elects to accommodate an employee with hearing loss by providing that employee with an electronic headset, the railroad would also need to provide the other regularly assigned crew members with compatible equipment. Because of the safety need attendant to good intra-crew communication, this is an accommodation that would be particularly appropriate where one member of the crew has known hearing loss and the locomotive is an older model known to have significant background noise. In this case, all crew members should cooperate in utilization of the technology. As a related aside, FRA notes that, with respect to crew members with documented hearing loss, this rule does not vary or add to the railroad's duties under the Americans with Disabilities Act.

G. Location of the Train Horn

Several individual commenters, all railroad employees, expressed concern about the location of the train horn. One commenter asserted that the location of the train horn was unsafe with respect to hearing protection for personnel on the train. Another commenter suggested that railroads with cab-roof-mounted horns should relocate their horns to the back of the cab on the engine compartment hood. This commenter also stated that cab-mounted horns create a greater safety risk, because they reduce the communication between the engineer and conductor in the cab and

because they decrease the crew's ability to hear the radio. Yet another asserted that the "biggest cause of cab noise [is] the horns mounted on top of the locomotive cab on all the older engines" and recommended that the new rule "include mandatory relocation of the roof mounted horns to the long hood area where all new locomotive horns are mounted."

FRA has a long history of working with the railroad industry on the issue of locomotive horn noise, both in the context of locomotive cab working conditions and of unwanted noise in communities through which active railroad lines pass. FRA has addressed train horn issues in depth through the rulemaking proceedings for its Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings ("Train Horn Rule.")³⁴ The issues ranged from setting maximum horn sound output levels to limiting horn sound (emanating to the side of the locomotive) to relocating the horn on locomotives. In order to fully consider these issues, FRA held a Technical Conference on Locomotive Horns during the comment period to the NPRM (for the Train Horn Rule), conducted tests through the Volpe National Transportation Systems Center, and reviewed the results of Transport Canada tests.

Research in support of the Train Horn Rule confirmed that placing the horn in the middle of the locomotive results in the need to have louder output from the source in order to achieve adequate warning to motorists, which, in turn, causes concern in communities along the rail line. However, the placement of the horn in the middle of the locomotive clearly reduces the impact on crews. Research conducted in Canada suggests that front-mounted horns may be more effective (than center-mounted horns) in providing warning under dynamic conditions.

In the Train Horn Rule, FRA decided not to mandate the relocation of the train horn. FRA explained that further research would be necessary before making any further regulatory changes. FRA continues to research these issues. For purposes of this rulemaking, the issue is whether employee hearing is adequately protected. The provisions of this rule will achieve that result. Accordingly, FRA, with the agreement of the RSAC Working Group, is not mandating that railroads locate the train horn in any particular location.

H. FRA Report to Congress

In the NPRM, FRA discussed the noise chapter of its 1996 Report to Congress.³⁵ The AAR commented on the data relied upon for the Report to Congress. The AAR asserted that there were problems with that data, that is "that FRA made time weighted measurements using an eight hour metric, but then reported the results as a percent of dose using a twelve hour metric as a reference. This resulted in overstating the percentage of exposures that exceeded the permissible exposure limit and also overstating the percentage of exposures that exceeded the OSHA threshold for hearing conservation programs." The AAR believes that it "could lead to overestimating the degree to which train crews are exposed to sound levels."

The AAR noted that FRA had acknowledged in the preamble discussion to the NPRM that the Report to Congress was "not rigorous." However, the AAR wants FRA to publicly correct the averages and percentages in the Report to Congress that were affected by these errors. The information that FRA endeavored to summarize in the Report is now more than a decade old and could not, even if drawn from a representative sample of assignments (which it was not), and even if re-characterized as AAR suggests, be used to describe current industry conditions in any quantitative way. However, the Report to Congress provides data supporting the proposition that excessive noise doses are possible in the worst of the older locomotives. And, industry representatives themselves pointed out during RSAC Working Group deliberations that occasional excessive doses are possible in new locomotives under challenging conditions of operations (e.g., windows open, many grade crossings, heavy loading). Industry noise monitoring has confirmed these points (see data reported in Appendix C to the Regulatory Impact Analysis for this final rule), and all parties agree that a hearing conservation approach is warranted to address potential exposures. Accordingly, FRA, having responded repeatedly and candidly to criticisms of the Report, sees no purpose relevant to this rulemaking for revisiting the details of the Report.

I. Regulatory Impact Analysis

The doseBusters Company submitted comments on the Regulatory Impact Analysis (RIA) that FRA prepared to

³³ See Pilcher, J., Nadler, E., and Busch, C., "Effects of Hot and Cold Temperature Exposure on Performance: A Meta-Analytic Review," *Ergonomics*, vol. 45, no. 10, 682-688.

³⁴ See FRA Docket No. 1999-6439, including 65 FR 2230 (January 13, 2000), 68 FR 70586 (December 18, 2003), and 70 FR 21844 (April 27, 2005).

³⁵ See 69 FR 35146, 35149 (June 23, 2004).

accompany the NPRM. FRA has responded to these comments in the final economic analysis, of which a copy can be found in the docket. FRA is addressing one comment here, however, because it is related to the reasons that FRA issued this rule and not just the RIA.

The doseBusters Company commented on Appendix C of the RIA. Appendix C of the RIA cited railroad data that FRA had reviewed before issuing the rule. A Class 1 railroad has gathered and submitted to FRA data on employee noise exposure in the locomotive cab. FRA reviewed that data, as described in Appendix C to the RIA. The doseBusters Company felt that the data readings from the dosimeter were flawed because of the placement of the dosimeter microphones during testing (*i.e.*, the microphones were placed at different locations—at the collar lapel, ball cap, or shoulder). The doseBusters Company asserted that using different microphone locations could cause substantial errors in the data.

The doseBusters Company also disagreed with FRA's conclusions from the testing about the risk of NIHL. The doseBusters Company stated that the results from the noise sampling represented the average number of workers overexposed to noise on any particular day, not the actual number of workers that may be overexposed over time. The doseBusters Company explained that, based on similar exposure data that they collected on underground coal miners, they estimate that nearly twice the number of railroad workers (than FRA identifies) are overexposed to noise.

FRA does not believe that the dosimeter data is flawed, and FRA believes that it can rely on this data which it received from a Class 1 railroad. FRA believes that the primary objective of this data collection was met placing the microphone near the employee's ear. It is widely accepted that, as long as the dosimeter microphone is located in the employee's hearing sphere (*i.e.*, a sphere with a two-foot diameter surrounding the head),³⁶ the tester will get a reasonable representation of the employee's noise exposure. In addition, FRA notes that this data was collected from field surveys, not a controlled laboratory study. As such, small variations in the microphone testing location may be expected. FRA also notes that, out of 512 valid samples, 17 samples included

a comment about the microphone location. In addition, no structural errors were observed in the data. As the variance in microphone location appears to be small from the comments, the error introduced by this variance is likely to be small as well. A small amount of error would not invalidate the study results.

The data displayed in the two tables in Appendix C to the RIA, *Locomotive Cab TWA(80) Measurements* and *Locomotive Cab TWA(90) Measurements*, were a simple count of the number of employees that fell below or above the OSHA standards. The TWA or number of employees was not arithmetically averaged. FRA agrees that a longitudinal study would have provided additional information on which employees were overexposed to noise and how their noise exposure changed over time. FRA notes that no new data was gathered for the analysis in Appendix C; rather, a previously-conducted study provided a cost effective source of data. FRA feels that the data review provides a good indication of the number of employees overexposed to noise in those environments in which the noise sampling was conducted, given that railroad routes and schedules tend to stay fairly constant. With similar work activities performed over time, the noise exposure can be expected to approximate the noise exposure measured in the study.

Without further information, FRA is uncertain whether the coal mining example cited by the doseBusters Company applies to the railroading environment. There are likely many differences between the coal mining environment and the railroading environment. For example, the noise sources, noise duration, sound frequencies, and reflective characteristics of the surroundings may all be different. Although FRA finds the coal mining comparison to be interesting anecdotally, there is no information presented that indicates how noise exposure in an underground coal mine correlates with noise exposure in a railroad cab.

V. Section-by-Section Analysis

This section-by-section analysis explains the provisions of the final rule. A number of the issues and provisions of the final rule have been discussed and addressed in the preceding discussions. Accordingly, the preceding discussions should be considered in conjunction with those below and will be referred to as appropriate.

Part 227—Occupational Noise Exposure

Subpart A—General

Section 227.1 Purpose and Scope

This section identifies the purpose and scope of this part. This is a general provision. Section 227.1(a) provides that the purpose of this part is to protect the occupational health and safety of employees involved in specified railroad activities and/or operations. More specifically stated, the purpose of this part is to protect the hearing of individuals who experience their primary noise exposure in the locomotive cab. Hearing loss occurs cumulatively over time and thus, the purpose of this rule is to protect individuals over the span of their railroad career. Section 227.1(b) states that this part prescribes minimum Federal health and safety noise standards for locomotive cab occupants.

FRA did not receive any comments on this section, and so FRA did not make any changes based on public comments or RSAC Working Group discussions. However, FRA did make a few minor changes in order to clarify this section. FRA revised the language in § 227.1(b) to reflect the fact that the rule provides “noise standards for locomotive cab occupants,” not general “health and safety standards for specified workplace safety subjects.”

Section 227.3 Application

This section identifies the applicability of this part and states that part 227 will apply to all railroads and contractors to railroads. This section identifies five exceptions. First, this part will not apply to railroads that operate only on track inside an installation that is not part of the general railroad system of transportation. Second, this part will not apply to rapid transit operations in an urban area that are not connected to the general railroad system of transportation. Aside from the exception noted below, this part will apply to rapid transit operations in an urban area that are connected to the general railroad system.

Third, this part will not apply to rapid transit (light rail) operations in an urban area that are connected to the general system and operate under a shared use waiver. This exception is a departure from the proposed rule, and one that was decided upon after the RSAC consensus. These operations are provided using electrical powered or diesel powered light rail vehicles. Most of these systems operate as street-running trolleys and over track segments shared with conventional railroads using the approach referred to

³⁶This definition comes from Appendix III(A), “Instruments Used to Conduct a Noise Survey” of OSHA's Technical Manual. See <http://www.osha.gov/dts/osta/otm/noise/exposure/instrumentation.html#dosimeter>.

as temporal separation. FRA has attempted to maintain consistency in sorting out those matters that FRA should regulate (because of interface with conventional railroads) and those that the Federal Transit Administration should regulate (under their State Safety Oversight program). FRA has used the waiver process to implement this arrangement, following the general principles set forth in FRA's relevant policy statements. See 49 CFR part 209, Appendix A "Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws" and 49 CFR part 211, Appendix A "Statement of Agency Policy Concerning Waivers Related to Shared Use Trackage or Rights-of-Way by Light Rail and Conventional Operations."

With the passage of time, FRA and the affected transit authorities have found this complex of issues increasingly unwieldy. FRA believes that where FRA is issuing or revising a regulation, matters are greatly simplified both for the regulated entity and for FRA, if FRA provides for appropriate exceptions outright. This is such a case. Light rail operations are typically conducted using equipment designed for passenger and operator comfort, and FRA has received no information that any shared use light rail operation is affected by a serious noise exposure problem. Further, to the extent a transit authority needs to address hearing conservation issues among its employees, there is no reason to single out just the employees operating on the general rail system. Finally, from a practical standpoint, most shared use operations involve line segments not under FRA jurisdiction, and it would make no sense to bifurcate hearing conservation between the time the trolley operator is on the shared use segment and the time the trolley operator is on the street running segment. Accordingly, FRA has provided for an appropriate exception in this final rule.

Fourth, this part will not apply to railroads that operate tourist, scenic, historic, or excursion operations, whether they are on or off the general railroad system of transportation. The term "tourist, scenic, historic, or excursion operations" is defined in § 227.5 to mean "railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose." Congress has directed that, in issuing safety rules, FRA take into account the unique financial, operational, and other factors that may apply to such railroads. 49 U.S.C. 20103(f). For those operations,

FRA has considered that they are often seasonal and generally use older or historic equipment.

In the NPRM, FRA solicited public comment on how to handle the employees covered in these types of operations but did not receive any comments. FRA has no evidence that employees and volunteers providing this service are at serious risk of hearing loss. Accordingly, FRA will continue to exempt these operations from this regulation. FRA notes, however, that operations utilizing steam locomotives with extended duty periods for locomotive engineers and firemen should make vigorous use of hearing protection to reduce crew doses to acceptable levels.

Fifth, this part will not apply to certain foreign railroad operations. Specifically, it will not apply to operations where employees of foreign railroads have a primary reporting point outside the U.S. but are operating in the U.S., and they satisfy the following requirements: (1) The government of the country in which the foreign railroad is based must have established requirements for hearing conservation for railroad employees in that jurisdiction; (2) the foreign railroad must undertake to comply with those requirements while operating within the U.S.; and (3) the Associate Administrator for Safety must determine that the foreign government requirements are consistent with the purpose and scope of part 227. A "foreign railroad" refers to a railroad that is incorporated in a place outside the United States and is operated out of a foreign country but operates for some distance in the U.S. (e.g., Canadian National Railroad). Employees excepted from application would be those employees of a foreign railroad whose primary reporting point is in Canada and Mexico.

The Associate Administrator's evaluation and determination would only be made at the request of the foreign railroad. As a practical matter, this evaluation could be accomplished at the request of an association of foreign railroads (e.g., the Railway Association of Canada), and the exception would then be available to all railroads of that country entering the U.S.

The Associate Administrator will determine whether the foreign government's requirements are consistent with the purpose and scope of this part, specifically that the purpose of the foreign government's requirements are "to protect the occupational health and safety of employees whose predominant noise

exposure occurs in the locomotive cab." This standard does not require a finding of equivalence in terms of program effectiveness, because making such a finding would require an estimation of incremental hearing loss over the working life of specific populations and that is scientifically impracticable. Further, more important than precise equivalence is the integrity of each of the North American governments' programs. Employees and program managers need to know what rules apply and need to be able to carry out those programs without the confusion that would be inherent in changing the rules at international boundaries. FRA will request similar treatment of U.S. railroads operating into Canada and Mexico, in order to achieve the goal of harmonization.

FRA did not receive any comments on this section, and so FRA did not make any changes based on public comments or RSAC Working Group discussions. However, FRA did make two minor changes on its own. FRA realized that it had failed to state in § 227.3(a) that the rule covers contractors in addition to railroads. While the preamble to the NPRM included such a statement,³⁷ the regulatory text did not. The regulatory text now indicates that this rule covers railroad contractors. FRA also realized that there was a drafting inconsistency in § 227.3(b)(4) and corrected it. In order to provide for consistency within the section, FRA started § 227.3(b)(4) with the term "railroad operations" instead of the term "employees."³⁸

Section 227.5 Definitions

This section contains definitions for key terms. The definitions are set forth alphabetically. FRA intends these definitions to clarify the meaning of terms as they are used in the text of the final rule.

Many of these definitions have been taken from the standards issued by OSHA and MSHA and the recommendations issued by NIOSH and the American Conference of Governmental Industrial Hygienists (ACGIH). These are definitions that are widely used by noise professionals. This includes definitions such as "Audiologist," "Decibel," "dB(A)," "Hertz," "Medical Pathology," and "Otolaryngologist." This section also contains some basic definitions that are standard to several of FRA's regulations. This includes definitions such as

³⁷ See 69 FR 35157.

³⁸ The language in the NPRM had provided: "This part does not apply to * * * Employees of a foreign railroad whose primary reporting point is outside the U.S. while operating trains or conducting switching operations in the U.S., if * * *"

“Administrator,” “FRA,” “Person,” “Railroad,” and “Tourist, scenic, historic, or excursion operations.” Several of the definitions, however, are new or fundamental concepts that are discussed below.

The term “Action Level” has been revised since the proposed rule. FRA, with the agreement of the RSAC, changed the upper limit for noise measurements from 130 dB(A) to 140 dB(A). FRA also made this change in § 227.103(c)(1). See § 227.103(c)(1) for a discussion of the revision.

The term “Audiogram” has been added to the final rule. The Council for Accreditation in Occupational Hearing Conservation (CAOHC) and AAA recommended that FRA add this definition. Since FRA uses this term throughout the rule, FRA decided, and the RSAC Working Group agreed, that it is appropriate for FRA to provide a definition.

The term “Audiologist” has been revised from the proposed rule. Several commenters suggested that FRA revise the definition, and most suggested alternative definitions. ASHA suggested a revised definition and explained it would be consistent with that contained in ASHA’s Scope of Practice in Audiology (2004). An individual commenter suggested an almost identical definition, except that it contained a different certification and licensing requirement. AAA also submitted a revised definition, explaining that their recommended definition came from the Social Security Act³⁹ and by using it, FRA would foster uniformity among Federal health programs. Finally, an individual ASHA member requested that FRA ensure that the audiologists are fully educated and trained. In particular, she suggested that an audiologist should have at least a master’s degree (or Ph.D. or Au.D), experience and training in hearing conservation, and certification from a national organization (and state licensure).

RSAC Working Group members expressed concerns about certain aspects of the comments. One member was concerned that it might be unreasonable to expect audiologists to have masters or doctoral degrees, however the other members pointed out that the vast majority of audiologists already have either masters or doctoral degrees. Another member was concerned about linking audiologist certification to a single organization. (In the NPRM, FRA had required ASHA certification for audiologists). Members were concerned that this might present

problems if that organization went out of existence or if a new licensing organization was created. As a result, the Working Group members decided not to link licensing to any one organization.

In addition, one railroad representative explained that he had reservations about AAA’s recommendation that the audiologist be licensed in the state in which the audiologist furnishes service. The railroad representative explained that since railroads operate through several states, railroad audiologists will provide services in many states. It would be impracticable to expect railroad audiologists to become licensed in each state in which the railroad operates. FRA agrees that it would be impracticable to impose such a burden on railroads, and thus FRA did not adopt AAA’s recommendation. OSHA’s rule did not require licensure in the state in which the audiologist furnishes service. FRA also does not have such a requirement. Moreover, FRA does not expect that this will present any problems. As a general matter, FRA expects that audiologists will perform broad duties associated with the hearing conservation program. Presumably, the audiologist will perform such duties from the state in which the railroad is headquartered and where the audiologist is licensed. Furthermore, FRA’s experience has indicated that most railroad audiometric testing tends to be conducted by contractor technicians hired by the railroad. As such, audiologists are unlikely to travel into the field in mobile vans (i.e., potentially other states) and provide audiological services.

As a related matter, one Working Group member suggested that FRA remove the provision in the second half the definition of audiologist, which sets the parameters for states which do not license audiologists. The Task Force member asserted that the provision was unnecessary, since the revised rule only requires audiologists to be licensed in any one state, and so therefore there was no need to make provisions for states without audiologist licensing requirements. The Task Force, as a whole, however, decided that removing this provision could create a problem for shortlines. A shortline operating in only one state which did not have licensing requirements for audiologists might have difficulty finding audiologists. With the provision removed, the rule would require audiologists to have a state license, and yet if the state didn’t require audiologists to get licensed, it would be likely that most, if not all, the

audiologists near the shortline operations would not have state licenses. Accordingly, FRA decided to retain in the definition of audiologist a provision for states which do not license audiologists.

The definition in the final rule is a hybrid of the above recommendations. It combines the description of the tasks from the ASHA (i.e., “a professional who provides comprehensive diagnostic and treatment/rehabilitative services for auditory, vestibular, and related impairments”) with the qualification requirements from AAA (i.e., requires (1) a masters or doctoral degree and (2) a state license or alternate state certification). (Note also that FRA has formatted the qualification requirements slightly different than AAA.) This hybrid definition addresses both commenters’ concerns that audiologists are adequately qualified, as well as Working Group members’ concerns that railroads are able to comply with the rule.

The term “Audiometry” has been added to the final rule. The Council for Accreditation in Occupational Hearing Conservation (CAOHC) and AAA recommended that FRA add this definition. Since FRA uses this term throughout the rule, FRA decided, and the RSAC Working Group agreed, that it is appropriate for FRA to provide a definition.

The term “Continuous Noise” is intended to clarify the use of the word in § 227.105. The term is used in OSHA’s standard,⁴⁰ though OSHA does not include a definition in its definition section. FRA decided to add a definition for the sake of clarity.

The term “Employee” refers to individuals engaged or compensated by a railroad, as well as to contractors to a railroad. One of FRA’s objectives in covering contractors is to promulgate standards that are applicable to all those individuals that are exposed to the specified levels of locomotive cab noise. Whether an individual is paid by a railroad or a contractor is irrelevant. The most important issue is preventing hearing loss. FRA holds no position on the practice of a railroad contracting work out to another company, but FRA strongly believes that contract employees are entitled to the same level of safety as railroad employees. To the extent that contract employees work under the circumstances presenting the noise hazards addressed in this regulation, those contractors must be protected.

The term “Exchange Rate” refers to the change in sound levels which would

³⁹ See 42 U.S.C. 1395x(l)(3)(b).

⁴⁰ See 29 CFR § 1910.95(b)(2).

require halving or doubling the allowable exposure time to maintain the same noise dose. FRA has set the exchange rate for this regulation at 5 dB. As previously discussed, both OSHA and MSHA also use a 5 dB exchange rate. Regarding this definition and the definition of "Time-Weighted Average," several commenters suggested that FRA instead adopt a 3 dB exchange rate. For a discussion of those comments, see section IV(D) above.

The term "Hearing Protector" refers to "any device or material, which is capable of being worn on the head, covering the ear canal or inserted in the ear canal; is designed wholly or in part to reduce the level of sound entering the ear; and has a scientifically accepted indicator of its noise reduction value." At the suggestion of NHCA and with the consensus of the RSAC Working Group, FRA added the words "covering the ear canal opening" after the phrase "worn on the head" and "inserted" before "in the ear canal." FRA believes that these words make the definition more clear.

In the NPRM, FRA sought comment on inclusion of the phrase "has a scientifically accepted indicator of its noise reduction value." The RSAC Working Group had discussed this phrase during the proposed rule stage and had considered several variations. Certain Working Group members had, at one point, thought the phrase was too general and provided too much leeway. They wanted that phrase replaced with a requirement to use a specific indicator, the Noise Reduction Rating (NRR). FRA sought comment from the public, asking whether FRA should use a general description for an indicator, the NRR, or some other specific indicator.

A few commenters, including Aearo Company, ASHA, and Theresa Schulz, responded to FRA's request for comments, explaining that they felt that the phrase was too vague. Aearo Company and ASHA suggested that FRA should mandate the use a specific rating(s) for enforcing hearing protector attenuation and include that rating(s) in this definition. They noted that there were several options, including NRR, NRR (SF), and Method B, though did not assert a preference for any individual one. Similarly, Theresa Schulz noted that there are new products and testing methods, including Fit Testing, Method B and Predicted Personal Attenuation Rating (P-PAR), that have been accepted scientifically and that provide real-world testing of attenuation.

The AAR also responded to FRA's request for comments, noting its support for the proposed definition of HP. The

AAR wrote that railroads should not be limited to the NRR for evaluating HP attenuation, because it does not provide the flexibility to employ current science. The AAR explained that there is current technology, such as in-the-ear microphones, which measure actual attenuation, and that technology would not be available if railroads were limited only to the NRR.

The Working Group discussed these comments and expressed concern that replacing that phrase with the NRR (or any other specific indicator) would ultimately be limiting. It would prevent the industry from availing themselves of advances in science and technology. By not listing any particular indicator, FRA leaves it open for the development of new standards. This is particularly important, since the EPA is currently working to develop a new standard. Given that there are several possible indicators that FRA could use and given that there is not widespread public support for any particular one, as well as the fact that listing a particular indicator might ultimately preclude the use of new technology, FRA will not mandate the use of any particular indicator in the definition of hearing protector.

The term "Noise Operational Controls" is the functional equivalent of OSHA's term "administrative controls."⁴¹ MSHA⁴² and NIOSH⁴³ also use the term. FRA proposed the use of this term in the NPRM and has decided to retain it in this final rule.

A few commenters, including the ASHA, Theresa Schulz, and Aearo Company, recommended that FRA use the term "administrative controls" instead of "noise operational controls." They acknowledged that FRA enforces noise operational controls differently than OSHA, MSHA and NIOSH; however, they thought that FRA should use the same term as the others since the terms are functionally equivalent. The commenters explained that FRA should be consistent and uniform with other Federal agencies in order to minimize confusion. They thought that it was particularly important for FRA to be clear, since OSHA and FRA share jurisdiction over certain aspects of the rail industry. Aearo Company also felt that the term itself could be potentially confusing; a newcomer might question whether the term applies to worker schedules since those could be thought of as "noise operations."

⁴¹ See 29 CFR § 1910.95(b)(1) and 29 CFR § 1926.52(a).

⁴² See 30 CFR § 62.130.

⁴³ See www.cdc.gov/niosh/hptersms.html for NIOSH Common Hearing Loss Prevention Terms.

FRA developed the term "noise operational controls" in conjunction with the RSAC Working Group during the NPRM stage. FRA re-opened the discussion on this matter during the comment period, and FRA, with the RSAC Working Group's input, has reaffirmed its decision to use this term. FRA uses a different term to distinguish it from OSHA's term. While the definition of the two terms is identical, the application of the two terms is different. Administrative controls are mandatory in OSHA's hierarchy, whereas noise operational controls are optional in FRA's hierarchy-free scheme. FRA is using this different term to make it clear that FRA treats noise operational controls differently than the way OSHA treats administrative controls.

The term "Occasional Service" refers to service of not more than a total of 20 days with one or more assignments in a calendar year. The term is used only once in this rule in § 227.101. Theresa Schulz commented on this definition, noting that it is an "important but previously unrecognized element for a noise standard." She explained that this provision ensures that the focus of the HCP is on employees who are routinely exposed to noise and therefore at higher risk for noise-induced hearing loss.

The term "Periodic Audiogram" has been revised in the final rule. The new definition states that a periodic audiogram is "a record of follow-up audiometric testing conducted at regular intervals after the baseline audiometric test." FRA made this change in response to commenters who explained that the NPRM incorrectly referred to audiograms as something that is "done" or "conducted." CAOHC, for example, explained that an audiogram is a document or report of audiometric testing, and so it is not something that is "done" or "conducted." This new definition corrects that inaccuracy.

The term "Professional Supervisor of the Audiometric Monitoring Program" was added to the final rule. This definition arose in the context of qualifications for individuals who perform audiometric tests. See § 227.109(c) for a discussion of this term and of qualifications, in general.

The term "Qualified Technician" was added to the final rule. This definition was not a product of the RSAC consensus. FRA added this definition in order to simplify the rule. Rather than restate the definition several times in the rule, FRA states it in this definition section once and then uses the term throughout the rule. For a discussion of the comments that FRA received about

technicians, see the section-by-section analysis for § 227.109(c).

The terms “Sound Level” and “Sound Pressure Level” can be used interchangeably. The definition comes from OSHA’s regulation. See Appendix I to 29 CFR 1910.95. OSHA’s regulation, in addressing SLOW time response, referenced a now-outdated ANSI standard, S1.4–1971 (R1976). FRA updated that standard with the current standard, ANSI S1.43–1997 (R2002), “Specifications for Integrating-Averaging Sound Level Meters.”⁴⁴

The term “Time-weighted-average eight-hour (or 8-hour TWA)” includes a reference to the 5 dB exchange rate. Regarding this definition and the definition of “Exchange Rate,” several commenters suggested that FRA instead adopt a 3 dB exchange rate. For a discussion of those comments, see section IV(D) above.

Section 227.7 Preemptive Effect

This section informs the public of FRA’s intention and views on the preemptive effect of the rule. The preemptive effect of this rule is broad, as its purpose is to create a uniform national standard. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. Exceptions would be rare. In general, 49 U.S.C. 20106 will preempt any State law—whether statutory or common law—and any state regulation, rule, or order, that concerns the same subject matter as the regulations in this rule. FRA received no comments on this section and it remains the same as proposed in the NPRM.

Section 227.97 Penalties

This section identifies the civil penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21302, and 21304. This penalty provision parallels penalty provisions included in numerous other safety regulations that FRA has issued.

Any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least \$550, and not more than \$11,000, per violation. Civil penalties may be assessed against individuals only for willful violations. Where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a civil penalty not to exceed \$27,000 per violation may be assessed. In addition, each day will constitute a separate offense.

Furthermore, a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with this regulation is important in ensuring that compliance is achieved. FRA received no comments on this section and it remains the same as proposed in the NPRM.

With respect to the penalty amounts contained in this section, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act), Pub. L. 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Pub. L. 104–134, April 26, 1996, requires agencies to periodically adjust by regulation each maximum civil monetary penalty or range of minimum and maximum civil monetary penalties. By final rule effective June 28, 2004,⁴⁵ FRA adjusted its civil monetary penalties. In this final rule, FRA has included those adjusted penalty amounts.

Section 227.11 Responsibility for Compliance

This section clarifies FRA’s position that the requirements contained in this rule are applicable not only to any “railroad” subject to this part but also to any “person” (as defined in § 227.5) that performs any function required by this rule. Although various sections of the rule address the duties of a railroad, FRA intends that any person who performs any action on behalf of a railroad or any person who performs any action covered by this rule is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. FRA received no comments on this section and it remains the same as proposed in the NPRM.

Section 227.13 Waivers

This section sets forth the procedures for seeking waivers of compliance with

the requirements of this part. Requests for such waivers may be filed by any interested party. In reviewing such requests, FRA conducts investigations to determine if a deviation from the general criteria can be made without compromising or diminishing rail safety. This section is consistent with the general waiver provisions contained in other Federal regulations issued by FRA. FRA received no comments on this section and so FRA left it the same as proposed in the NPRM.

Section 227.15 Information Collection

This section notes the provisions of this part that will be submitted to the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.*

Subpart B—Occupational Noise Exposure for Railroad Operating Employees

Section 227.101 Scope and Applicability

This section identifies the individuals to whom this rule will apply. FRA did not receive any comments on this section, and so FRA did not make any changes based on public comments or RSAC discussions. However, FRA did make a few minor changes in order to clarify this section. FRA changed the name of this section, from “scope” in the NPRM to “scope and applicability” in the final rule. FRA believes that the revised name more accurately reflects the content of this section. In § 227.101(a), FRA added the words “noise-related,” to clarify that this subpart applies to noise-related working conditions, not just working conditions in general. Additionally, at the end of § 227.101(a)(1), FRA added the clause “subject to a railroad’s election in paragraph (3) of this section.” This clarifies the interplay between paragraphs (a)(1) and (a)(3) of this section. FRA believes these changes make the rule more clear and accurate.

Section 227.101(a)(1) provides that this rule covers employees who regularly perform service subject to the provisions of the hours of service law governing “train employees.” See 49 U.S.C. 21101(5) and 21103. This refers to employees who are engaged in functions traditionally associated with train, engine, and yard service; for example, engineers, conductors, brakemen, switchmen, and firemen. In general, these employees encounter their predominant occupational noise exposure in the locomotive cab, and therefore, FRA plans to appropriately tailor the noise monitoring and noise

⁴⁴ For a general discussion on the use of ANSI standards in this rule, see the section-by-section analysis for § 227.103(c)(2).

⁴⁵ See 69 FR 30591 (May 28, 2004).

testing programs in this section to address the exposure that these employees experience.

With respect to the term “regularly” in § 227.101(a)(1), FRA intends to cover individuals who perform some level of work in a locomotive cab. In making this assessment, the railroad should consider an employee’s work over the period of a year. FRA would like railroads to think about how they use their workforces, i.e., take a serious look at the work that their employees perform, determine which employees will experience potentially hazardous noise exposure in the cab, and then place those employees in a hearing conservation program.

Given the nature of the railroad industry, FRA is aware that some of these employees may not always experience their predominant noise exposure in the cab. Due to longstanding labor practices in the railroad industry concerning seniority privileges and concerning the ability of railroad employees to bid for different work assignments, these railroad employees are likely to change jobs frequently and to work for extended periods of time on assignments that involve duties outside the cab. For example, an employee might start the year in a job that involves mostly outside-the-cab work, spend three months working primarily inside the cab, and then return to outside-the-cab work for the rest of the year. In this type of situation, FRA’s regulations can govern the noise exposure of this employee throughout the year despite the fact that the employee only spent three months inside the cab. This employee can be covered by FRA’s regulations, because he spent time, no matter how little, in a locomotive cab.

Under an alternative scope provision that the RSAC Working Group considered at the NPRM stage, OSHA’s regulations would have applied to these employees when they were outside the cab, and FRA’s regulations would have applied to these employees when they were inside the cab. The employee would have had to switch back and forth between OSHA’s and FRA’s hearing conservation programs throughout the year. FRA believes this would have been both illogical and unworkable.

This section identifies groups of employees to whom this subpart does not apply. This rule will not extend to employees who occasionally and briefly enter the cab. That includes employees who move equipment only within the confines of locomotive repair or servicing areas protected by blue signals (see § 227.101(a)(1)(i)) or who move

locomotives for distances of less than 100 feet for inspection or maintenance purposes (see § 227.101(a)(1)(ii)). The job assignments of these employees usually involve consistent and significant work outside the cab, such as moving about on the shop floor, working on the ground to connect the air hoses and MU cable for locomotives, and performing locomotive servicing (e.g., sanding or fueling). This is why these types of employees are being excepted from FRA’s regulation. Increasingly, however, inside hostling duties are commingled with other mechanical duties involving major additional sources of noise exposure. These employees would remain under the authority of OSHA with respect to occupational noise exposure, unless the railroad elected to place them in the FRA program based upon their expected mix of assignments. (See § 227.103).

In addition, this rule will not extend to contractors who operate historic equipment in occasional service, as long as those contractors have been provided with hearing protection and are required to use the hearing protection while operating the historic equipment. (See § 227.101(a)(1)(iii)). Although these contractors will not be in the railroad’s HCP, it is still important that they use HP, because they will be working in noisy environments (e.g., historic locomotives). Occasional service is defined in § 227.5 and refers to service of not more than a total of 20 days with one or more assignments in a calendar year. This exception will apply to all members of the crew responsible for operating the train. That includes, but is not limited to, engineers, conductors, firemen, and brakemen. When originally raised, this exception contemplated service only on steam locomotives; however, FRA instead used the term “historic equipment,” thereby encompassing in the definition diesel locomotives and other antiquated equipment typically used in tourist and scenic operations, in addition to steam locomotives.

FRA added this historic equipment exception as a result of a Working Group member’s comment during a pre-NPRM meeting. The member explained that a railroad will occasionally hire a contractor with special expertise to operate a steam locomotive for one or two days as part of a special excursion operation. The member was concerned that the railroad would have to place those temporary, contract employees in a hearing conservation program. At the recommendation of the Working Group, FRA decided to include this exception. Pursuant to this provision, those contractors are exempted, because they

provide limited service and thus will have limited exposure to noise in a locomotive cab. Railroads should note, however, that this provision will not exempt regular railroad employees who happen to perform this occasional service on historic equipment.

FRA realizes that earlier provisions in this rule have discussed historic operations. In particular, § 227.3(b)(3) excludes from this part railroads that perform historic operations. Despite the apparent similarity, these provisions are different. The earlier provision excludes railroads that operate, among other things, historic operations, while this provision excludes contract employees who work for a freight railroad (such as Union Pacific Railroad or CSX Railroad) operating tourist, scenic, and excursion equipment.

Section 227.101(a)(2) provides that this rule covers any direct supervisor of the persons described in § 227.101(a)(1) whose duties require frequent work in the locomotive cab.

Section 227.101(a)(3) provides that this rule covers, at the election of the railroad, any other person whose duties require frequent work in the locomotive cab and whose primary noise exposure is reasonably expected to be experienced in the cab, if the position occupied by such person is designated in writing by the railroad, as required by § 227.121(d). Note that, pursuant to § 227.101(a)(3), a railroad can elect to cover an employee that would otherwise be excluded by §§ 227.101(a)(1).

Section 227.101(b) provides that all other railroad employees who are exposed to noise hazards but are outside the scope of this regulation will continue to be covered by OSHA’s noise standard, which is located at 29 CFR 1910.95. The MTA/Long Island Railroad (LIRR) submitted comments on this provision. LIRR believes that this rule will cause them to administer a hearing conservation program to a much larger percentage of their workforce than they currently do and that it will have a significant monetary cost and with a greatly increased administrative burden. They explained that they would probably be forced to reallocate resources to the detriment to other aspects of operations, which in turn, could affect the service it provides to the general public.

FRA believes the scope of this rule is appropriate and is leaving it as proposed in the NPRM. LIRR provided no reason why the rule would necessitate inclusion of a much larger portion of their workforce in a HCP. Based upon the typical cab environment on LIRR and similar commuter railroads, FRA does not believe that will

be the case. To the extent LIRR employees are exposed above the action level, as a Federal grantee and public benefits corporation of the state of New York, LIRR bears at least the same responsibility to its employees as other railroads. Finally, FRA notes that this rule is the product of the RSAC, of which railroad representatives including APTA, were members. The railroad representatives on the RSAC Working Group noted that most railroads already had HCPs and so as a practical matter, this rule would not be overly burdensome on railroads.

Section 227.103 Noise Monitoring Program

Railroad noise monitoring programs entail a system of monitoring that evaluates employee noise exposure. Noise monitoring is performed for one or more of the following reasons: To determine whether hearing hazards exist; to ascertain whether noise presents a safety hazard by interfering with oral communication; to ascertain whether noise presents a safety hazard by impairing recognition of audible warning signals; to identify which employees need to be included in a hearing conservation program; to define and establish the amount of hearing protection that is necessary; to evaluate specific noise sources for noise control purposes; and to evaluate the success of noise control efforts.

FRA's rule requires railroads to develop and implement a noise monitoring program by a specific date; the date varies depending on the size of the railroad. The noise monitoring program is intended to determine whether an employee's exposure to noise may equal or exceed an 8-hour time-weighted average of 85 dB(A). Factors which suggest that noise exposure in the cab may meet or exceed a TWA of 85 dB(A) include: employee complaints about the loudness of the noise, indications that train employees are experiencing hearing loss, noisy conditions that make conversation difficult, and route-specific or locomotive-specific factors that suggest the possibility of an excessive noise dose. In addition, actual workplace noise measurements can indicate that railroad should initiate a monitoring program.

FRA's noise monitoring requirements cover noise in cabs and noise in exterior environments in which employees work during their work shifts. FRA's rule involves the monitoring of some employees whose daily functions are entirely outside of the cab and some employees whose daily functions are both inside and outside of the cab. This

ensures that the hearing conservation program addresses the full noise exposure that is experienced by employees who are within the scope of this rule.

Section 227.103(a) provides the general requirement that all railroads must develop and implement a noise monitoring program. FRA used the provision from OSHA's rule as a starting point and then tailored it to suit FRA's needs. FRA identifies dates by which railroads must develop their programs. The dates are staggered based on railroad size, giving smaller railroads more time and larger railroads less time to develop a noise monitoring program.⁴⁶ FRA provides railroads with a defined purpose for the noise monitoring program—that is, “to determine whether any employee covered by the scope of this subpart may be exposed to noise that may equal or exceed an 8-hour TWA of 85 dB(A).” Note that FRA has changed the organization of this section since the proposed rule in order to make the rule easier to understand, however, the substance of the section remains the same. FRA received several comments about the phase-in implementation dates found in § 227.103(a). The comments fell on both side of the issue. Several of the commenters, including ASHA, AIHA, NHCA, and Theresa Schulz, suggested that FRA has given railroads too much time with these implementation dates. AHSA and several individual ASHA members suggested that all aspects of the rule be phased in within 12 months of the effective date of the rule. They explained that the Small Business Regulatory Enforcement Fairness Act⁴⁷ (“SBREFA”) supports phase-in dates, but only where there is no immediate safety risk. They believe there is an immediate safety risk for railroad operating employees. Theresa Schulz wrote that there is significant evidence showing that excessive noise levels “can impair mental processes, increase fatigue, and increase the number of errors, while simultaneously decreasing vigilance.” NHCA suggested that FRA give railroads 12 to 18 months to comply with the rule. NHCA stated that 18 to 30 months appears to be an “indulgence,” given that “the

equipment, procedures, trained personnel, and reporting techniques of a noise-monitoring program have existed for decades.” By contrast, LIRR, indicated that the 12-month-period is a short time frame and recommended that FRA allow for 24 months instead.

FRA has decided to retain the phase-in dates that FRA proposed in the NPRM. FRA is providing smaller operations with extra time to comply, because FRA understands that they are in a unique situation. Smaller operations lack the resources, manpower, and money of larger operations. In addition, FRA is required, by law, to consider the impact of its regulations on smaller entities. SBREFA requires agencies to employ communication, enforcement, and regulatory systems that consider the unique aspects of small entities. SBREFA specifically provides that agencies should avoid “one size fits all” enforcement and regulatory programs and should, to the extent possible, minimize unnecessary economic burdens. One of the SBREFA's suggestions is that agencies use phase-in implementation dates to permit gradual compliance where no immediate safety risk exists, and that is what FRA has done here.

The specific dates in this rule are based on FRA's assessment of the current resources and abilities of the railroad industry, as well as FRA's assessment of employee safety. FRA believes these phase-in dates are the most appropriate since they strike a balance between employee safety and the practical realities of current railroad operations. As a practical matter, too, many, if not most, railroads already have hearing conservation programs in place, and so employees will not be completely unprotected during the phase-in months. Furthermore, these dates are based upon the consensus agreement of the affected parties (e.g., union and railroad representatives) as part of the RSAC. For all the reasons discussed here, FRA has provided phase-in implementation dates here and in two other locations in this proposed rule: in § 227.109(e)(2) (audiometric testing) and § 227.119(b) (training).

Also of note regarding the phase-in implementation dates is FRA's use of an alternate size standard. Rather than use the size standard promulgated by the Small Business Administration⁴⁸ or the size standard adopted in FRA's “Final Policy Statement Concerning Entities

⁴⁶ Class I, passenger, and commuter railroads have 12 months from the effective date of this rule to establish a noise monitoring program. Railroads with 400,000 or more annual employee hours, but that are not a class I, passenger, or commuter railroad have 18 months to comply. Railroads with fewer than 400,000 annual employee hours have 30 months to comply.

⁴⁷ Pub. L. No. 104–121, 110 Stat. 857 (codified at 5 U.S.C. § 601 et seq.).

⁴⁸ The SBA Table of Size Standards specifies that line-haul railroads with 1,500 or fewer employees and short-line railroads with 500 fewer employees are considered small businesses. 13 CFR 121.201.

Subject to the Railroad Safety Laws,"⁴⁹ FRA is using an alternate size standard that implicitly defines a small business as a railroad with fewer than 400,000 annual employee work hours. Accordingly, FRA has identified three categories of railroads and given the smaller railroads more time to comply. FRA sought approval from the SBA in a January 11, 2005 letter for the use of this alternate size standard and received that approval from SBA Administrator Hector V. Barreto in a May 12, 2005 letter. (Copies of the letters are included in the docket).

FRA has decided to use this alternate size standard for several reasons. First, the specific safety problem at issue here is employee health and specifically employee hearing. An *employee* hours definition is most appropriate given that the nature of the safety issue is protecting *employee* hearing. Second, FRA can more readily identify a railroad's size according to annual employee hours, because FRA collects data related to annual employee hours. See 49 CFR part 225. Furthermore, FRA's safety inspectors and industrial hygienists have easy access to this data through FRA's safety data Web site. By contrast, FRA does not maintain updated information identifying railroads by class. Third, FRA has successfully used this definition in its regulations in the past. See 49 CFR 217.9 and 49 CFR 220.11. Fourth, FRA believes that the SBA size standard, which would encompass 650 railroads, would be over inclusive. FRA's alternate size standard encompasses 634 railroads. Section 227.103(b) discusses sampling strategy. Aside from some minor language changes, it is identical to OSHA's provision, which is found in 29 CFR 1910.95(d)(i) and (ii). Cooper Tire commented on FRA's statistical approach, advocating that FRA employ a 100 percent monitoring program. Cooper Tire noted that 100% monitoring technology, which did not exist when FRA began proceedings for this rule seven years ago, is now available and can provide continuous weighted eight hour noise data. Cooper Tire explained that new technology permits the capturing and transmitting of data continuously. They also noted that railroads could measure all locomotives for compliance automatically, thereby relieving the railroads from having to collect the data as proposed in the rule.

Cooper Tire's comment is similar to the doseBuster Company's comment about alternative prevention strategies. As discussed above in section IV(B), the doseBusters Company advocated the use of their ESP system, which includes continuous monitoring. FRA does not believe it is necessary to mandate continuous monitoring. Sampling is a well-established and widely-accepted statistical principle. In addition, FRA does not believe it is appropriate to link any requirement (e.g., continuous monitoring) to individual commercial products. Finally, FRA believes that the costs of continuous monitoring would outweigh any benefits. If railroads were to employ continuous monitoring, their compliance with other portions of the regulation (e.g., recordkeeping) could be very burdensome.

Please note that while FRA does not require the use of continuous monitoring, FRA also does not prohibit its use. Railroads are free to employ continuous monitoring if they so wish.

Section 227.103(c) specifies how railroads should conduct noise measurements. Section 227.103(c)(1) requires all continuous, intermittent, and impulsive sound levels from 80 dB to 140 dB to be integrated into the noise measurements. FRA has changed this provision in the final rule by increasing the upper limit from 130 dB to 140 dB.

In the proposed rule, FRA used an 130 dB upper limit. FRA had adopted that limit from OSHA though with reservation. In the NPRM, FRA explained that, while OSHA's 1981 general industry noise standard used a 130 dB upper limit, OSHA wrote in the preamble that its intent was to increase the upper limit to 140 dB as dosimeters were improved and became readily available.⁵⁰ According to OSHA in the preamble to the 1981 standard, the decision to use the 130 dB upper limit was the result of technological limitations on sound level meters and dosimeters. In addition, FRA explained in the NPRM that it had looked to OSHA's 2002 Advance Notice of Proposed Rulemaking (ANPRM) for a Hearing Conservation Program for Construction Workers,⁵¹ in which OSHA noted that "most, if not all, of today's noise dosimeters and integrating sound level meters are capable of dynamic ranges from 80 dB to 140 dB."⁵²⁻⁵³

FRA sought comment on whether 130 dB or 140 dB was the appropriate upper limit for calculating railroad operating

employee noise dose. Several commenters responded in support of the 140 dB upper limit, all of whom explained that technology has improved considerably since OSHA promulgated its general industry standard and that technology now supports the 140 dB upper limit. ASHA explained that "today's dosimeters and integrating sound level meters are capable of dynamic ranges from 80 dB to 140 dB," and AAA explained that "modern sound level measurement systems now routinely integrate noise levels to 140 dB(A)." NIOSH made an additional point, explaining that "impulsive-type noise may frequently exceed 130 dB peak SPL" and so "limiting measurements to 130 dB may exclude the most harmful events in a given exposure and seriously underestimate a worker's risk of hearing loss." Wilson, Ihrig, & Associates, an acoustical consulting firm, responded that the upper limit should be at least 140 dB.

Only one commenter, the AAR, did not support the 140 dB upper limit. The AAR explained that "most AAR members already own equipment that was purchased to comply with existing OSHA rules. Some of this equipment is old enough that it will not have the increased range." Without evidence that the expanded range would yield benefits outweighing the costs, the AAR thought FRA should not increase the range.

At the RSAC Working Group meeting, the members discussed the capabilities of railroads with respect to this equipment. Members acknowledged that this change would impose neither an administrative nor an economic burden. Given OSHA's statement in its 2002 ANPRM, the RSAC consensus, and the widespread belief among commenters that modern technology supports this change, FRA raised the upper limit to 140 dB. FRA notes that noise monitoring data conducted prior to this rulemaking (i.e., with the upper limit of 130 dB(A)) is still good data.

On a related matter, Wilson, Ihrig, & Associates submitted comments on the lower limit. Wilson, Ihrig, & Associates asserted that there should be no lower limit. They explained that "there is no practical reason for limiting the lower range to 80 dB(A), as the levels below this range contribute little to the total noise dose." FRA has decided not to remove the lower limit. FRA does not believe there is any justification supporting such a change. Given that there is little contribution to dose by levels below 80 dB(A), given that eliminating the lower level is not a commonly accepted practice, and given that it could potentially result in a

⁴⁹ 68 FR 24, 891 (May 9, 2003). This Policy Statement defines a "small entity" as a railroad that meets the line haulage revenue requirements of a Class III railroad (i.e., a railroad with annual operating revenue of \$20 million or less).

⁵⁰ See 29 CFR 1910.95(d)(2)(i).

⁵¹ See 67 FR 50610 (August 5, 2002).

⁵² *ndash*:⁵³ See 67 FR 50610, 50605 (August 5, 2002).

heavy financial burden (e.g., complying with this provision might require the re-design of dosimeters, SLMs, and iSLMs), FRA sees no reason to mandate such a change.

Section 227.103(c)(2) specifies that railroads shall take noise measurements under typical operating conditions using a sound level meter (SLM), integrating-averaging sound level meter (iSLM), or noise dosimeter. The instrumentation should meet the appropriate standard set forth by ANSI; these standards set performance and accuracy tolerances. An SLM used to comply with this part shall meet ANSI S1.4-1983 (Reaffirmed 2001), "Specification for Sound Level Meters." An iSLM used to comply with this part shall meet ANSI S1.43-1997 (Reaffirmed 2002). A noise dosimeter used to comply with this part shall meet ANSI S1.25-1991 (Reaffirmed 2002), "Specification for Personal Noise Dosimeters." Each instrument should be set to an A-weighted SLOW response.

Section 227.103(c)(2), for the most part, is adopted from FRA's previous noise standard (i.e., the previous § 229.121(d)). Note, however, that FRA has added the ANSI standard for noise dosimeters, updated the ANSI standard for SLMs (from ANSI S1.4-1971 to ANSI S1.4-1983 (Reaffirmed 2001)), and included a reference and citation to iSLMs. In doing so, FRA has made this regulation more current and comprehensive.

In conformance with Office of Management and Budget (OMB) Revised Circular A-119 (February 10, 1998), FRA is using voluntary national consensus standards here and in several other locations throughout the rule. FRA's use of standards established by other organizations such as ANSI 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 used the most current version of each ANSI standard, however FRA understands that over time, ANSI will revisit these standards and likely update them. FRA intends to regularly update the rule, most likely through the use of technical amendments, in order to incorporate ANSI's newer standards. Note that in the NPRM, FRA had proposed to adopt successor standards. Given the Federal law requires that a publication incorporated by reference be identified by its title, date, edition, author, publisher, and identification number, FRA amended this final rule to incorporate the current standards only. See 1 CFR 51.9(b)(2).

While the rule provides that a railroad may use either a noise dosimeter, SLM, or iSLM to conduct noise measurements, it also permits a railroad to use any combination of those instruments. Using several instruments helps to develop a more complete picture of the noise environment, because the instruments provide different information. A SLM and an iSLM measure the sound levels at fixed locations in the cab and during transient events (e.g., application of the alerter, brakes, or horn). They also characterize the emissions of suspected noise sources (e.g., vibrating panels). A noise dosimeter and an iSLM measure an employee's overall noise exposure. An iSLM is particularly useful, because it characterizes the contribution of transient events to an employee's overall dose. A noise dosimeter, which is worn by the employee, is useful because it accumulates all the noise exposure data from an employee's work shift. From that, a tester can determine an employee's noise dose during a work shift.

Section 227.103(c)(3) specifies that all instruments used to measure employee noise exposure shall be calibrated to ensure accurate measurements. This paragraph is the same as OSHA's provision, which is found in 29 CFR 1910.95(d)(2)(ii). FRA received no comments on this section and it remains the same as proposed in the NPRM.

Section 227.103(d) provides that a railroad shall repeat noise monitoring whenever there is a change in operation, process, equipment, or controls that increases noise exposures to the extent that either: (1) Additional employees may be exposed at the action level, or (2) the attenuation provided by the hearing protectors may be inadequate to meet the requirements of § 227.103. This paragraph is the same as OSHA's provision, which is located at 29 CFR 1910.95(d)(3). FRA received no comments on this section and it remains the same as proposed in the NPRM.

Section 227.103(e) provides that, in administering the monitoring program, a railroad shall take into consideration the identification of work environments where the use of hearing protectors may be omitted. This provision is unique to FRA's rule; no comparable provision exists in OSHA's standard. The purpose of this provision is to ensure that railroads do not excessively rely on reflexive use of hearing protectors when structuring their hearing conservation programs. FRA believes that well managed programs already focus on this issue, incorporating such monitoring as necessary, to determine general categories of work assignments that

require hearing protectors and those that do not. FRA fully recognizes that no sustainable amount of monitoring could support a job-by-job analysis at all locations on the railroad. FRA also recognizes that such a level of monitoring is not appropriate given the objective of the hearing conservation program.

Examples of situations where hearing protection may be omitted include: (1) Cabs designed for sound reduction. These cabs should be monitored over time on a sample basis to ensure that their noise-insulating qualities continue to function as intended; and (2) "Ground" assignments where employees work around moving equipment but have limited exposure to loud and persistent noise sources such as locomotives or retarders.

Aearo Company commented on § 227.103(e), asserting that it is redundant with §§ 227.103(b) and 227.115. FRA does not believe these provisions are redundant, for they serve different purposes. Section 227.103(b) addresses the sampling strategy for the noise monitoring program, § 227.103(e) identifies one of the factors that employers need to consider when administering the noise monitoring program, and § 227.115 identifies the levels at which railroads must require HP use.

In the proposed rule, FRA listed several benefits that accrue when employees refrain from over-using hearing protectors. That list included the following: reducing the danger of infection from the misuse of HP; strengthening overall employee compliance with HP use by focusing requirements where it makes a difference; and maximizing the availability of auditory cues associated with the movement of equipment among ground personnel, which results in improved personal safety.

Aearo Company commented on this preamble discussion, asserting that some of those items, specifically a reduction in the danger of infection and a strengthening of overall compliance, were not benefits of refraining from overuse of HP. Regarding infections, Aearo Company cited a 1985 monograph that found that regular wearing of HP does not normally increase the likelihood of contracting an ear infection. Regarding compliance, Aearo Company explained that compliance improves, not by "having less people wear [HPs] in less applications," but by developing a hearing conservation culture and empowering employees to believe they can make a difference in protecting their hearing.

Aearo's comments generated a great deal of discussion at the post-NPRM RSAC Working Group meeting. Aearo Company had presented data which shows it will not cause an infection. Several members presented information at the RSAC Working Group meeting suggesting that overuse of HP can cause an infection. Overuse of HP may or may not cause ear infections. Without further study or more conclusive data, FRA is unable to reach any conclusions about the danger of ear infections from HP.

With respect to compliance, FRA, in conjunction with the RSAC Working Group, has determined that there are compliance benefits from refraining from overuse of HP. Overprotection can erode compliance. Where an employee is instructed to wear HP at all times and in all circumstances, it creates the impression for the employee that the HP requirement is just a pro forma requirement, not part of a larger program designed to protect their hearing. With that mindset, the employee is less likely to wear HP. This is particularly significant for transportation employees who are not subject to direct supervision during most of their work shift.

In short, FRA has included § 227.103(e) to ensure that railroads do not overuse HP. FRA wants to ensure that there is not an excessive reduction in hearing from the use of HP such that it interferes with employee communication and with auditory cues related to job duties.

Section 227.103(f) specifies that a railroad shall provide affected employees or their representatives with an opportunity to observe any noise dose measurements conducted pursuant to this part. This parallels OSHA's provision, which is found at 29 CFR 1910.95(f). FRA received no comments on this section and it remains the same as proposed in the NPRM.

Section 227.103(g) identifies a railroad's obligation for reporting monitoring results to employees and their representatives. There are two components to this reporting provision. The first component is § 227.103(g)(1), which requires railroads to notify each monitored employee of the results of the monitoring. This is similar, but not identical, to OSHA's notification provision located at 29 CFR 1910.95(e). Whereas OSHA requires an employer to notify each employee *that is exposed at or above an 8-hour TWA of 85 dB(A)* of the results of his or her monitoring, FRA requires a railroad to notify each *monitored employee, irrespective of his or her exposure.*

The second component of this reporting provision, which is found at

§ 227.103(g)(2), requires railroads to post monitoring results. The posting should include sufficient information to permit other crews to interpret the meaning of the results in the context of the operations monitored. The information is intended to help crews and labor officials to understand the conditions under which the monitoring was conducted. There are a wide range of data elements that a railroad could include in its posting. FRA believes that the railroad should include enough information so that the monitored crew, as well as other crews, are able to understand, interpret, and assess the results of the monitoring. Theresa Schulz commented on this provision, commending FRA for requiring railroads to post noise measurements results "in an 'understandable way' so that employees are aware of the hazard and what they can do to protect themselves."

In order to make the posting meaningful and understandable to crews, railroads should include information on the following types of data elements: (1) A description of the monitoring event: The date of the monitoring, the start time and end time of the monitoring, the locations of the beginning and end of the monitoring; the assignment or train identification number or train symbol; the locomotive consist (including locomotive numbers, models, and dates of manufacture); and a train profile (including car counts, length of train, tonnage, and power consist details); and (2) circumstances of the monitoring: Number of crew members monitored, job title(s) of the crew members monitored, duration of crew member exposure, number of crew members monitored, placement of measurement equipment, results of the monitoring, and the equipment used for monitoring.

These data elements are useful, because they contain information on items and conditions that can impact the noise level in the locomotive cab. The date of monitoring is important, because it indicates the time of year of the monitoring, which in turn indicates general weather conditions (e.g., it was likely that there was ice on the rail). The start and end time indicate the length of the crew exposure to noise. The location of the monitoring indicates the topography of the specific run (e.g., there were many hills, curves, or closed embankments). The assignment or train identification number or train symbol indicate the type of equipment and the make-up of the train. The locomotive consist provides information which can be used to figure out tractive effort. The train profile provides specific

information on the particulars of that train, i.e., car counts, the number of loaded cars, the number of empty cars, the length of the train, tonnage, and power consist details. The monitoring circumstances are useful, as well, because they convey the specifics of the railroad's monitoring efforts.

Section 227.103(g) is the product of extensive RSAC Working Group discussions. It reflects a compromise of labor and management concerns. To reach this compromise, the RSAC Working Group considered numerous proposals concerning monitoring observations and reporting. The RSAC Working Group's initial proposals did not include an observation provision and instead focused on reporting requirements. One proposal, without an observation requirement, required a railroad to notify each employee exposed during a monitored exposure, as well as the employee's designated representative, of the results of the monitoring. A variation to that proposal required a railroad to notify each employee and employee's representative upon written request by the employee. Another proposal, also without an observation requirement, required railroads to provide the monitoring information to the president of each labor organization that represented monitored employees. In yet another proposal, railroads would have been required to submit to FRA an annual summary of its noise monitoring activity. FRA would then have made this information publicly available.

In the end, the RSAC Working Group recommended, and FRA adopted, this provision which retains the observation provision contained in OSHA's provision located at 29 CFR 1910.95(f). In addition, the RSAC Working Group recommended, and FRA adopted, the requirement that railroads shall notify monitored employees of the results of monitoring (irrespective of the TWA) and shall post monitoring results at appropriate crew origination points. FRA believes this provision is the most effective one, because it satisfies both labor's request for access to information and management's request for a reasonable and practical means of complying with the observation and reporting provisions. FRA did not receive any comments recommending that FRA revise this section and so it remains the same as proposed in the NPRM.

Section 227.105 Protection of Employees

In this section, FRA establishes the permissible noise exposures for railroad employees. These limits are the same as

FRA's previous noise standard, OSHA's permissible noise exposures (29 CFR 1910.95(a), Table G-16), and OSHA's occupational noise exposure limits (29 CFR 1926.52(a), Table D-2).

Section 227.105(a) prescribes the noise exposure limits and requires railroads to provide appropriate protection if employees are exposed to noise that exceeds those limits. The limits are identified in Appendix A to part 227. For purposes of clarity, FRA has slightly revised § 227.105(a). FRA replaced the phrase "as measured on the dB(A) scale as set forth in Appendix A" with "as measured according to § 227.103." FRA believes that rewording more accurately captures the requirement of that section. In addition, since Table 1 contained information that is equivalent to the information in Tables A-1 and A-2 in Appendix A, FRA has removed Table 1 from this section and referred readers to the limits in Appendix A. Related to that, FRA has taken the provision on impulsive or impact noise from the footnote to Table 1 and has put it into section I of Appendix A to this part. With respect to Appendix A, FRA has made some additional clarifying edits, e.g., use the term "work day" throughout the appendix as opposed to alternating between "work shift" and "work day;" replace "reference duration" with "duration permitted," add an entry for 140 dB in Table A-1, etc. All of these changes are drafting clarifications and as such, they were not part of the RSAC consensus.

More significantly, FRA has added a provision on deadheading in section I of Appendix A. Both Wilson, Ihrig, & Associates and NHCA had suggested that FRA add language in the rule to address deadheading. RSAC Working Group and FRA agreed with the comment. FRA addressed this issue in section (I)(D), which provides that, when calculating the noise dose, a railroad shall include any time that an employee spends deadheading. Deadheading is a practice unique to the railroad industry. It refers to the time when railroad employees are being transported (whether by van, taxi, locomotive, or other vehicle) between their home base and a point where they begin or end operation of a train. Although these employees are not operating a train when deadheading, they continue to be exposed to noise. Since noise dose is based on time of exposure as well as intensity of exposure, railroads must consider the time employees spend deadheading in locomotives when calculating an employee's noise dose.

AIHA also commented on § 227.105(a). They suggested that FRA add a requirement for a 140 dB unweighted peak limit in Table 1 to § 227.105. They asserted that "this would eliminate exposures to high-level impulse noise, which is not captured with current SLMs." As discussed in the preceding paragraphs, FRA has removed Table 1 in this final rule. Accordingly, this issue became moot. However, FRA notes that FRA did add an entry for 140 dB in Table A-1 to Appendix A.

Section 227.105(b) addresses the treatment of measurement artifacts when assessing exposures exceeding 115 dB(A). Artifacts include events such as unintentionally coughing into or brushing against the dosimeter microphone. Artifacts cause the noise level to spike, which, in turn, results in higher overall noise dose levels.

This provision has undergone several changes. The initial version required railroads to remove measurement artifacts. The sentence provided that "the apparent source of the noise exposures shall be noted and measurement artifacts shall be removed." During pre-NPRM meetings, a railroad representative explained that while he wants to remove all artifacts, he is concerned about a getting into a predicament where he tries to identify an artifact but is unable to do so. Unable to identify the artifact, he would be unable to remove it. To accommodate that concern, the version in the NPRM gave railroads the option of removing measurement artifacts. The sentence provided that "the apparent source of noise exposures shall be noted and measurement artifacts may be removed." Aearo Company submitted comments on this provision. Aearo Company acknowledged that the opportunity to remove measurement artifacts is reasonable on the surface. However, they believe it is unnecessary, and they are concerned that if done carelessly or with bias, it could materially distort the data.

In the final rule, FRA requires railroads to observe and document the apparent source of noise exposures and allows them, but does not require them, to remove measurement artifacts. This artifact removal provision addresses only those phenomena that result in peaks above 115 dB(A) as recorded by a dosimeter. Where an industrial hygienist (or other appropriately qualified individual) is present in a locomotive cab during a monitoring run and observes the noise events to which a monitored individual is subject, the industrial hygienist has the option of removing noise sources that cannot be explained by his or her record of the

run. In other words, if the industrial hygienist were to maintain a log during the run in which he documented all noise sources he observed, (e.g., horn, grade crossing bell), and he later discovered that there were additional unexplained events (over 115 dB(A)) in the noise monitoring data, he could remove those unexplained events. Of course, the industrial hygienist only has the option of removing those noise events where the records of his or her direct observations do not show a noise event at the time the artifact appears in the record.

FRA decided to retain the provision whereby railroads have the option of removing artifacts, because FRA wanted to address Working Group members' concerns. FRA does not want members to be in a predicament where they try to identify an artifact and are unable to do so. Moreover, FRA believes that, from a statistical perspective, it makes sense to remove the artifacts. It is accepted scientific practice to remove directly observed artifacts from any data set, because artifacts will affect other statistical aspects of the data such as the variance. FRA recognizes that data manipulation is a concern when data editing is allowed, however, FRA hopes that it can rely on the professionalism of the individuals testing employees and that those individuals will not manipulate the data. Finally, FRA intends to develop a compliance guide that provides direction to its inspectors on how it intends on enforcing the various elements of compliance. This guide will be available to the regulated community as well as the public when it is finalized after the final rule is published.

Practical concerns aside, FRA maintains that it is in the best interest of a railroad to remove measurement artifacts. Artifacts are not experienced as noise exposure by the employee, and so they should not be included in an employee's noise dose.

With respect to this provision, FRA has made a one additional minor change. Since FRA removed Table 1 from § 227.105(a), FRA removed the reference to Table 1 in § 227.105(b).

Section 227.105(c) provides that employee exposure to continuous noise shall not exceed 115 dB(A). Paragraph (c) contains the same requirement that had been located in FRA's previous noise regulation at § 229.121(c).

Section 227.105(d) addresses continuous noise exposure above 115 dB(A). This requirement differs from OSHA's standards. OSHA prohibits unprotected exposures above 115 dB(A) (See 29 CFR 1910.95(a) and 29 CFR 1926.52(a)). By contrast, FRA permits

very brief exposures to continuous noise (which is defined as noise that exceeds one second) between 115 dB(A) and 120 dB(A) as long as the total daily duration does not exceed 5 seconds.

Wilson, Ihrig, & Associates commented on this provision, stating that there is no practical reason for relaxing the standard. Wilson, Ihrig, & Associates believes that "it results in a lax standard and one that does not encourage railroads to reduce the noise levels that their employees are exposed to." They explained that this provision might be acceptable if FRA were to adopt a 3 dB exchange rate, but that is not the case. Wilson, Ihrig, & Associates believe that FRA's logic for relaxing the standard is faulty—i.e., that FRA has no technical justification for this change "other than the fact that these noise levels occur, so these levels can be allowed to exist."

RSAC Working Group discussions on this matter had revealed that some members did not wish to penalize the railroads for these brief unavoidable excursions above 115 dB(A). At the same time, other RSAC members did not wish to stray, to any great extent, from the existing OSHA standard. It should be noted, however, that certain RSAC Working Group members expressed the view that there may be health effects associated with longer exposures over 115 dBA, while other RSAC Working Group members contended that health effects will not occur until much higher noise levels.

At the proposed rule stage, FRA determined that it was necessary to relax OSHA's standard because of the operational realities of railroading and the resulting safety implications. FRA stands by those reasons and thus is leaving this provision as proposed. As explained in the proposed rule, in the railroad industry, it is generally recognized that very brief excursions above 115 dB(A) sometimes occur in the cab. For the most part, these noise exposures are brief, non-recurring events. Some of these excursions are due to external conditions that may be difficult, or unwise, to prevent. The sounding of the locomotive horn is a prime example. The locomotive horn is a safety device used to warn the public and railroad employees of oncoming train traffic. If the horn is used while cab windows are open or while the cab is adjacent to reflective surfaces, the noise level in the cab may exceed 115 dB(A). FRA would not want to eliminate the sounding of the horn, however, because the horn is very important to safe rail operations. Unfortunately, then, these types of noise exposures are unavoidable. FRA has concluded that

this short cumulative time limit will effectively distinguish incidental, and perhaps unavoidable and necessary noise exposures, from longer exposures that stem from undesirable noise overexposure found in deficient rolling stock that should not be in use.

Section 227.107 Hearing Conservation Program

Section 227.107 sets out the requirement that railroads establish a hearing conservation program for all employees exposed to noise at or above the action level. It also provides that railroads shall compute employee noise exposure in accordance with the tables found in Appendix A and without regard to any attenuation provided by the use of hearing protectors. Since the RSAC consensus, FRA made some drafting changes to better clarify the provisions of this section. FRA divided the section into two separate paragraphs. FRA added an explanatory clause ("required by § 227.103") when referring to the noise monitoring program. FRA revised § 227.107(a) to reflect the fact that the hearing conservation program is set forth in §§ 227.109 through 227.121, not just in § 227.121. In addition, since FRA has removed Table 1, FRA removed the reference to Table 1 in this section. The drafting changes aside, § 227.107 is the same as the comparable provision found in OSHA's standard at 29 CFR 1910.95(c).

FRA received one comment on this section. The doseBusters Company requested that FRA clarify the meaning of the last sentence in § 227.107. The doseBusters Company asked: "Is the intent to prohibit any adjustment to the dose measurement, based on the hearing protector manufacturer's published attenuation data? FRA believes that the language (which is the identical language which OSHA uses) speaks for itself. The relevant portion of the last sentence of § 227.107 provides that: "Noise exposure shall be computed * * * without regard to any attenuation provided by the use of hearing protectors." This means that a professional reviewer should not adjust an employee's exposure dose based on any attenuation provided by the employee's hearing protection. Or as the Working Group answered the question, "You do not adjust the dose based on the hearing protection worn by the employee." In short, the answer to the doseBuster Company's question is, yes.

Section 227.109 Audiometric Testing Program

This section sets out the requirements for railroad audiometric testing

programs. Section 227.109(a) sets out the general requirement that each railroad shall establish and maintain an audiometric testing program as set forth in this section and include employees who are required to be included in a hearing conservation program pursuant to § 227.107. FRA has made one clarifying change to this section. Section 227.109(a) of the NPRM had contained the phrase "by making audiometric tests available to all of its employees." Because one of the paragraphs in this section (see § 227.109(f)) specifically addressed this issue, FRA thought it was confusing and unnecessary to include this phrase here, and so FRA removed this phrase. In place of that phrase, FRA included language clarifying that the railroad shall include in the audiometric testing program all employees who are required to be included in the HCP.

Section 227.109(b) provides that audiometric tests shall be provided for employees, at no cost to employees. This paragraph refers only to the audiometric test itself. It does not refer to additional costs that an employee might incur, e.g., missed trips or missed work time as a result of the test. FRA received no comments on this section and it remains the same as proposed in the NPRM.

Section 227.109(c) requires that appropriate professionals or qualified technicians administer the audiometric test. FRA received several comments on this provision. Commenters included ASHA, AAA, AIHA, CAOHC, NHCA, Aearo Company, and Theresa Schulz. The comments were very similar in nature.

With respect to physician qualifications, the commenters stated that it is unwise to let *any* physician administer or supervise audiometric testing. Because there is a wide range of medical specialties, and because hearing testing and hearing conservation program management are not usually part of medical training programs, most physicians are not well-informed on the details of hearing, its measurement, and its impairment. Theresa Schulz went further, suggesting that FRA require physicians to attend training on how to supervise the audiometric testing portion of a hearing conservation program.

With respect to technician competency, all of the commenters shared the same basic concern. They disagreed with the second method that FRA permitted in the NPRM for qualifying technicians (i.e., allowing technicians to demonstrate their competence to a audiologist, otolaryngologist, or physician). The commenters think it contributes to the

weakening of the competence of the personnel conducting the audiometric tests. They questioned whether a technician who had merely “satisfactorily demonstrated competence” would be skilled enough to perform some of the necessary duties, e.g., problem solving for judgment calls encountered during testing or serving as a resource for employees with questions.

As an alternative, the commenters suggested that the rule only allow technicians to be qualified by the first method (i.e., successful completion of the CAOHC certification requirements). They explained that CAOHC has a board of multi-disciplinary professionals that collectively strive to maintain and increase the minimum standard of competency. By requiring railroads to use only CAOHC-certified technicians, FRA would assure a high level of quality for this component of the HCP.

Also, regarding technician qualifications, there were a few comments about FRA’s decision in the NPRM to allow a technician to be qualified by CAOHC or *any equivalent organization*. This differs from OSHA’s standard, which only allows technicians to be certified by CAOHC. CAOHC strongly opposed this provision, explaining that CAOHC is the only national accreditation program of its kind for Occupational Hearing Conservationists. CAOHC further explained that § 227.109(c)(2) should not include the words “equivalent organization, because there is no equivalent to CAOHC’s unique capabilities.” CAOHC pointed out that MSHA recognized CAOHC’s uniqueness in its 1999 rule.⁵⁴

Finally, regarding technician qualifications, Theresa Schulz commended FRA for removing OSHA’s “unsupported exemption [from CAOHC certification] for technicians using microprocessors.”

FRA made three changes to this provision. Two were the product of RSAC consensus, and one was a drafting clarification that FRA added on its own. First, with RSAC consensus, FRA added a qualification requirement for physicians. According to § 227.109(c)(1), audiometric tests shall be performed by an audiologist, otolaryngologist, or other physician *who*

has experience and expertise in hearing and hearing loss. (Italics indicate revised language). “Experience and expertise” means that the individual has the knowledge and skills to conduct audiometric tests, has experience conducting audiometric tests, and has demonstrated success in audiometric conducting tests.

FRA did not, however, add a provision requiring physicians to attend training on how to supervise the audiometric testing portion of a HCP. FRA did not think it was necessary to require that training, especially given the addition of the “experience and expertise” requirement. By requiring that physicians have “experience and expertise,” FRA ensures that the doctors are knowledgeable about hearing conservation and so there is no point to also require those doctors to attend training.

Second, subsequent to the RSAC consensus, FRA added a definition for “qualified technician” to § 227.5. FRA used language from § 227.109(c)(2) of the proposed rule for the definition (though with some modifications, which are discussed below). FRA believes this change simplifies the rule. Rather than repeat the definition throughout the rule, FRA states it once in the beginning. According to § 227.5, audiometric tests shall be performed by a qualified technician who can become qualified in one of two ways: (1) By successfully completing a course designed for the training and certification of audiometric technicians, or (2) by satisfactorily demonstrating competence to the Professional Supervisor of the Audiometric Monitoring Program in administering audiometric exams and in the use and care of audiometers. Qualified technicians might include trained specialists, industrial hygienists, and nurses who have the appropriate qualifications. A technician (of either qualification type) must be responsible to the Professional Supervisor of the Audiometric Monitoring Program.

Third, with RSAC consensus, FRA modified the qualification requirement for technicians. Technicians must be responsible to a Professional Supervisor of the Audiometric Program, instead of simply an “audiologist, otolaryngologist, or a physician.” A Professional Supervisor of the Audiometric Monitoring Program is “an audiologist, an otolaryngologist, or a physician *with experience and expertise in hearing and hearing loss.*” As explained above, “experience and expertise” means that the individual has the knowledge and skills to conduct

audiometric tests, has experience conducting audiometric tests, and has demonstrated success in audiometric conducting tests. Consistent with this change, FRA added a definition of Professional Supervisor to the Definitions section (§ 227.5). However, FRA used a different definition than that suggested by commenters. Several commenters had suggested that FRA define a Professional Supervisor as “an audiologist, an otolaryngologist, or a physician who supervises the audiometric testing program, reviews audiograms, and reviews audiometric tests.” Rather than focus on the tasks involved in being an audiologist, FRA instead chose to focus on the qualifications of an audiologist.

Despite several commenters’ suggestions, FRA did not eliminate the second method for qualifying technicians (i.e., satisfactorily demonstrating competence). FRA adopted this provision from OSHA’s rule. FRA does not know of any problems with weakened competence among technicians performing under OSHA’s rule, and so FRA believes it is appropriate to use it here. Furthermore, if FRA were to remove this provision at this point in time, FRA would potentially disqualify an entire group of individuals who have been performing these tasks (and presumably well) under OSHA’s rule for years. However, acknowledging that technicians must be adequately qualified, FRA revised this second method. As explained above, FRA now requires a technician to be responsible to a Professional Supervisor who must have experience and expertise in hearing and hearing loss. FRA anticipates that this will ensure that technicians are fully qualified.

FRA also retained the provision allowing technicians to be certified by an “equivalent organization.” FRA wants the rule to be forward looking. At the time of this final rule, CAOHC is the only national accreditation program for hearing conservationists, however, in coming years, there may be additional organizations comparable to CAOHC. FRA wants to ensure that the rule has the flexibility to accommodate such changes. FRA notes that MSHA included a comparable phrase in its Final Rule on occupational noise exposure of miners.⁵⁵

Section 227.109(d) is intentionally left blank. The proposed § 227.109(d) had addressed audiometric instrumentation, providing that instruments used for audiometric testing must meet the requirements of the Appendix C “Audiometric Testing Requirements.”

⁵⁴ In contrast, Aearo Company and CAOHC asserted that MSHA recognized the uniqueness of CAOHC “(with no equivalent organization).” That does not appear to be the case. In 29 CFR 62.101, MSHA defines a “qualified technician” as “a technician who has been certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC), or by another recognized organization offering equivalent certification.” (Italics added).

⁵⁵ See 29 CFR 62.101 and footnote 54 supra.

Since FRA has removed Appendix C: "Audiometric Testing Requirements" from the rule, this regulatory provision is now unnecessary. For a discussion of FRA's decision to remove the proposed Appendix C, see the section-by-section analysis for Appendix C.

Section 227.109(e) provides the requirements for baseline audiograms. A baseline audiogram is the reference audiogram to which all future audiograms are compared. Baseline audiograms are necessary, because they can then be used as points of comparison for subsequent audiograms. Note that FRA has changed some of the formatting of this section since the proposed rule in order to make the rule easier to understand, however, the substance of the section remains the same. Section 227.109(e)(1) sets out the requirements for establishing baseline audiograms for new employees. A railroad has six months from a new employee's first tour of duty to establish a valid baseline audiogram for that employee. See § 227.109(e)(1)(i). Where a railroad uses a mobile test van, a railroad has one year from a new employee's first tour of duty to obtain a valid baseline audiogram. See § 227.109(e)(1)(ii). Pre-employment audiometric tests can be used as baseline audiograms.

Regarding § 227.109(e)(1), ASHA, AIHA, and Theresa Schulz submitted virtually identical comments and opposed several of the provisions. Contrary to FRA's 6 month allowance for new employees, they recommended that FRA require railroads to complete an audiometric test before the employee works in an environment where sound levels are going to be equal to or greater than 85 dBA or pre-placement. Similarly, contrary to FRA's 1 year allowance for new employees tested on a mobile test van, ASHA, AIHA, and Theresa Schulz suggested that FRA require railroads to obtain baseline audiograms in 90 days for new employees who are tested on mobile test vans. They explained that "it is in the employer's best interest to obtain an accurate measurement of an employee's hearing levels as soon as possible."

FRA and the Working Group did not adopt these recommendations and is leaving the language as proposed in the NPRM. While FRA agrees that it is in the employer's best interest to obtain a measurement as soon as possible, FRA also realizes that the commenters' recommendation is not practical, given the mobile nature of railroad operating work and the large size of the railroad workforce. Railroad operating employees are constantly moving throughout the country. It is hard to

know what noise environment any individual employee is going to encounter on any given day since the noise level can vary greatly depending on several variables, e.g., which locomotive, which run, what time of day, what geographical characteristics, etc. As such, it would be difficult for railroads to know when they would have to test any given employee. Exacerbating the situation further, it would be administratively difficult, and potentially very costly, for railroads to have to plan, schedule, and arrange for each individual audiometric test as an employee moves across company locations throughout the country. FRA found, and the RSAC Working Group agreed, that it is necessary and reasonable to give railroads six months to obtain a new employee's baseline audiogram and to give them one year for new employees tested on mobile test vans.

FRA also found this allowance for new employees to be reasonable because a railroad may not know that a newly hired employee has exposures that require baseline audiometric testing until the employee is assigned to, or bids certain jobs. Once the jobs the employee is doing are known the fact that those jobs have triggering exposures requiring inclusion in the Hearing Conservation program, and thus a baseline audiometric test will be known. In addition, FRA would note that the employees covered by the scope of the rulemaking are not highly dosed workers, which are more likely to be found in other industries.

Furthermore, the concern underlying the comment is that employees need to have adequate protection for their hearing. As a practical matter, employees are going to be adequately protected, because most of them will have had audiometric tests during their pre-employment tests. At the post-NPRM Working Group meeting, Class 1 railroad representatives explained that it is common practice for their railroads to use pre-employment tests as baseline audiograms.

Furthermore, the commenters' concern is also addressed by another provision in the rule. According to § 227.115(c)(2), a railroad must require the use of hearing protectors when: an employee is exposed to sound levels that meet or exceed the action level and the employee has not yet had a baseline audiogram. ASHA, AIHA and Theresa Schulz had made another recommendation, suggesting that when a railroad does not obtain an audiogram before placing an employee on the job and if that employee's noise exposure meets or exceeds the action level, the

railroad should require that employee to wear hearing protection until the railroad can obtain an audiogram. As explained at the beginning of this paragraph, FRA has already adopted that requirement but located it elsewhere in the rule.

Section 227.109(e)(2) sets out the requirements for establishing baseline audiograms for existing employees. Section 227.109(e)(2)(i) covers existing employees who have not had a baseline audiogram as of the effective date of the rule. Class 1, passenger, and commuter railroads, and railroads with 400,000 or more annual employee hours have two years from the effective date of the rule to establish a baseline audiogram for this group of employees. Railroads with 400,000 or fewer annual employee hours have three years from the effective date of the rule to establish a baseline audiogram for this group of employees. For a further discussion on allowances for small entities, see the section-by-section analysis for § 227.103(a).

ASHA and AIHA did not like the two year allowance that FRA gave railroads for existing employees. They suggested that railroads treat existing employees without baseline audiograms as if they were new employees. NHCA likewise did not like this allowance, suggesting that FRA phase in all aspects of the rule within 12 to 18 months. NHCA wrote that SBREFA, which FRA cited to support the phase-in implementation, only applies where no immediate safety risks exist. NHCA believes there is an immediate safety risk here, and so it is not appropriate to phase in implementation dates.

FRA, along with a Working Group recommendation, decided to leave that provision as proposed in the NPRM. At the NPRM stage, FRA made a decision to distinguish between new employees and existing employees and to give railroads more time to test existing employees. That was one of the big differences between OSHA's rule and FRA's rule with respect to baseline audiograms. FRA had specifically deviated from OSHA and extended the time frame for compliance in order to accommodate the unique aspects of the rail industry. FRA recognizes that there are serious administrative difficulties, and potentially high costs, of testing a large number of mobile employees in a short period of time. This extra time was intended to give railroads an opportunity to "catch up" on their testing. Also, contrary to NHCA's assertion, FRA does not believe there is an immediate safety risk. FRA expects that many of the rail employees will be tested well before the end of the two-year period. Moreover, as a practical

matter, FRA expects that many railroad employees will already have been tested as part of existing railroad hearing conservation programs. Accordingly, FRA did not adopt the commenters' suggestions.

Sections 227.109(e)(2)(ii) and (iii) cover existing employees who have had a baseline audiogram as of the effective date of the rule. FRA has decided to grandfather many of these baseline audiograms. This is in line with OSHA, which had adopted a lenient policy on accepting baseline audiograms that were produced before the promulgation of the hearing conservation amendment. OSHA had noted that it was flexible in grandfathering old baseline audiograms, because in most cases, this would be more protective of employees.

For the same reasons, FRA is grandfathering baseline audiograms. FRA believes that the grandfathered baseline audiograms will provide a more accurate picture of an individual's hearing ability. A grandfathered baseline audiogram will show an employee's initial hearing level and so, when compared with subsequent audiograms, it will be possible to determine the extent of an employee's hearing loss. Also, by allowing railroads to grandfather baseline audiograms, FRA eliminates unnecessary costs for the railroad, because railroads do not need to re-test employees that have already been tested. Whether or not a railroad can grandfather a particular baseline audiogram depends on how the railroad conducted that baseline audiogram.

Per § 227.109(e)(2)(ii), where an existing employee has already had a baseline audiogram as of the effective date of this rule, and it was obtained under conditions that satisfied the requirements found in 29 CFR 1910.95(h), the railroad must use that baseline audiogram. Section 1910.95(h) identifies OSHA's audiometric test requirements for employees who obtained audiograms as part of a hearing conservation program. The requirements in 29 CFR 1910.95(h) are similar to the requirements that are now found in FRA's rule at § 227.109.

FRA notes that many locomotive engineers will have baseline audiograms that were obtained as part of the hearing acuity⁵⁶ testing for FRA's Locomotive

Engineer Qualification. See 49 CFR 240.121. FRA expects that the majority of these audiograms will have met OSHA's 29 CFR 1910.95(h) requirements. FRA notes that railroads must accept these baseline audiograms if they were obtained in compliance with the requirements found in 29 CFR 1910.95(h)(1)–(5).

Per § 227.109(e)(2)(iii), where an existing employee has already had a baseline audiogram as of the effective date of this rule, and it was obtained under conditions that satisfied the requirements in 29 CFR 1910.95(h)(1) but not the requirements found in 29 CFR 1910.95(h)(2)–(5), the railroad may elect to use that baseline audiogram as long as the Professional Supervisor of the Audiometric Monitoring Program makes a reasonable determination that the baseline audiogram is valid and is clinically consistent with the other material in the employee's medical file.

At the suggestion of AAA and CAOHC, FRA revised this section by replacing the phrase "individual administering the Hearing Conservation Program" (which was used in the NPRM) with "Professional Supervisor of the Audiometric Monitoring Program." Professional Supervisor of the Audiometric Monitoring Program is defined in § 227.5. While the RSAC Working Group agreed to add a definition in the final rule for "Professional Supervisor of the Audiometric Monitoring Program," the RSAC Working Group did not specifically address the substitution in this situation. FRA has made this change, because it ensures that the determination in § 227.109(e)(2)(iii) is made by a qualified professional who understands hearing loss. FRA made a similar change in § 227.109(i).

ASHA, AIHA, and Theresa Schulz commended FRA for grandfathering these pre-existing baseline audiograms. They also agreed with FRA that it should be the responsibility of the professional supervising the hearing conservation program to determine which pre-existing audiograms are acceptable and which should be chosen as the baseline.

An issue closely related to grandfathering baseline audiograms is recordkeeping. During pre-NPRM Working Group meetings, many railroad representatives expressed concern about the record-keeping requirements associated with grandfathered baseline audiograms. Section 227.121 requires railroads to maintain records of employee audiometric tests and to retain them for the duration of the employee's employment plus thirty years. Those records should include

information such as the name and job classification of the employee, the date of the audiogram, the examiner's name, the date of the last acoustic or exhaustive calibration of the audiometer, and accurate records of the measurements of the background sound pressure levels in the audiometric test rooms. At the NPRM stage, railroads explained that they will not be able to provide all the required information for grandfathered baseline audiograms.

FRA is fully aware of the railroads' concerns and so FRA reiterates in this final rule what FRA explained in the proposed rule. FRA recognizes that, in some cases, railroads will not have some of that information and will not be able to obtain some of that information (e.g., a railroad might not know the examiner or the last exhaustive calibration for a baseline audiogram that was obtained five years ago). FRA will be cognizant of that fact when evaluating what records are available and when evaluating the adequacy of the available records. Overall, FRA will take a practical approach toward the audiometric test record-keeping requirements for grandfathered baseline audiograms.

Section 227.109(e)(3) addresses one of the details of baseline audiogram tests, specifically, that baseline audiograms must be preceded by a 14-hour quiet period and that HP may be used in place of the 14-hour quiet period. Aearo Company submitted comments on the second part of this subparagraph. Aearo Company has concerns about allowing employees to substitute hearing protection in place of a 14-hour quiet period. Aearo Company asserts that hearing protectors do not provide high levels of protection and do not always prevent noise-induced hearing loss. They explain that hearing protectors fail to prevent permanent threshold shifts, and so they must also fail to prevent temporary threshold shifts. In essence, then, Aearo Company doesn't think hearing protectors are an effective substitute for a quiet period. However, Aearo Company recognizes that it would be impossible and impracticable to require employees to rely solely on the 14-hour quiet period, because, for example, it is not always possible for an employer to obtain an audiogram prior to a workshift.

Aearo Company proposes that FRA continue to allow the use of the 14-hour quiet period, but with stipulations. An employee would be able to use hearing protectors as long as, within 5 days prior to the audiogram: (1) The employee received individual refresher training on the use of his or her hearing protector, (2) the condition of the employee's hearing protector is checked

⁵⁶ Aearo Company commented that FRA used the term "hearing acuity" incorrectly in the preamble and suggested that FRA use "sensitivity" instead. FRA used the term "hearing acuity" in the preamble, and again in this final rule, to refer to an existing regulatory provision that contains the term. See § 240.121 "Criteria for vision and hearing acuity data." Moreover, FRA's use is consistent with OSHA's use. See 66 FR 52031, 52032 (October 12, 2001).

and found to be satisfactory, (3) the hearing protector to be used is either an earmuff or a foam earplug or is a device that has been fit-tested and shown to provide adequate protection to reduce exposure to levels equivalent to less than 80 dB(A), and (4) an employee exposed to sound levels about 100 dB(A) would be required to wear an earplug with an earmuff for the 14-hour quiet period.

FRA and the Working Group considered Aearo Company's suggestion but decided to leave the rule as proposed. FRA believes this change would impose very rigorous standards that would greatly increase the requirements of the rule and are not justified. In addition, there are practical problems with this approach. For example, regarding #1, FRA's standard already requires training whenever an employer provides an employee with HP, so it is unnecessary to duplicate that requirement. Regarding #2, it is unclear who would check the employee's HP and whether there would be a record made of the check. If so, there would then be an additional recordkeeping burden on employers. Regarding #3 & 4, this specific standard contradicts the performance standard that FRA uses in § 227.115(a)(4) for giving employees an opportunity to select from a "variety" of HPs with a "range" of attenuation levels. Finally, FRA pulled this provision directly from OSHA's general industry noise standard. See 29 CFR 1910.95(g)(5)(iii). As OSHA is the lead agency in this area, and FRA does not see any compelling reason to veer from OSHA's rule, FRA is leaving the rule the same as FRA's proposed rule and OSHA's general industry standard.

Since the post-NPRM RSAC Working Group meeting, FRA realized that there were some drafting errors in this section and corrected them. Section 227.109(e)(3) referred to "the level specified in § 227.115" and yet there are several levels listed in § 227.115 and so it was not clear to which level in § 227.115 the rule was referring. To clear up this type of confusion which can result from cross-referencing, FRA has revised § 227.109(e)(3) such that it refers directly to the specified level, i.e., the action level. In addition, FRA changed the term "workplace" to "occupational" in the second sentence of § 227.115, so that the terminology is consistent throughout the paragraph. Accordingly, § 227.115 now provides that "testing to establish a baseline audiogram shall be preceded by at least 14 hours without exposure to occupational noise in excess of the action level. Hearing protectors may be

used as a substitute for the requirement that baseline audiograms be preceded by 14 hours without exposure to occupational noise."

Section 227.109(e)(4) provides that "the railroad shall notify its employees of the need to avoid high levels of non-occupational noise exposure during the 14-hour period immediately preceding the audiometric examination." FRA did not receive any comments on this section and so it remains the same as proposed in the NPRM.

Section 227.109(f) provides the requirements for periodic audiograms. Periodic audiograms are the subsequent audiograms that are conducted at regular intervals in the future. They can be used to identify deterioration in hearing ability and to track the effectiveness of a hearing conservation program.

This section has undergone several permutations. The starting point was OSHA's rule. OSHA requires an employer to obtain a new audiogram at least annually for each employee exposed at or above the 8-hour TWA of 85 dB(A). See 29 CFR 1910.95(g)(6). During RSAC Working Group meetings, labor representatives tended to disfavor mandatory hearing testing and railroad representatives tended to favor mandatory hearing testing. The RSAC Working Group members reached a compromise position that was used in the proposed rule. It required railroads to test employees at least once every three years but to offer a test at least once a year.

FRA received several comments on this provision. The commenters, including ASHA, AAA, AIHA, NHCA, CAOHC, Aearo Company, Theresa Schulz, and 12 individual ASHA members, overwhelmingly supported an annual audiometric testing requirement. Theresa Schulz wrote that the annual audiogram is a "critical tool to determine the effectiveness of a hearing conservation program." NHCA wrote that "annual audiometric monitoring will allow for early identification, leading to early intervention, and thus the potential to prevent noise-induced hearing loss." Aearo Company explained that, with triennial audiometric testing, an employer's ability to catch changes in time and to halt the progression [of hearing loss] will be substantially diminished. ASHA and AIHA went on to explain that a significant amount of irreversible hearing loss can occur in 3 years. Theresa Schulz and NHCA added that the progression of hearing loss is more aggressive in early years of an employee's career, especially the first 3 to 6 years of noise exposure.

The commenters identified several other reasons why FRA should require annual testing. Aearo Company wrote that the test data is of less value when spread out over 3 year periods. Aearo Company explained that audiometric test results can be very variable, and so a doctor reviewing data for potential shifts might want to review additional test results spanning a period of years. With triennial tests, it would take too long to develop a database of periodic audiograms. Aearo Company also wrote that the annual audiogram is the best training opportunity that a professional hearing conservationist has to educate and motivate employees. Having a triennial testing requirement means there are much fewer training opportunities. In addition, ASHA, AIHA, and Aearo Company noted that it would more logical for FRA to be consistent with other Federal noise standards (OSHA, MSHA, DOD) and have an annual audiometric test requirement. CAOHC and Aearo Company acknowledged that the mobile railroad workforce presents some logistical challenges and recognized FRA's desire to reduce that burden for railroads, yet still thought that FRA should require annual audiometric tests. Finally, ASHA and AIHA also stated that it will be administratively more difficult for FRA to track compliance if there is as much as 3 years between audiograms.

There was one commenter who took a different position. Attorney/audiologist Michael Fairchild of Michael Fairchild and Associates wrote that "OSHA and MSHA do not make the hearing test mandatory which results in some individuals 'slipping through the cracks' until it is far too late to preserve their hearing." He felt that obtaining triennial hearing tests would help to alleviate that problem to at least some extent.

At the post-NPRM RSAC Working Group meeting to discuss comments to the proposed rule, the AAR raised a new concern. They noted that they had not raised this concern in their comment submission but that it followed the same logic as their comment submission regarding calendar days in the training requirement. The AAR argued that the testing should be based on a calendar year, not 365 days from the last test. The AAR explained that they had not contemplated the issue when the RSAC Working Group was drafting recommendations for the NPRM, but at this stage, they had realized that it would be too difficult for them to comply with the proposed requirement. They explained that it would be virtually impossible to offer testing to each

covered employee every 365 days, given their large workforce, mobile nature of the workforce, and lack of clinics in certain rural communities. The railroad representatives explained that they needed more time and more flexibility to meet the testing requirement. In turn, the labor representatives pointed out that a calendar year requirement raised some serious practical concerns. For example, a railroad could offer testing to an employee in January 2008 and would not have to offer testing again to that employee until December 2009. In effect, then, employees could go as long as 23 months without having the railroad offer them a test.

There was a great deal of discussion on this topic during the post-NPRM Working Group meeting. The RSAC Working Group members were faced with various sets of competing positions. There was the railroad-labor difference of opinion as to the time frame. The railroad wanted the requirement based on the calendar year but labor thought that allowed for far too much time between tests. There was also a railroad-commenter difference of opinion. On one hand, commenters rejected a triennial testing requirement and instead recommended an annual audiometric testing requirement. On the other hand, the railroad representatives adamantly asserted that they were unable to comply with the proposed triennial testing requirement, no less an annual requirement.

In the end, the RSAC Working Group recommended, and FRA adopted, a variation on the provision that was used in the proposed rule. The final rule requires a railroad to offer an audiometric test to each employee included in the hearing conservation program at least once every calendar year, however, the rule qualifies the time frame. For any individual employee, the interval between the date offered for a test in a calendar year and the date offered in the subsequent calendar year shall be no more than 450 days and no less than 280 days. See § 227.109(f)(1).

The provision giving railroads up to 450 days to offer a test to any individual employee is important, because it will provide railroads with sufficient time to offer testing to their large, mobile workforce. This provision was part of the RSAC recommendation for this rulemaking.

The provision that requires railroads to offer audiometric tests at least 280 days apart was not a product of the RSAC consensus. FRA added this provision after the RSAC Working Group meeting. Without this provision, railroads would have been able to offer

tests to employees virtually back-to-back. For example, a railroad could test an employee in December 2006 and again in January 2007. To prevent that, FRA has established a minimum time period between tests of 280 days, or 9 months. FRA chose 9 months, because it allows for equal increments of time in relation to the 450 day requirement. The final rule also requires railroads to require each employee included in the hearing conservation program to take an audiometric test at least once every 1095 days. See § 227.109(f)(2). 1095 days is the equivalent of 36 months or 3 years. This triennial requirement is consistent with the triennial hearing acuity requirement for locomotive engineers. See 49 CFR 240.201(c).

Contrary to some of the comments received, FRA believes that these provisions are, in fact, comparable to OSHA provisions because they mandate employers' offering testing annually and require employee's participation not less than triennially.

Section 227.109(g) provides the requirements for the evaluation of audiograms. Paragraph (g)(1) provides that each employee's periodic examination should be compared to that employee's baseline audiogram to determine if the audiogram is valid and to determine whether a standard threshold shift (STS) has occurred. The second sentence of paragraph (g)(1) provides that this comparison may be done by a technician. AAA and CAOHC commented on this second sentence, suggesting that FRA require this comparison to be done by a technician "under the supervision of a Professional Supervisor of the Audiometric Testing Program." FRA adopted that change, though not in the precise manner the commenter suggested. Instead of adding that phrase here, FRA added that phrase elsewhere—i.e., in the definition of "qualified technician" located in § 227.5. FRA believes it important to have the Professional Supervisor oversee these determinations, because it will ensure consistency of application across all determinations.

Paragraph (g)(2) states that if the periodic audiogram demonstrates a STS, a railroad may obtain a retest within 90 days and use the retest as the periodic audiogram. This provision differs from OSHA's regulation. OSHA gives an employer 30 days to obtain a re-test if an annual audiogram shows that an employee has experienced a standard threshold shift. See 29 CFR 1910.95(g)(7)(ii).

Several commenters opposed the 90-day retest period, suggesting that FRA follow NIOSH's recommendation for an immediate retest if an STS has occurred.

If the retest audiogram does not show the same shift, the retest audiogram becomes the test of record and there is no need for a confirmatory test within 30 days. ASHA and AIHA also recommended that FRA require employers to conduct confirmation audiograms within 30 days of any monitoring or retest audiogram that continues to show an STS. They believe that the 90-day window permits too much time to lapse to permit effective comparison of tests, and they believe that 30 days is more appropriate. One commenter supported this provision. Michael Fairchild and Associates, noted that the 90-day retest period "makes sense given the mobile nature of the target worker population and the fact that some conditions that may cause a spurious STS may not resolve within the 30 days required by OSHA and MSHA."

FRA and the Working Group discussed the issue and decided to leave the retest period at 90 days. Most importantly, this 90-day retest period accommodates the mobile nature of the railroad work force. OSHA's 30-day retest period would not be appropriate here. OSHA regulates employers that tend to have employees at fixed facilities, and so it is practically possible to retest those employees within 30 days. Railroad employees, by contrast, are not at fixed facilities, but are widely dispersed, constantly moving throughout the country, and often work irregular hours. As well, many are subject to the Hours of Service laws, which further limits the railroad's ability to test employees on certain dates and at certain times. In addition, FRA and the Working Group believe that the 90-day period might allow for a better retest than the 30-day period. For example, medical conditions that are likely to interfere with the audiometric test, such as the common cold, are more likely to resolve themselves in 90 days than 30 days.

Section 227.109(g)(3) provides that the audiologist, otolaryngologist, or physician shall review problem audiograms and shall determine whether there is a need for further evaluation. A railroad shall provide various pieces of information to the person performing this review. That information includes: The baseline audiogram of the employee to be evaluated, the most recent audiogram of the employee to be evaluated, measurements of background sound pressure levels in the audiometric test rooms, and records of audiometer calibrations.

As used in this paragraph, "problem audiograms" refers to audiograms that

have had technical or administrative problems. In a general sense, it refers to situations where the testing equipment did not work, where there is evidence that the test-taker skewed the test results, or where the results are medically atypical. Examples of problem audiograms include audiograms that show large differences in hearing thresholds between the two ears, audiograms that show unusual hearing loss configurations that are atypical of noise induced hearing loss, and audiograms with thresholds that are not repeatable.⁵⁷

NHCA commented on this paragraph, noting that FRA had not required railroads to provide the worker's most recent noise exposure. NHCA thinks this information is critical to the professional reviewer in making appropriate follow-up decisions. NHCA also wrote that "although it can be difficult to obtain this information from the worker, it is not impractical especially since FRA has a requirement to keep a list of employees or positions in the hearing conservation program."

FRA is not sure what the NHCA is recommending here. NHCA seems to be implying that the employee provide this information to the railroad, which does not make sense. Moreover, OSHA requires employers to retain a record of the employee's most recent noise exposure assessment (see 29 CFR 1910.95(m)(2)(e)), but FRA, in the recordkeeping section, made a conscious decision not to include this requirement in FRA's rule.

FRA specifically excluded, and continues to exclude, the employee's most recent noise exposure, because the workforce in question typically experiences a relatively wide range of exposures. Thus, there is no reason to believe that any individual's last exposure data will be particularly relevant to the evaluation of an audiogram. Further, this rule authorizes monitoring of exposures on a sampling basis, so for any given employee, the last exposure may not be available or may be months or years out of date.

Section 227.109(h) provides the follow-up procedures for subsequent audiograms. Section 227.109(h)(1) provides that a railroad shall notify an employee if the railroad determines that the employee has experienced a standard threshold shift (STS). The employer will be able to identify that a STS has occurred by comparing the employee's baseline audiogram with the employee's periodic audiogram. A railroad shall inform the employee in

writing within 30 days of the determination. FRA's rule gives railroads 30 days while OSHA's rule gives employers 21 days. See 29 CFR 1910.95(g)(8)(i). FRA's rule provides railroads with more time, because FRA is taking into account the mobile railroad workforce and railroads' difficulty in providing notice to that mobile workforce. Moreover, FRA believes there is no substantial harm if the railroads have an additional nine days to notify employees.

Section 227.109(h)(2) identifies the steps that a railroad should take if the railroad learns that an employee has experienced a standard threshold shift and specifies further notification procedures for subsequent audiometric testing. It provides that "if subsequent audiometric testing of an employee whose exposure to noise is less than an 8-hour TWA of 90 dB indicates that a standard threshold shift is not persistent, the railroad shall inform the employee of the new audiometric interpretation and may discontinue the required use of hearing protectors for that employee."

Several commenters, including Theresa Schulz, ASHA, AAA, AIHA, CAOHC, and NHCA strongly opposed the language in § 227.109(h)(3). Before summarizing their comments, it is necessary to provide a context for their comments. According to § 227.115(c)(2), a railroad must require the use of HP when an employee is exposed to sound levels that meet or exceed the action level, and the employee has experienced a STS and is required to use HP under § 227.109(h). However, according to § 227.109(h)(3), the railroad may discontinue the required use of HP if an employee's STS resolves, i.e., is not persistent. In other words, if the railroad finds that an employee's STS was only a TTS (temporary threshold shift), then the railroad need not require that employee to continue wearing HP.

The commenters were opposed to language in § 227.109(h)(3), and several requested that FRA delete it. They stated that it is illogical to discontinue the use of HP if an STS is not deemed persistent. They explained that a TTS is an indication that intervention is necessary, not that intervention should be discontinued. AAA explained that "If a retest indicates that hearing may have improved due to the use of HP prior to the retest, individuals should be aware of the need to continue use of HP when exposed to noise, rather than simply ignore this early warning and continue with the sloppy use of [personal protective equipment]." Similarly, AIHA wrote that a TTS may be an early indication of a noise-susceptible

employee. Rather than discontinue the use of HP, the employer should see it as an indicator that they need to intervene and promote the effective use of HP by offering a different selection of devices.

These commenters overwhelmingly emphasized that to discontinue intervention is to allow a TTS to become a permanent threshold shift (or permanent hearing loss) and that does not further the goal of preventing hearing loss. They wrote that the current language in the rule means that employers are merely documenting the TTS, but not doing anything to prevent further hearing loss. As Theresa Schulz wrote, this provision "makes the hearing conservation program an *hearing loss documentation* program!"

CAOHC recommended a variation, specifically that FRA require employees who show a STS that is not persistent but who are exposed to noise levels between 85 and 90 dB(A) to use HP. AAA also recommended a very similar variation, suggesting that employees who (1) show a STS that is not persistent and (2) are exposed to <90 dBA TWA not be allowed to terminate use of HP.

FRA, with the consensus of the RSAC Working Group, has decided to leave this provision as presented in the proposed rule. FRA does not believe it makes sense to change this provision according to the commenters' recommendations. If FRA adopted the commenters' recommendations, FRA would create a "new class" of noise-exposed employees—that is, employees who are exposed to noise below an 8-hour TWA of 90 dB(A) and who do not have an STS upon retest. Also, FRA would require that "new class" of noise-exposed employees to wear hearing protection all the time. As long as these employees continued in the same job and experienced the same noise exposure, they would have to wear hearing protection for the rest of their working careers. That would be illogical given that the STS could have been caused by one or more conditions other than hearing loss, e.g., poor technique, an undetected illness that suppresses hearing, an intentional effort to test poorly, or some other non-noise related condition. In addition, in order to ensure that this "new class" of exposed employees were in compliance, FRA would have to require a new set of records, which would impose an additional recordkeeping burden on railroads. Finally, this change would be a significant departure from OSHA. FRA adopted this provision from OSHA's general industry noise standard. See 29 CFR 1910.95(g)(8)(iii). Throughout this rulemaking, FRA has followed OSHA's

⁵⁷ OSHA Interpretation Letter from OSHA to Mr. J. Christopher Nutter dated May 9, 1994.

lead and veered from it only when FRA thought it was necessary to accommodate the unique aspects of the rail industry or when there have been advances in technology that warranted a change. As OSHA is the lead agency in this area and FRA does not see any compelling reason to veer from OSHA's rule in this case, FRA is leaving this provision as proposed.

Section 227.109(i) identifies the methods which railroads should use to revise baseline audiograms. The first method, which is provided in § 227.109(i)(1), should be used by railroads for the two years immediately following the effective date of this rule. It states that there are two situations where a Professional Supervisor of the Audiometric Monitoring Program may substitute a periodic audiogram in place of the baseline audiogram. The two situations are: (1) the audiogram reveals that the standard threshold shift is persistent, or (2) the hearing threshold shown in the periodic audiogram indicates significant improvement over the baseline audiogram. FRA adopted this concept from OSHA's general industry noise standard. See 29 CFR 1910.95(g)(9).

At the suggestion of AAA and CAOHC, FRA revised this section by replacing the phrase "audiologist, otolaryngologist, or physician" (which was used in the NPRM) with the more specific phrase "Professional Supervisor of the Audiometric Monitoring Program." Professional Supervisor of the Audiometric Monitoring Program is defined in § 227.5. While the RSAC Working Group agreed to add a definition in the final rule for "Professional Supervisor of the Audiometric Monitoring Program," the RSAC Working Group did not discuss the substitution in this situation. FRA has made this change, because it ensures that the substitution in § 227.109(i) is made by a qualified professional who understands hearing loss. FRA made a similar change in § 227.109(e)(2)(iii).

The second method, which is provided in § 227.109(i)(2), should be used by railroads for the period of time after the date that this rule has been in effect for two years. This method is virtually identical to the NHCA Professional Guide for Audiometric Baseline Revision (NHCA Guidelines).

NHCA recommended that FRA adopt the NHCA Guidelines and use it to better explain what OSHA meant in 29 CFR 1910.95(g) and what FRA now means in § 227.109(i). AAA, CAOHC, and Aearo Company also endorsed the use of the NHCA Guidelines. According to the commenters, NHCA developed

these guidelines in 1996 in response to frustrations among hearing conservationists who wanted clarification of what OSHA intended for baseline audiograms in its general industry standard.⁵⁸ The commenters explained that the OSHA guidelines lack precision. They explained that the NHCA Guidelines, in contrast, provide specific recommendations concerning when audiometric baselines should be revised. The NHCA Guidelines offer a standardized method of determining when baselines will be revised, and so they assure consistency and uniformity among professional reviewers. Several commenters also noted that these guidelines "have been commonly accepted."

FRA agrees with the commenters that, from a technical and programmatic point of view, the information contained in the NHCA Guidelines is very useful information. OSHA is silent on this issue, and these NHCA Guidelines provide much-needed guidance in this area. The NHCA Guidelines create a consistent methodology for revising baselines and in the process, make FRA's rule more clear. They fill the gap that has developed since OSHA issued its rule. And it fills the gap with a document created by and widely supported by the hearing conservation community.

Accordingly, with the consensus of the RSAC Working Group, FRA added the NHCA Guidelines as Appendix C to this final rule: "Audiometric Baseline Revision." FRA has made some edits to the document to tailor them for FRA's use (e.g., changing "OSHA" to "FRA" and changing the "30-day retest" to a "90-day retest"). The appendix is initially non-mandatory, but the appendix will become mandatory two years from the effective date of the final rule. The RSAC Working Group agreed that this two-year period is a fair and reasonable amount of time. It should provide railroads with sufficient time to make any necessary administrative changes.

Section 227.109(j) addresses standard threshold shifts. It provides that when determining whether a standard threshold shift has occurred, the individual evaluating the audiogram can consider the contribution of age (presbycusis) to the change in hearing level. The individual evaluating the audiogram should use the procedure described in Appendix F: "Calculation and Application of Age Correction to Audiograms."

⁵⁸ The Executive Council of the National Hearing Conservation Association approved these guidelines on February 24, 1996.

Appendix F is a non-mandatory appendix that employers can use to calculate and apply age correction to audiograms. Consistent with their 1998 criteria document, NIOSH submitted comments, recommending that FRA should not provide employers with the option of using age-corrected hearing levels to determine the presence or absence of a STS. NIOSH explained that "it is statistically inappropriate to apply aggregate data to individuals." In addition, NIOSH asserted that the Appendix F tables are racially biased and are discriminatory against persons older than 60 years old. NIOSH explained that the data sources for the age correction tables in Appendix F were surveys conducted in the late 1960s and early 1970s. The tables are representative of Caucasian male and female hearing thresholds from age 20 to 60 and therefore not of people of other races and above 60 years old.

NIOSH went on to suggest that FRA should make some changes to the age-correction charts if FRA decides to use age correction tables. Specifically, NIOSH suggested that FRA make the following adjustments—compute age corrections based on hearing levels of the 84th or 98th percentiles, i.e., mean minus 1 or 2 standard deviations; use tables that have representative age-related changes for both genders of all major ethnic groups; and use tables that accurately represent age-related hearing changes for workers over age 60. NIOSH also recommended that, if FRA wishes to use age correction tables, FRA should use tables derived from the National Health and Nutrition Examination Survey (NHANES), a joint National Institutes of Health (NIH)—Centers for Disease Control (CDC) effort, in order to ensure that the racial, gender, and age specific corrections are valid.

AAA and NHCA also submitted comments on this matter. Similar to NIOSH, AAA and NHCA do not support the use of the tables in Appendix F, because they are racially biased and discriminatory against persons greater than 60 years old. AAA raised a separate issue too. AAA asserts that the OSHA method for permitting use of age corrections (when computing STSs) is not a best practice for identifying meaningful changes in hearing. AAA believes that age correction of individual audiograms is counterproductive to the goal of detecting temporary hearing changes before they become permanent hearing losses. AAA asserts that a STS should be a sentinel for identifying significant changes in hearing.

On one hand, FRA understands that there are problems with the historical

data used to create the tables in Appendix F. It is older data that fails to take into account racial differences or the fact that people now have longer life spans. On the other hand, FRA does not have a viable alternative to use in place of the tables in Appendix F.

NIOSH did not present FRA with a viable alternative option. NIOSH did recommend that FRA use data from NHANES, but the NHANES effort is still pending, so there is nothing conclusive to use. There is no good scientific data available yet. NIOSH also offered that its scientists could provide technical assistance to FRA. However, that is not a feasible option for FRA either. FRA has neither the resources nor the expertise to conduct its own studies, obtain the new data, and create new age correction tables, even with NIOSH's technical assistance.

Since there is no viable replacement for the Appendix F tables, FRA considered the option of removing the age correction charts completely. Essentially, the age correct decision would be left up to the professional judgment of the Professional Supervisor of the Audiometric Monitoring Program. However, FRA decided that might do more harm than good. Without these tables, there would be absolutely no guidance for Professional Supervisors, and FRA would have created a gap.

Finally, OSHA, not FRA, is the lead federal agency on this matter and OSHA continues to use age correction charts. FRA is reluctant to make such a radical departure from OSHA at this time. Given the above reasons and the fact that these tables are non-mandatory, FRA and the Working Group decided to leave these tables as proposed in the NPRM. When, and if, OSHA decides to change these tables, FRA will consider a change.

Section 227.111 Audiometric Test Requirements

This section sets out the requirements for audiometric tests. FRA used OSHA's standard at 29 CFR 1910.95(h) as a starting point and then tailored the provisions for FRA's use.

Section 227.111(a) provides that audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including 500, 1000, 2000, 3000, 4000, 6000, and 8000 Hz. Tests at each frequency shall be taken separately for each year.

In the proposed rule, FRA sought comment on whether FRA should add the 8000 Hz frequency. Several commenters, including AAA, CAOHC, Aearo Company, NHCA, and NIOSH recommended that FRA require

audiometric testing at the 8000 Hz frequency. They explained that the information provided by the 8000 Hz threshold is valuable in determining the classic "noise notch" pattern. It enhances clinical decisions about the probable etiology of hearing losses. In order to determine that hearing loss is related to noise exposure and is a "work-related hearing loss," clinicians must observe an audiometric notch at 4000 Hz or 6000 Hz. This notch cannot be calculated without observing hearing thresholds at 8000 Hz. In addition, commenters noted that the cost, time, and effort of adding one frequency per test is negligible, particularly when compared to the reviewer time lost when a case's status regarding work-related, noise-induced hearing loss is unclear.

Accordingly, FRA has decided, and the RSAC Working Group has agreed, to require audiometric testing at the 8000 Hz frequency. It is important to include this frequency, because it will allow employers to identify hearing loss sooner. It is possible to include this frequency because the technology to test it is available while the time and effort necessary to test it is negligible. Moreover, railroads with hearing conservation programs are probably already testing at this frequency. It is important to note that all existing tests (i.e., tests conducted prior to this rule and which did not include the 8000 Hz frequency) are still considered to be valid tests.

Section 227.111(b) provides that audiometric tests shall be conducted with audiometers that meet the specifications of and are maintained and used in accordance with ANSI S3.6-2004, "Specification for Audiometers."⁵⁹ Aearo Company brought to FRA's attention the fact that FRA had published an outdated ANSI standard in the proposed rule (i.e., ANSI S3.6-1996), FRA has since updated the standard.

Section 227.111(b)(1) addresses the requirements for pulsed-tone audiometers. In the proposed rule, the requirement for pulsed-tone audiometers was found in § 227.111(c). FRA has substantially revised this requirement since the proposed rule. For a discussion of the changes, see the section-by-section analysis for Appendix C to this part.

Section 227.111(b)(2) is new to this final rule. This provision allows railroads to use insert earphones while conducting audiometric testing. Some

commenters asserted that FRA had allowed for the use of insert earphones by adopting the updated ANSI standard for audiometers (ANSI S3.6-2004) in § 227.111(b). They explained that ANSI S3.6-2004 includes, among other things, requirements for the use of insert earphones and so therefore, FRA must implicitly be allowing for the use of insert earphones in § 227.111(b).

The commenters also discussed OSHA's position on insert earphones. OSHA does not explicitly permit the use of insert earphones in its standard (although, as one commenter pointed out, that is probably because this technology did not exist at the time OSHA promulgated its standard). In fact, as indicated in a August 31, 1993 interpretation letter, OSHA considers the use of insert earphones to be a violation, albeit a *de minimis* one. Employers who wish to use insert earphones under OSHA standards can do so and avoid a citation, however, if they satisfy specified conditions (which are listed in the August 31, 1993 letter). Commenters concurred that OSHA's position on insert earphones is difficult with which to contend. One commenter specifically wrote that OSHA has made the use of insert earphones difficult in industrial settings.

Overwhelmingly, commenters praised the idea of permitting the use of insert earphones. Commenters pointed out that insert earphones are increasingly used in hospital-based and clinical practices, and so it is logical to permit their use in the regulation. Aearo Company wrote that insert earphones not only provide the same level of test validity and reliability as supra-aural headphones but eliminate several of the most vexing limitations of supra-aural earphones. AAA noted that it is desirable to use insert earphones since they provide better isolation of the stimulus (than supra-aural headphones) from the ambient room noise. AAA also wrote that insert earphones provide significant advantages in testing patients with background noise levels, with asymmetrical hearing loss, and with collapsing canals, and for reducing cross-contamination in cases of external ear canal infections.

The RSAC Working Group considered the issue of insert earphones. The members felt strongly that FRA should not require the use of insert earphones. The Working Group members explained that there were logistical problems with their required use. Railroad contractors who perform hearing tests do not generally use insert earphones, because, among other things, they have to keep several different types of tips and that becomes too difficult when they are

⁵⁹ For a general discussion on the use of ANSI standards in this rule, see the section-by-section analysis for § 227.103(c)(2).

operating out of mobile vans. As well, there are data problems with using insert earphones. The data from tests with insert earphones and tests with supra-aural headphones would not be comparable since the testing conditions for each vary. Despite these problems, the Working Group agreed that insert earphones are a useful and emerging technology and wanted to provide railroads with the option of using them. The Working Group recommended that FRA permit their use but left it to FRA to work out the details.

Consistent with the Working Group's recommendation, FRA is allowing railroads to avail themselves of this new technology. FRA could have relied on the implication in § 227.111(b) that permits the use of insert earphones, but FRA believes that is too ambiguous. To avoid ambiguity, § 227.111(b)(2) of this rule explicitly permits the use of insert earphones. Although FRA is not mandating the use of insert earphones, when they are in fact used, they must be used consistent with the requirements listed in Appendix E: "Use of Insert Earphones for Audiometric Testing." In drafting the requirements for Appendix E, FRA used the conditions from OSHA's August 31, 1993 letter as a starting point and tailored them to meet FRA's needs. Of note are the background sound level requirements for insert earphones. They are discussed below in the section-by-section analysis for § 227.111(c).

Section 227.111(c) provides that railroads should administer audiometric examinations in rooms that meet the requirements listed in Appendix D: "Audiometric Test Rooms." Appendix D specifies that employers shall use rooms that do not have background sound pressure levels that exceed the levels in Table D-1 of Appendix D. Railroads are required to measure sound pressure levels with equipment conforming to at least Type 2 requirements of ANSI S1.4-1983 (Reaffirmed 2001), "Specification for Sound Level Meters" and to the Class 2 requirements of ANSI S1.11-2004, "Specification for Octave-Band and Fractional-Octave-Band Analog and Digital Filters."⁶⁰ Note that FRA has updated the octave-band filter ANSI standard from the outdated standard used in the proposed rule, ANSI S1.11-1971 (R1976) "Specification for Octave, Half-Octave, and Third-Octave Band Filter Sets."

Several commenters asserted that the background noise levels in Table D-1 of

Appendix D are too high. The commenters explained that excessive background noise levels in the room can interfere with an individual's ability to detect stimuli. As a result, clinicians do not know whether hearing shifts are valid or are caused by interfering background noise. In addition, Aearo Company explained that the Appendix D levels, which FRA adopted from OSHA, are outdated. Aearo Company explained that the OSHA requirements were based on a 1960 ANSI standard and its values were based on audiometric zero as defined in 1951. The 1951 threshold values are about 10 dB less sensitive than today's values, and the science behind the 1960 permissible noise standard was not as well developed.

The commenters proposed various alternatives. Theresa Schulz recommended that FRA adopt the background noise levels specified by the DOD in their Instruction 6055.12 (DOD, 1996). AAA, NHCA, ASHA, and Aearo Company recommended that FRA adopt the compromise position established by NHCA—that is, adopt the latest ANSI standard on background noise levels, ANSI S3.1-1999, "Maximum Permissible Ambient Noise Levels for Audiometric Rooms" but with a 5 dB relaxation at 500 Hz.⁶¹ NIOSH suggested that FRA adopt the ANSI S3.1-1999 standard for testing frequencies of 1000 to 8000 Hz but did not assert a position on how FRA should handle 500 Hz.

With respect to the ANSI S3.1-1999 standard, the commenters were concerned about railroads' "real world" ability to comply with ANSI S3.1-1999, specifically the maximum noise level at 500 Hz. They pointed out that studies have shown that a large percentage of audiometric booths and test vans would fail those requirements at 500 Hz. Mobile facilities did not fail, however, when the requirement for 500 Hz was relaxed. Aearo Company also pointed out that the 5 dB relaxation has minimal negative effect. Aearo Company explained that ambient background noise is typically high at 500 Hz and at the same time, occupational noise exposure has little measurable effect on the hearing thresholds that are masked (i.e., elevated) by those background noise levels.

By contrast, one commenter, Michael Fairchild and Associates suggested that the proposed Appendix D is a workable solution. He asserted that the proposals from the various professional organizations are "neither workable in a

real world environment nor necessary." He explained that the very low ambient sound levels suggested by the professional organizations are necessary for clinical diagnosis and research but not for occupational hearing conservation screening tests. He also explained that audiometric testing in a rail yard can be difficult under the current OSHA standards. Given the noise in the rail yard environment, clinicians often have to stop and re-start the test or move the test away from the work area. Both increase employee travel time and costs.

The RSAC Working Group discussed this issue of background sound levels at the post-NPRM meeting. The Working Group identified three options: (1) Use the OSHA background sound levels found in Appendix D, (2) use the more stringent standards (i.e., lower levels) found in ANSI S3.1-1999 or (3) use a modified version of the ANSI S3.1-1999 standard (i.e., relax 500 Hz by 5 dB).

Railroad representatives of the Working Group were concerned that they would experience substantial administrative difficulties if they had to comply with ANSI S3.1-1999 standard. One representative explained that, when this rule goes into effect, some railroad employees will be covered by the OSHA HCA while others will be covered by FRA. If FRA adopted the ANSI standard, railroads would have to test some employees with existing equipment that meets the OSHA standards and others with new equipment that meets the ANSI standard. There would also be difficulties with mobile test vans. Mobile test vans are already set to the OSHA standards, so all vans would have to be re-worked to accommodate the ANSI standards. AAR representatives stated that they do not know of any vans currently available on the market that are set to the new ANSI standard. In addition, some Working Group members pointed out that, given the noise environment in a rail yard, it is often difficult to perform audiometric tests using OSHA's background sound levels. To change the requirements to ANSI's more stringent standard would be even more difficult. Overall, the Working Group felt strongly that it was difficult to expect employers to switch between the standards in Appendix D and the latest ANSI standard. As a result, FRA decided to leave the requirements as proposed—that is, railroads should comply with the background sound levels that FRA adopted from OSHA and placed in Appendix D.

A related issue is the background sound levels for insert earphones. As several commenters pointed out, insert

⁶⁰ For a general discussion on the use of ANSI standards in this rule, see the section-by-section analysis for § 227.103(c)(2).

⁶¹ This relaxes the 1991 ANSI requirements by 3.5 dB (and the current 1999 ANSI standard by 5 dB) to a value of 24.5 dB.

earphones provide more attenuation than supra-aural headphones and so the background sound levels can be higher when hearing tests are performed with insert earphones. Accordingly, the relevant ANSI standard (ANSI S3.1-1999) sets higher background levels for insert earphones. The RSAC Working Group members discussed this issue at the post-NPRM meeting. The Working recommended that FRA allow the use of insert earphones but left it to FRA to implement the requirements for their use.

FRA considered two options for background sound levels for insert earphones: (1) the Appendix D levels which FRA adopted from OSHA (and which apply to supra-aural headphones) or (2) the levels in ANSI S3.1-1999. FRA has decided to use the background noise levels specified in ANSI S3.1-1999. Note, however, that FRA is not adopting ANSI S3.1-1999 in whole (and specifically not the background noise levels for supra-aural headphones). FRA is merely adopting the background noise levels from ANSI S3.1-1999 as they relate to insert earphones. FRA has placed the noise levels for insert earphones in a new row in Table D-1 of Appendix D. The background noise levels for insert earphones are higher than the background noise levels for supra-aural earphones. This is due to the fact that insert earphones provide higher attenuation.

Section 227.111(d) addresses the calibration of audiometers. Section 227.111(f)(1) requires a check of the audiometer's functional operation before each day's use. This requirement is slightly different than the related provision in OSHA's standard. In OSHA's rule, the audiometer must be checked by testing a person with known, stable hearing thresholds. In FRA's rule, the audiometer can be checked by either a person or with an appropriate calibration device.

Section 227.111(d)(2) requires an acoustic calibration annually. This section also directs railroads to perform the acoustic calibration in accordance with ANSI S3.6-2004.⁶² Just as FRA replaced ANSI S3.6-1996 with ANSI S3.6-2004 in § 227.111(b), so FRA has done here. FRA made this change at the recommendation of a couple of commenters and with the agreement of the RSAC Working Group.

Upon replacing the information in Appendix E with the requirement to comply with an ANSI standard, FRA realized that most of the information in

the proposed Appendix E: "Acoustic Calibration of Audiometers" was outdated and unnecessary. The information in the proposed Appendix E had come from OSHA's Appendix E, and most of that information, in turn, appears to have come from ANSI S3.6-1969. FRA deleted that outdated information. FRA has placed in § 227.111(d)(2) the requirement that railroads comply with ANSI S3.6-2004. FRA has also included some particularly salient parts of the ANSI standard and provided them in § 227.111(d)(2).

FRA notes that this updated ANSI standard includes procedures for the calibration of audiometers with insert earphones. FRA expects that railroads who elect to use insert earphones will follow those calibration procedures.

Section 227.111(d)(3) requires an exhaustive calibration, performed in accordance with ANSI S3.6-2004, once every two years for audiometers not used in mobile test vans and once a year for audiometers used in mobile test vans. This stricter requirement for mobile vans is necessary because of the nature of mobile service work. Mobile vans are constantly in movement, and thus the audiometric equipment in those mobile vans are subject to greater mechanical stress. An exhaustive annual calibration will ensure that the audiometer is continually producing accurate test results. Moreover, the cost of such a calibration is low. Because of that, FRA concluded that the minimal cost of this stricter requirement would be easily offset by the assurance of more accurate test data.

Theresa Schulz commented on this stringent mobile van requirement, noting that it helps to maintain quality in a difficult-to-control environment. She went further, suggesting that FRA require "daily listening checks" that railroads should conduct whenever they move equipment or turn it on or off. While FRA believes it's important to have more stringent standards for mobile test van audiometers, however, FRA does not believe it is necessary to go so far as to require daily listening checks. FRA believes the exhaustive annual calibration for mobile test vans is sufficient.

Section 227.113 Noise Operational Controls.

This section addresses noise operational controls. Operational controls refer to efforts to limit workers' noise exposure by modifying workers' schedules or locations or by modifying the operating schedule of noisy machinery. Examples of operational controls include, but are not limited to,

the following: placement of a newer (i.e., quieter) locomotive in the lead; rotation of employees in and out of noisy locomotives; and variation of employee's routes, e.g., rotation of employees on routes that have many grade crossings (which means that the horn is sounded more often). Operational controls are beneficial, because they help reduce the total daily noise exposure of employees, thereby reducing the harmful cumulative effects of noise. They also make the environment safer and take the burden off the employee to protect himself or herself.

Noise operational controls are the functional equivalent of OSHA's term "administrative controls." Unlike OSHA, FRA does not mandate the use of controls. This difference is rooted in practicality. In general industry, if an employee's noise exposure is too high, an employer can often simply move the employee to a different location. That option is not necessarily available in the railroad industry. Certain railroad employees, by the nature of their job, are limited as to their ability to be moved to a quieter location. For example, locomotive engineers have to work in a locomotive, which can be noisy. Management can rotate employees through a quieter locomotive or a quieter route, but even those options are limited, given that locomotives are constantly moving throughout the country and a quieter locomotive might not be available or a quieter route might not exist on a particular day for a particular employee. Because there are far fewer options in the railroad industry for employing operational controls, FRA did not mandate the use of noise operational controls in this rule.

This section provides that railroads may use noise operational controls to reduce noise exposures to levels below those required by Table A-1 of Appendix A of this part and that railroads are encouraged to use noise operational controls when employees are exposed to sound exceeding an 8-hour TWA of 90 dB(A). This section has been revised slightly since the proposed rule. The revision does not make any substantive changes; it merely ensures that the regulatory language accomplishes what FRA had intended and what FRA had expressed in the preamble to the proposed rule. In particular, railroads may consider noise operational controls at any point in time. The proposed rule provision had implied that railroads should wait until sound reaches an 8-hour TWA of 90 dB(A) before using or considering noise

⁶² For a general discussion on the use of ANSI standards in this rule, see the section-by-section analysis for § 227.103(c)(2).

operational controls, and that is not the case.

As stated above, railroads have the *option* of using noise operational controls. Railroads can use noise operational controls, by themselves, to lower the total noise exposure (as long as the total noise exposure does not exceed 90 dB(A) as an 8-hour TWA, in which case the railroad must also require hearing protection). Railroads can also use noise operational controls in combination with the other controls. Those other controls include FRA's design, build, and maintenance requirements (*i.e.*, those items found in § 229.121, through which FRA has embodied OSHA's concept of engineering controls). FRA realizes operating requirements and labor agreements may affect a railroad's ability to use noise operational controls; nevertheless, FRA would like railroads to remain open to their use.

While noise operational controls will be an option for all railroads, FRA expects that the smaller railroads will be in the best position to use them and benefit from the flexibility that they provide. Small railroad work is characterized by more limited hours of operation and more flexible work rules, and thus it is more conducive to the use of operational controls. Noise operational controls are even more useful to small railroads since they rarely have the opportunity to implement engineering controls. Unlike larger railroads, small railroads infrequently buy new locomotives or rebuild old locomotives.

A couple of commenters, including ASHA and AIHA, submitted comments, supporting FRA's decision to make noise operational controls optional rather than mandatory. The commenters point out that administrative controls have proven to be problematic in general industry. They explain that administrative controls tend to take a secondary role to production requirements and that they have been difficult to administer and enforce."

Section 227.115 Hearing Protectors

This section addresses hearing protectors (HP), another measure that can be used to minimize employee exposure to noise in the locomotive cab. The term "hearing protector" is defined in § 227.5. Hearing protectors can be divided into three main categories: (1) Ear plugs that are placed in or against the entrance of the ear canal to form a seal and block sound; (2) ear muffs that fit over and around the ears to provide an acoustic seal against the head; and

(3) helmets that encase the entire head.⁶³

FRA has reorganized § 227.115 since the proposed rule. The content remains the same; however, the section is structured differently. This was brought about by Aearo Company's comment that the proposed §§ 227.115(a) and 227.115(c)(1) were redundant. By reorganizing the section, FRA believes it has removed the redundancy and also made this section more clear. Paragraph (a) contains the general requirements for hearing protectors, while paragraphs (b) through (d) address employee use of hearing protectors.

Section 227.115(a) contains the general requirements for hearing protectors. Railroads are required to provide hearing protectors to employees at no cost (§ 227.115(a)(1)) and replace hearing protectors as necessary (§ 227.115(a)(2)). These requirements are similar to the comparable provision in OSHA's standard, which is found at 29 CFR 1910.95(i).

Section 227.115(a)(3) is unique to FRA's rule; there is no comparable provision in OSHA's rule. This provision requires railroads to consider two important factors when offering (and requiring) hearing protectors: (1) Employees' ability to understand and respond to voice communications, and (2) employees' ability to hear and respond to audible warnings. This requirement addresses FRA's concern that the overuse of hearing protection may be counter-productive, especially for employees with existing hearing loss. For example, an employee who is exposed to a TWA of 85 or 86 dB(A) should not wear HP that provides 30 dB in noise reduction, because that will reduce the employee's hearing ability and thus the employee's ability to listen and communicate in the cab. The ability of these employees to discriminate speech and recognize other auditory cues is critical to avoiding train accidents and incidents.

FRA specifically sought comments from the public on this issue. In general, commenters supported this provision. ASHA, Theresa Schulz, and AIHA submitted similar comments, applauding FRA's recognition of the potential adverse impacts of overprotection. They explained that overprotection is prevalent because "purchasing authorities often * * * operate under the false assumption that higher noise reduction is better—regardless of local exposure conditions and need." They noted that a "one size fits all" approach for HP is inappropriate. They explained that

employers instead need to consider several factors—including an employee's comfort, an employee's ability to understand and respond to voice and radio communication, and an employee's ability to hear and respond to audible warnings—when selecting HP for an employee. Theresa Schulz noted that these two new considerations that FRA added (*i.e.*, an employee's ability to hear and respond to (1) voice communication and (2) audible warnings) are important considerations that directly address the problem of overprotection." Overall, these commenters expressed their belief that employees will be safer and more satisfied with HP if overprotection is limited or eliminated.

NHCA also applauded FRA for including this language. NHCA suggested that the use of low-attenuating devices or flat-attenuating devices may be an option to address the problem of employees' inability to understand and respond to voice radio communications and audible warnings. Likewise, an individual railroad operating employee with 35 years of engine service submitted comments applauding FRA's efforts with this rule. While he didn't specifically link his comment to this provision, he raised a point directly related to it. He acknowledged that he sometimes has difficulty hearing the alerter when he is wearing his hearing protection.

Another commenter, Aearo Company, initially explained that, based on their experience, the problem is usually inadequate use of HP, not overuse of HP. While responding to the preamble discussion on avoiding excessive reflexive use of HPs, Aearo Company asserted that the "problem is truly one of getting those in need to be protected without focusing undue attention on the few who may be wearing hearing protection that need not be." However, further in their comments, Aearo Company noted that "FRA's interest in accommodating hearing loss and use of HPs in moderate noise is well founded." Aearo Company pointed to data supporting FRA's provisions; Aearo said that the studies have found that the use of HPs in lower-level noise increases the likelihood that the HPs "will interfere with the audibility of warning signals and communication, especially for the hearing impaired." Similar to the comments mentioned above, Aearo Company noted that "simple blanket recommendations are not possible." Aearo Company suggested that it is generally necessary to do case-by-case analyses for each critical communication scenario and that such an analysis might include speech

⁶³ Berger at 383.

intelligibility or signal detection testing in a simulated occupational noise environment, as well as the services of a consulting audiologist.

Similarly, Wilson, Ihrig, & Associates had a mixed reaction. They agreed with FRA that employees with existing hearing loss will have more problems communicating with HPs and that a 30 dB noise reduction for an employee with existing hearing loss would be inappropriate. However, Wilson, Ihrig, & Associates then asserted that a 30 dB noise reduction is unlikely even if the NRR rating indicated such. Wilson, Ihrig, & Associates explained that "FRA should assume the reduction indicated in the NIOSH recommended standard document. [Accordingly,] it would appear that over protection would be a minor problem and that the main problem is outfitting a population of workers who already have hearing loss, where it is a problem of bad signal to noise ratio that precludes proper communication."

In addition to the above comments, Aearo Company had an organizational suggestion. Aearo Company suggested that the concept in § 227.115(a)(3) (which requires consideration of communications ability) would work better as the latter part of the proposed § 227.115(a)(4) (which requires railroads to provide a variety of hearing protectors). While FRA did not merge the two concepts, FRA has re-organized the section. As part of that reorganization, these two concepts are now back-to-back. FRA believes that change addresses the intent of Aearo Company's comment; it makes these concepts more understandable.

In the NPRM, FRA sought comment from the public on a related matter—the potential use by railroads of a mandatory hearing protection provision as a disciplinary tool. During pre-NPRM Working Group meetings, some labor members of the RSAC Working Group stated that they were uneasy with the HP requirement in § 227.115(a)(3). They worried that railroads might use a mandatory HP provision as a disciplinary tool or as a means for harassing an employee. They were also concerned that compliance could ultimately erode as a result of this provision and employees would encounter even worse noise exposure, i.e., if railroads were to unnecessarily mandate the use of HP, employees who find HP uncomfortable would stop wearing them altogether and receive even less hearing protection.

The commenters on this subject did not seem to think this would be a problem. ASHA and AIHA noted that the use of HPs should be considered in

the same light as all other mandatory personal protective equipment. They also noted that "enforcement of this policy should be uniform and consistent" and that neither labor nor management should view the use of HP as punitive or as a disciplinary tool. Aearo Company was surprised by this statement, explaining that it is unsupported by literature. Aearo Company explained that "discipline may certainly be needed for those who fail to wear their safety products, but viewing the required use of safety products as discipline is counterproductive." Aearo Company went on to explain that individuals who have studied and written on this topic emphasize the need for "strong enforcement, good motivation, and the development of a safety culture within an organization."

The AAR also submitted comments similar to those they had made at the RSAC Working Group meetings. They wrote that they supported these requirements; however, they disagreed with a comment made by FRA in the preamble discussion accompanying this provision in the NPRM. The AAR noted that during Working Group meetings, there was an open exchange of ideas and opinions, some of which were ultimately rejected by the Working Group. With respect to labor's concern that a mandatory HP provision could be used as a disciplinary tool, the AAR says they explained, during the Working Group discussions, that most railroads have had mandatory HP requirements and many of the requirements have been in place for 20 years. The AAR says they invited FRA or labor "to provide examples of any abuse of these rules, and none were forthcoming." "Given this background, AAR believes that it is inconsistent with the history and spirit of the RSAC process to include a comment like this in the NPRM."

Given FRA's belief that § 227.115(a)(3) is a valuable addition to FRA's noise standard, coupled with the overwhelming positive response that FRA received from the public, FRA is leaving this provision as proposed in the NPRM. FRA believes there are many beneficial aspects to the use of HP especially when employers carefully select an employee's HP (i.e., consider the employee's ability to understand and respond to communications and warnings).

Section 227.115(a)(4) provides that "The railroad shall give employees the opportunity to select their hearing protectors from a variety of suitable hearing protectors. The selection shall include devices with a range of attenuation levels." The first sentence of

this paragraph is identical to OSHA's rule. See 29 CFR 1910.95(i)(3). The second sentence is unique to FRA's rule. The requirements in both sentences underscore the importance of railroads offering employees with sufficient options—a variety of hearing protectors with a range of hearing attenuation levels. FRA believes that providing a choice of suitable devices increases the likelihood that the employee will use the device as required.

FRA received various comments about the phrase "variety of suitable hearing protectors" in the first sentence. Overwhelmingly, commenters noted that the rule does not define the term "variety" and requested that FRA provide a definition. Aearo Company pointed out that OSHA's regulation did not adequately define "variety" and as a result, OSHA has had to issue subsequent interpretations.

Several commenters provided specific suggestions as what a "variety" should be. Aearo Company wrote that a choice between two protectors, as per OSHA's HCA, is inadequate because "it fails to provide sufficient choice to assist in persuading the employee that they are a welcome participant in the HCP, and hence to encourage their 'buy-in' to the program." Aearo Company noted that a 2000 study and MSHA both recommend a minimum of four devices. ASHA, Theresa Schulz, and AIHA submitted similar comments, all suggesting that FRA require employers to provide a minimum number of HPs, i.e., "at least four different models of HPs with an appropriate range of attenuation levels including at least two types of earplugs and one type of earmuff." ASHA explained that the effectiveness of a HCP is dependent on the workers' willingness to wear HPs. By ensuring that workers have sufficient options, it increases the likelihood that workers will willingly wear their HP. NHCA made a similar suggestion, though with slightly different language. NHCA wrote that railroads should be required to "offer a minimum of four hearing protection devices (HPDs), including at least two different styles of plugs (e.g., foam and flanged), and at least one type of earmuff."

Aearo Company went further, explaining that "suitable variety" refers to more than just providing HPs with a range of potential levels of protection; it also means that an employer should provide HPs with differing feels and ergonomic characteristics. As Aearo Company wrote, "a 'menu' of options from which to choose conveys to employees that their opinion counts, and this in turn will enhance their feelings of self-efficacy and the

likelihood of wearing their HPs consistently and properly.”

At the meeting to discuss public comments, the Working Group considered these recommendations. The Working Group recommended that the rule should remain as stated in the NPRM, i.e., to refrain from specifying a minimum number of HPs which an employer must offer. FRA agrees and is reluctant to specify a minimum number as representing a “variety,” because FRA is concerned that employers may interpret that number as a maximum rather than a minimum. In addition, FRA wants to provide employers with the flexibility to consider the specific working environment of their employees. By specifying a number, FRA would be greatly limiting the employer’s flexibility.

FRA, however, would like to clarify the meaning of “variety.” When offering hearing protectors, employers should offer employees several different types, whether ear plugs, ear muffs, and/or electronic headsets. Within any given type, the employer should offer several different designs and models. For example, with respect to ear plugs, there are several options, including, but not limited to, roll down foam earplugs, push-in foam earplugs, premolded-flanged earplugs, premolded-unflanged earplugs, banded ear protectors. The employee should have the opportunity to try a variety of devices, so that he can determine what fits best and most comfortably.

Railroad industrial hygiene representatives of the Working Group indicated that a lack of variety of HP has not been a problem in the past, and they do not foresee that it will be a problem in the future. Several of the major railroads indicated that they have developed practices that seem to work. One railroad industrial hygienist noted that he tries to keep a large variety of hearing protectors readily available for employees. Another railroad industrial hygienist explained that he tries to work with employees on an individual basis if the employee has a special need, such as a STS.

As further guidance, FRA is including the hearing protector selection criteria set forth in the report of the NHCA Task Force on Hearing Protector Effectiveness in 1995. FRA included this information at the suggestion of the NHCA. “No single HPD characteristic, such as attenuation (as represented by the present NRR), or any other feature, should be the sole arbiter influencing selection of an HPD. The most critical consideration in selecting and dispensing a hearing protector is the ability of the wearer to achieve a

comfortable noise-blocking seal, which can be consistently maintained during all noise exposures. Additional important issues include: The noise reduction of the device, the wearer’s daily equivalent noise exposure, variations in noise level, user preference, communication needs, hearing ability, compatibility with other safety equipment, the wearer’s physical limitations, climate and other working conditions, and HPD replacement, care and use requirements.”

FRA also received a comment about the “range of attenuation levels” language found in the second sentence of § 227.115(a)(4). Aearo Company explained that the provision “range of attenuation levels” is helpful but too vague. Aearo Company is concerned that an employer “could easily interpret a range of attenuation values as being only 27–33 dB, just as likely as being from 12–33 dB,” and so they suggested some alternative language. FRA decided not to adopt Aearo Company’s suggested language. The Working Group agreed, but recommended that FRA include more guidance in the preamble.

As used in this paragraph (a)(4), a “range of attenuation levels” means that an employer should provide HP types with ranges that are sufficient to protect the employee from the level of noise expected but still permit the employee to communicate effectively for the job. In addition to offering devices with high attenuation, railroads should offer devices with low or moderate attenuation. Low or moderate attenuation devices further safety by facilitating communication and the detection of audible cues in the workplace. FRA expects that railroads will employ or consult professionals, such as industrial hygienists, who can guide employees in their selections and ensure that employees are adequately protected.

Section 227.115(a)(5) provides that railroads shall provide training in the use and care of all hearing protectors provided to employees. This section sets out the general requirement that railroads must train employees on the use and care of HP. Section 227.119 addresses this issue further. It requires railroads to have a training program that includes, among other things, instructions on selection, fitting, use, and care of hearing protectors. See § 227.119(c)(4). FRA did not receive any comments on § 227.115(a)(5), and accordingly FRA has left this provision as proposed.

Section 227.115(a)(6) provides that railroads shall ensure proper initial fitting and supervise the correct use of all hearing protectors. NHCA

commented on this provision, noting that the initial fitting is critical. NHCA explained that employers often gloss over the HPD fitting and simply tell employees to “follow the directions on the package.” NHCA wrote that “the employee should be given the opportunity [at the proper fitting] to sample a variety of HPDs to determine the proper fit, comfort, preference, appropriateness, and ability to use correctly.” FRA agrees that it is important that employers take the time and effort with employees at their initial fitting to ensure that the employees have the proper HP.

Sections 227.115(b) through (d) address the use of hearing protectors by employees. Section 227.115(b) requires railroads to make hearing protectors available to all of its employees exposed to noise at or above the action level. Section 227.115(c) provides that railroads shall require the use of HP where employees are exposed to sound levels that meet or exceed the action level, and the employee has not yet had a baseline audiogram established pursuant to § 227.109 or the employee has experienced a STS and is required to use HP under § 227.109(h). Section 227.115(d) provides that railroads shall require the use of HP when an employee is exposed to sound levels equivalent to an 8-hour TWA of 90 dB(A) or greater. The HP should be used to reduce sound levels to within the levels required by § 227.105 and Appendix A to § 227.105. Note that, since FRA has removed Table 1 (to § 227.105) from the rule, FRA has removed the reference to Table 1 here in § 227.115(d). FRA received some comments suggesting that FRA reorganize the proposed §§ 227.115(a) and (c). FRA has done so and believes that this section is now easier to understand.

Section 227.117 Hearing Protector Attenuation

Section 227.117(a) provides that a railroad shall evaluate HP attenuation for the specific noise environments in which the protector will be used and directs that a railroad shall use one of the methods described in Appendix B to this part, “Methods for Estimating the Adequacy of Hearing Protector Attenuation.” Those methods include: derating by type, Method B from ANSI S12.6–1997 (Reaffirmed 2002), and objective measurement.

This is a change from the proposed rule. In the NPRM, FRA had adopted OSHA’s Appendix B to 29 CFR 1910.95, which provided for the following methods: Noise Reduction Rating (NRR), and NIOSH methods #1, #2, and #3. There were two main issues with respect to the changes to this section:

the inclusion of Method B as an acceptable method and the overall revision of Appendix B.

In the NPRM, FRA had not included Method B but had sought comment on whether FRA should include it. Method B refers to the use of "subject-fit" attenuation data measured according to Method B from ANSI S12.6-1997 (Reaffirmed 2002). That ANSI standard, "Methods for Measuring Real-Ear Attenuation of Hearing Protectors," "provides attenuation estimates based on the responses of subject who are given the manufacturer's directions and are told to fit the device themselves as best they can."⁶⁴ Instead of the traditional method of obtaining attenuation estimates, which uses experimenters who fit highly trained subjects, this method uses subjects that are untrained in the fitting of hearing protectors. Arguably, "the NRR derived from Method B more closely resembles the real-world performance of hearing protectors."⁶⁵

Several commenters responded to FRA's request for comment, stating that FRA should allow railroads to use Method B as a method for evaluating hearing protector noise reduction. The president and principal of Wilson, Ihrig, & Associates explained that, based on his experience as a consultant, of those individuals who had filed hearing loss claims, most who used HP had done so without any explicit training. Thus, Wilson *et al.* explained, "determining the attenuation without training or with only verbal training would provide a very valuable tool with respect to the actual attenuation achieved under actual field conditions."

Similarly, ASHA and AIHA agreed with FRA's assessment that Method B more closely resembles the real-world performance of hearing protectors and supported its inclusion in Appendix B. They explained that hearing protector ratings included in the NRR are based on data obtained under optimal laboratory conditions and therefore differ greatly from the noise reduction that employees actually experience on the job. They pointed to a few studies, including one that "demonstrated that having untrained subjects fit their own hearing protectors provided much better estimates of the hearing protectors' noise attenuation in the workplace than having the experimenter fit them." Theresa Schulz went further, explaining that there are other methods available to test the "real world" performance of

hearing protectors (e.g., the "fit-check" and the Predicted Personal Attenuation Rating) and recommending that FRA also encourage the use of those methods.

Other commenters, such as NHCA and Aearo Company, acknowledged that the Method B "subject-fit" attenuation data provides a better estimate of the average real world attenuation but expressed concern about using Method B. Both noted that there is "still wide debate about Method B and questions about whether it will be adopted or widely used." NHCA, along with some other commenters, recommended that railroads have the option to follow the NIOSH recommendations for derating HPs for the purpose of estimating the average workplace protection attainable by groups of HP users. The Aearo Company suggested a more complex scheme, whereby the use and type of attenuation varies based on the employee's level of exposure.

FRA and the Working Group considered this issue and decided to allow railroads to use Method B as a method of evaluating hearing protector attenuation. It provides railroads with an additional option, thereby giving railroads more flexibility to choose the method which is most appropriate for them.

The other issue related to HP attenuation was the overall revision of Appendix B. Aearo Company had submitted comments, asserting that it was "regrettable" that FRA chose to adopt OSHA's Appendix B without change. Aearo Company explained that Appendix B is confusing and misleading and recommended that FRA rewrite and clarify it in the final rule. The RSAC Working Group discussed Aearo Company's comment at the post-NPRM meeting and decided that it was most appropriate to leave Appendix B as proposed, with the exception that, FRA would add Method B as an option for estimating the adequacy of HP attenuation. The Working Group also noted that Aearo Company had not provided FRA with any viable alternatives to use in place of Appendix B.

As FRA attempted to incorporate Method B into Appendix B, FRA encountered difficulty. FRA found that the proposed appendix was, in fact, confusing. Given the confusion and complications, FRA is unable to simply add Method B, and so FRA is revising Appendix B. While the decision to add Method B to Appendix B was part of the RSAC Working Group consensus, the revision of Appendix B was not. FRA has modified Appendix B as explained below.

In the interest of simplicity, FRA provides for three methods of estimating real world HP protection levels. Using the first method, one subtracts 7 dB from the published NRR and then derates based on a percentage of the remainder. This is similar to NIOSH recommendations based on type. The justification for derating by device type has to do with the potential effect HP fit has on the attenuation level, with muffs being the least prone to fitting poorly and non-formable ear plugs being the most prone to fitting poorly. Using the second method, one would derate based on ANSI S12.6-1997 (Reaffirmed 2002) Method B. And finally, using the third method, one uses objective measurement. One conducts testing in user environments that measure actual levels inside the users HPs. FRA wants to emphasize that it recognizes that all of the methods mentioned, with the possible exception of the objective measurements, are estimates and may not precisely reflect the true level of protection. FRA acknowledges that the level of protection is as much related to the quality of training, practice and motivation of the users as it is to the NRR of the devices used.

Finally, with respect to HP attenuation, NHCA submitted further comments, specifically that FRA should include cautions about HP attenuation in the rule text. The cautions are based on conclusions of the NHCA Task Force on Hearing Protector Effectiveness. The Working Group, along with FRA, did not think it was necessary to include this information in the rule text but did think it was useful to include it here in the preamble. Accordingly, FRA encourages railroads to be cognizant of the following when evaluating HP attenuation:

When comparing hearing protectors, differences between hearing protector ratings of less than 3 dB are not important.

The labeled values of noise reduction are based on laboratory tests. It is not possible to use these data to reliably predict levels of protection achieved by a given individual in a particular environment. To ensure protection, those wearing hearing protectors for occupational exposures must be enrolled in a hearing conservation program.

The remaining provisions in § 227.117 are identical to FRA's proposed rule and to OSHA's standard at 29 CFR 1910.95(j). Section 227.117(b) provides that hearing protectors shall attenuate employee exposure to an 8-hour TWA of 90 decibels or lower, as required by § 227.115.

Section 227.117(c) provides that hearing protectors for employees who have experienced a STS must attenuate exposure to an 8-hour time-weighted

⁶⁴ Council for Accreditation in Occupational Hearing Conservation "Hearing Conservation Manual," Fourth Edition, 114 (2002).

⁶⁵ *Id.*

average of 85 decibels or lower. During pre-NPRM RSAC Working Group discussions, a railroad representative raised some practical concerns about this requirement. Per § 227.115(d), an employee selects his hearing protection. The railroad representative is concerned that an employee might select hearing protection that is not protective enough, e.g., an employee might want to use HP with lower attenuation because he or she finds it more comfortable. FRA notes that a railroad should offer its employees a variety of hearing protectors with several different types of attenuation, all of which provide adequate protection.

Section 227.117(d) provides that the railroads should re-evaluate the adequacy of hearing protector attenuation whenever noise exposures increase to the extent that hearing protectors may no longer provide adequate attenuation. FRA believes it is necessary for railroads to conduct noise monitoring in order to know whether noise exposures have changed.

Section 227.119 Training Program

This section governs a railroad's training program. FRA's training requirements are based heavily on OSHA's training requirements found at 29 CFR 1910.95(k), however there are some differences, which are noted below. Section 227.119(a) sets forth the basic requirement that railroads must institute an occupational noise and hearing conservation training program for all employees included in the hearing conservation program.

LIRR submitted comments about the training requirement generally. They noted that they already have a four-day process to re-certify/re-qualify crews (on rules, air brakes, and parts 238 and 239). To add hearing training would extend the process to five days, which LIRR asserts would be at a significant cost and with added administrative burdens. As FRA has noted earlier in preamble, this rule evolved out of the RSAC process, of which several railroad representatives were members. Those members felt that this rule would not be overly burdensome on railroads, especially considering that most railroads already have HCPs in place. Moreover, the RSAC Working Group and FRA, as well as the majority of other commenters, feel that hearing conservation is an important enough issue to warrant this rulemaking and its associated training. In fact, one commenter, a consultant who has consulted on over 200 hearing loss claims, wrote that, based on his observations, he believes that one of the two main reasons for cab employees'

hearing loss is a lack of adequate training. He asserts that railroad HCPs have "not been comprehensive or thorough enough with respect to educating on both the need for and how to properly use appropriate hearing protection devices."

Sections 227.119(a)(1) and (2) have evolved through the rulemaking process and therefore a discussion is warranted. In the NPRM, FRA proposed that railroads shall offer training annually and shall require each employee to complete training triennially. This differed from OSHA's requirement, which requires employees to complete a hearing training program at least once a year.

FRA received numerous comments on this matter. On one end of the spectrum was the AAR, which suggested that the training requirements should be based on a calendar year, not 365 days from the last training. They explained that this would provide flexibility in offering and completing the training but would not substantially change the intervals for any given employee. So, for example, if a railroad offered training to an employee in June 2006, the railroad would be required to offer the next training session any time in 2007 up until December 2007.

On other end of the spectrum were ASHA, AIHA, AAA, NHCA, CAOHC, NIOSH, Aearo Company, and Michael Fairchild and Associates, all who advocated for FRA to require annual, not triennial, training. They all noted that training is very important, explaining that motivation and education of employees is a key element to hearing conservation success and is one of the most effective and critical components of a HCP. Michael Fairchild and Associates doubted that employees would retain information if not reinforced annually. Similarly, NIOSH asserted that training would be more effective if presented annually, based on the acquisition, retention, and application of new knowledge and skills. The commenters also noted that the success or failure of HCPs has been shown to depend on the "buy-in" of employees. They explained that training not only educates employees but it serves to reveal problems that employees face in complying with components of a HCP. The commenters also pointed out that an annual requirement would be consistent with OSHA's general industry standard as well as with other federal agencies such as MSHA and DOD. Aearo Company, acknowledging FRA's desire to minimize intrusion into the mobile railroad workforce, suggested that if FRA had to reduce training frequency,

FRA should compromise at requiring training at least every 2 years.

The RSAC Working Group discussed this matter at length. The AAR, an active member of the RSAC Working Group present during the proposed rule discussions, raised a new issue in their comments to the proposed rule. The AAR asserted that railroads would have great difficulty complying with a 12 month period. Faced with factors such as a highly mobile workforce and a lack of clinics in certain rural communities, railroads would be unable to offer training once every 12 months. Other RSAC Working Group members, however, were concerned that a calendar year requirement would create the potential for very large gaps between training. In a worst case scenario, an employee offered training in January 2006 might have to wait until December 2007 to be offered training again, a period of almost 2 years. Or, an employee offered training in December 2006 could next be offered training in January 2007, a period of only two months.

In the spirit of compromise, the RSAC Working Group decided on the provision that is now in the final rule. Each railroad shall offer training to each employee at least once each calendar year. As to any employee, the interval between the date offered for a test in a calendar year and the date offered in the subsequent calendar year shall be no more than 450 days and no less than 280 days. See § 227.119(a)(1). The railroad shall require each employee to complete the training at least once every 1095 days. See § 227.119(a)(2). These provisions are identical to those in § 227.109(f)(2) on audiometric testing.

With respect to the 450-day provision, FRA is trying to give railroads sufficient time to train the large number of railroad employees spread through the country while also trying to ensure that the training sessions are appropriately spaced. This section requires that every employee be offered training every calendar year but to prevent training in two calendar years from being too far apart, is providing that the training interval may not exceed 450 days.

In order to prevent railroads from offering training too close together, FRA has established a minimum interval of 280 days (or 9 months). This provision prevents railroads from offering training to an employee back-to-back, e.g., offer training in December 2006 and again in January 2007. FRA chose 280 days, because it allows for equal increments of time in relation to the 450 day requirement. This 280 day provision is not a product of the RSAC Working Group consensus. FRA added this

provision after the RSAC Working Group meeting.

Section 227.119(b) is new to FRA's rule; no comparable provision exists in OSHA's standard. Section 227.119(b) identifies the times when a railroad should initiate training for employees. For new employees, a railroad shall provide training within six months of the employee's first tour of duty in a position identified within the scope of this part. For existing employees, a railroad shall provide training within two years of the effective date of this rule, except for railroads with 400,000 or less employees hours, who shall provide training in three years.⁶⁶ Note that FRA has changed some of the formatting in this section. The substance of the provision remains the same.

FRA received several comments on this paragraph. One comment was to change the word "after" to "of" before the words "employee's first tour of duty." FRA took that suggestion and changed the rule accordingly. The revised provision now permits an employer to provide the training before, in addition to after, the employee's first tour of duty.

FRA sought, and received, several comments on the start date. FRA asked whether railroads should initiate training no later than six months after the employee's first occupational exposure or whether railroads should initiate training prior to the expiration of the six months (i.e., when the occupational exposure occurs or before the occupational exposure first occurs). ASHA, AIHA, NHCA, NIOSH, Aearo Company, and Theresa Schulz all responded that it is best to train employees and to fit hearing protection *before* employees enter noise-hazardous areas. AIHA wrote that the 6-month and 2-year windows were "unnecessary and counterproductive." The commenters explained that there are negative consequences of allowing employees to work in noise hazardous environments for up to the proposed time periods in that it provides a substantial time frame for employees to develop bad habits and to experience incipient hearing loss. Theresa Schulz wrote that, at the very minimum, railroads should have to train new employees within 6 months. The commenters also pointed out the importance of training. Aearo Company explained that HCP training should be viewed and treated as equally as important as the other pieces of safety information that a new employee receives.

The RSAC Working Group discussed this issue and recommended to FRA to leave this provision as proposed. The RSAC Working Group felt that it was not necessary to require early training, since the important issue is employee protection and employees are otherwise protected during this interim, initial period through the operation of other provisions of the rule. Other provisions of the rule ensure that the employee is protected. Specifically, if a new employee has not yet received a baseline audiogram and is exposed to sound exceeding an 8-hour TWA of 90 dB(A), the employee is required to use HP. See § 227.115(c)(2)(i). Plus, the railroad is supposed to ensure "proper initial fitting and supervise the correct use of hearing protectors." See § 227.115(f). Thus, a new employee, if exposed to hazardous noise, will receive HP and basic instructions on its use. Moreover, railroad members of the RSAC Working Group felt that this issue was moot given standard practice. They explained railroads typically provide new employees with initial training covering all topics when they start their jobs, and therefore new employees are generally trained before they are exposed to noise. Some employees might even receive their noise training as part of their pre-employment training.

Section 227.119(c) lists the items that a railroad should address in its hearing conversation training program and include in its training materials. This is a list of the minimum items that a railroad should address; railroads are free to include additional items if they so wish. The first five items listed in §§ 227.119(c)(1) through (5) are the same items that OSHA requires in its standard. See 29 CFR 1910.95(k)(3). Those items are: The effects of noise on hearing; the purpose of hearing protectors; the advantages, disadvantages, and attenuation of various types of hearing protectors; instructions on selection, fitting, use, and case of hearing protectors; and the purpose of audiometric testing and an explanation of test procedures.

The remaining six items found in §§ 227.119(c)(6) through (11) are additional items which FRA has added to its standard, and which do not exist in OSHA's standard.

Given that FRA has added these additional training requirements, it is not sufficient for railroads to use only a "canned" OSHA training program (although a "canned" OSHA training program does suffice as training for the OSHA-related elements in the FRA training program). A "canned" OSHA training program does not contemplate

the unique needs of the railroad operating environment—e.g., the mobile nature of his or her work, the variety of noise sources to which he or she is exposed—while FRA's training program does. These items were added to address the unique aspects of the railroad operating environment—e.g., the mobile nature of the employees' work, the variety of noise sources to which they are exposed, etc. These items are discussed in the following paragraphs.

Section 227.119(c)(6) requires railroads to provide an explanation of noise operational controls, where used. This is most relevant for short lines, because they are most likely to use noise operational controls.

Section 227.119(c)(7) requires railroads to provide employees with general information concerning the expected range of workplace noise exposure levels associated with major categories of railroad equipment and operations (e.g., switching and road assignments, hump yards proximate to retarders) and appropriate reference to requirements of the railroad concerning the use of hearing protectors. As originally conceived, this provision required railroads to provide employees with workplace noise exposure levels, including examples of where hearing protectors are, or are not, necessary; the types of equipment that emit excessive noise; and the types of operations that produce excessive noise. During meetings at the proposed rule stage, some Working Group members expressed concern that railroads would have to provide detailed information specific to each employee. That would have been administratively difficult for railroads.

After discussing the issue, the RSAC Working Group recommended that the requirement be expressed in more general terms. FRA accepted that recommendation. The general language addresses the railroad's administrative concerns and also addresses FRA's intention that railroads provide a general discussion of the ranges of noise exposure levels that an employee might encounter. FRA does not intend that a railroad provide an individualized report to each employee.

Furthermore, FRA notes that railroads may provide details of requirements for the use of hearing protectors during safety or operating rules training, if the railroad so chooses, as long as the railroad retains the appropriate records required by this part. This should address railroad representatives' concerns about the timing of this training. Some railroad representatives asserted that this material was already

⁶⁶ For a discussion on small entities, see the section-by-section analysis for § 227.103(a).

covered at the time of the audiometric test. Others asserted that a portion of this information was already covered in the railroad safety rules training. Accordingly, FRA did not specify the delivery time for these training requirements. A railroad may choose to present this information at the safety rules training, operating rules training, during audiometric testing, and/or at any other time. A railroad can even present this information to an employee at different times, as long as an employee can reasonably understand the information and make sense of it.

Section 227.119(c)(8) requires railroads to explain the purposes of noise monitoring and a general description of noise monitoring procedures. The intention of this provision is that railroads will provide employees with an understanding of how monitoring is conducted and how monitoring helps to identify potentially high exposures of excessive doses. Railroads do not have to provide employees with a complex, technical discussion. Rather, railroads should provide employees with enough information so that they know what will occur and what equipment will be used during monitoring.

Section 227.119(c)(9) requires railroads to provide information concerning the availability of a copy of this rule, the requirements of this rule as they affect the responsibilities of employees, and employees' rights to access records required under this part. Because FRA mandates that employees participate in the audiometric testing program specified in this rule, it is important that the railroads, at a minimum, explain this rule's requirements as they affect their employees. This provision is not too different from OSHA's requirement; OSHA's rule contains a provision whereby the employer shall make available copies of this standard and shall also post a copy in the workplace. See 29 CFR 1910.95(l)(1). FRA had, at one point, considered a more general provision that would have broadly required railroads to provide information on the requirements of this subpart. However, FRA decided that this more narrow requirement struck a better balance between the need to provide employees relevant information and the scope of the information that railroads will have to provide.

Section 227.119(c)(10) requires railroads to train employees on how to determine what can trigger an excessive noise report, pursuant to § 229.121(b). Section 227.119(c)(11) requires railroads to train employees on how to file an excessive noise report, pursuant to

§ 229.121(b). This information will be helpful to employees, because it will enable them to identify when noise exposures are excessive in the locomotive cab. Also, it will educate employees, so that they know how to respond to excessive noise in the locomotive cab. These two training elements were not found in the NPRM consensus document that the RSAC forwarded to FRA. Rather, these two elements were added after OSHA's review of the NPRM during the pre-publication clearance process.

FRA sought comment on these two items which FRA added as a result of OSHA's review of the proposed rule. Most commenters, including ASHA, AIHA, and Theresa Schulz, supported FRA's decision to include these additional items. One commenter wrote that the additional requirements were "excellent." The commenters went on to explain that these requirements will allow an employee to recognize excessive noise and use HP, which will provide an early intervention to prevent hearing loss. The AAR requested that FRA clarify what would be adequate to satisfy § 227.119(c)(10) (i.e., train employees on how to determine what can trigger an excessive noise report). During the post-NPRM RSAC Working Group meeting, the AAR withdrew this comment, noting that definition in the rule and preamble language in the NPRM (much of which is reproduced in this final rule) sufficiently defines excessive noise report. The AAR also noted that training should include the definition of excessive noise. FRA agrees and encourages railroads to share not only the definition of "excessive noise" with employees but also the information contained in the preamble discussion on "excessive noise."

Another issue which arose in the context of training is delivery method. The NPRM did not specify the delivery method for training. FRA noted that traditional classroom training is the most beneficial, followed by interactive (e.g., computer) training, and then video training. It is FRA's understanding that most class I railroad employees are generally trained by viewing a video presentation or by operating an interactive computer program.

Railroad representatives felt strongly that FRA should not mandate classroom training. They felt that any requirement that departs from a standardized OSHA training program might result in significantly increased costs with questionable additional benefit. FRA sought comment as to whether railroads should conduct training through the use of traditional classroom methods, video presentations, or computer training.

The AAR replied, objecting to FRA's conclusion "on the desirability of classroom training over training by video or computer." The AAR stated that there was no empirical data presented to the Working Group that would support the proposition that traditional teaching methods are more effective than video or computer training. The AAR pointed out that there are benefits to video and computer training, such as avoiding distractions inherent to teaching groups and potentially maximizing the attention to the training by allowing the employee to choose the time of the training. The AAR explained that computer and video training are well accepted by professional educators and felt that they should be maintained as options.

Several other commenters, including ASHA, AAA, and AIHA, were in favor of interactive training. They stated that interactive training is usually more effective, if not the "most effective way to communicate the message." They explained that live training permits employees to interact with the instructor and to ask questions. Several mentioned that it provides a "teachable moment," where an employee is open to receiving information. ASHA and AIHA acknowledged, however, that face-to-face training can be "burdensome and costly" and so ASHA suggested an alternative whereby employers would provide resources for answering employee questions as they arose, instead of conducting face-to-face training.

In this final rule, FRA does not specify a delivery method for training. A railroad can provide the training information through any medium it chooses. Given the nature of the mobile railroad workforce and the cost of this type of training, FRA recognizes that traditional classroom/live training could be costly and administratively burdensome. However, FRA reiterates its belief that traditional classroom training (i.e., face-to-face or live) is an excellent and often highly effective method of training. Traditional classroom training is beneficial, because it allows employees to ask questions and receive immediate feedback. Similarly, training with interactive components (e.g., the ability to test employees' knowledge of the subject matter as they learn and the ability of employees to obtain further information during the session) creates a more effective learning environment than training without those components.

FRA recognizes that there are many creative training options, especially given today's technological capabilities. For example, a railroad could use on-

line interactive training. Or a railroad could supplement a computer or video presentation with content experts that are available through e-mail or phone. It is FRA's belief that these methods, while not necessarily exactly equivalent to classroom training, can be effective in conveying necessary information to employees.

Section 227.121 Recordkeeping

This section contains the recordkeeping requirements for this regulation. Section 227.121(a) sets out some general recordkeeping provisions, and §§ 227.121(b) through (f) specify the records which railroads must maintain and retain. FRA is granted authority to inspect records by 49 U.S.C. 20107. Pursuant to that authority, FRA must act within certain parameters when inspecting records. FRA must enter upon property and inspect records at a reasonable time and in a reasonable manner and must seek records that are relevant to FRA's investigation.

Section 227.121(a)(1) addresses the availability of records. Section 227.121(a)(1) provides that a railroad shall make all records available for inspection and copying/photocopying to representatives of FRA upon request; make an employee's records available for inspection and copying/photocopying to that employee, former employee or such person's representative upon written authorization by such employee; make exposure measurement records for a given run or yard available for inspection and copying/photocopying to all employees who were present in the locomotive cab during the given run and/or who work in the same yard; and make exposure measurements for specific locations available to regional or national labor representatives, upon request.

This section has been revised since the proposed rule. FRA has formatted it slightly differently and has better clarified who can have access to which records. Along those lines, FRA revised the provisions found in § 227.121(a)(1)(i), (ii), and (iv) and added § 227.121(a)(1)(iii). The proposed rule seemed to permit an individual employee to obtain any records (including audiometric testing/medical records) required under this part of another individual employee. FRA did not think that was appropriate since it raises privacy concerns. What FRA intended in the NPRM and what is more explicit in this final rule is that individual employee would be able to receive the records of a monitored run if the employee was in the cab during the monitoring and/or if the employee

works in the same yard where the monitoring occurred. However, FRA never intended for an individual employee to be able to obtain the individual testing records of another employee. FRA notes that it realized the need for this change after the RSAC Working Group meeting and so this change was not the result of the RSAC consensus recommendation.

Section 227.121(a)(2) permits records to be kept in electronic form. FRA has added language to this section since the proposed rule. FRA added this language since the post-NPRM RSAC Working Group meeting, and so it is not a product of the RSAC consensus recommendation. With this additional language, FRA has clarified the requirements for the use of electronic records. These requirements are almost identical to the electronic recordkeeping requirements found in FRA's existing track safety standards, § 213.241(e), though FRA has tailored them slightly to fit the nature of noise records. Section 227.121(a)(2) allows each railroad to design its own electronic system as long as the system meets the specified criteria in §§ 227.121(a)(2)(i) through (v), which is intended to safeguard the integrity and authenticity of each record. Section 227.121(a)(3) discusses the transfer of records from a railroad that ceases to do business.

Section 227.121(b) requires railroads to maintain and retain employee noise exposure measurement records. In the NPRM, FRA proposed to require railroads to retain employee exposure measurement records for three years. Several commenters voiced strong opposition to this proposal. NHCA wrote that it was "unrealistic," and Theresa Schulz wrote that it was a "questionable practice." Many commenters noted that there was a marked inconsistency between this requirement (i.e., retaining exposure records for 2 years) and § 227.121(c)(2) (i.e., retaining audiometric test records for the duration of the covered employee's employment).

Wilson, Ihrig, & Associates noted that the three-year requirement could be detrimental to an employee's ability to file a Federal Employers Liability Act (FELA) claim. According to Wilson et al., an employee's FELA claim is supported or refuted using previously obtained-noise exposure information. If employers aren't required to keep those records, they won't keep them, and then employees will have great difficulty making a hearing loss claim because they will not have information they need. Several other commenters, including ASHA, Theresa Schulz, AIHA, and NHCA, recommended that

FRA require employers to retain both sets of records for the duration of the employee's employment plus 30 years. They explained that this would be consistent with other health record maintenance standards.

FRA notes that the three-year-retention period in the proposed § 227.121(b)(2) was an oversight. FRA and the Working Group had sought to track OSHA's requirement and in doing so, FRA failed to take into account the connection between OSHA's general industry standard in 29 CFR 1910.95(m)(3)(i) and OSHA's access to employee exposure and medical records standards in 29 CFR 1910.1020(d)(1)(ii). While OSHA's general industry standard requires employers to retain noise exposure measurements for 2 years, OSHA's access to records standards requires employers to retain employee exposure records for at least 30 years. FRA should have tracked the retention requirements in 29 CFR 1910.1020, because FRA employee exposure measurement records more closely resemble employee exposure measurement records. Accordingly, FRA is correcting its original mistake. Section 227.121(b)(2) requires railroads to maintain employee exposure measurement records for the duration of the covered employee's employment plus thirty years. FRA notes that the Working Group members indicated that most major railroads are already retaining these documents for this time period, so this requirement will be consistent with current practice.

Section 227.121(c) requires railroads to maintain employee audiometric test records. Consistent with the retention period for § 227.121(b), FRA requires railroads to maintain these records for the duration of the covered employee's employment plus thirty years. In § 227.121(c)(1), FRA specifies the items which railroads must include in the audiometric test records. FRA included in the NPRM all of OSHA's items (see 29 CFR 1910.95(m)(2)(ii)) except for one, "the employee's most recent noise exposure assessment." NHCA, AIHA, Theresa Schulz, and ASHA indicated that they think FRA should have the same recordkeeping requirements as OSHA, including the provision which FRA eliminated in the NPRM. In addition, as NHCA explained, "this important piece of information provides assistance to the professional reviewer who must make follow-up decisions based on the audiometric record."

FRA agrees that this information is important, however, FRA believes that the rule already provides for the retention of this item. The railroad will

already have a copy of the employee's most recent noise exposure assessment pursuant to § 227.121(b). As such, there is no need to duplicate the requirement in § 227.121(c). In addition, as FRA pointed out in the NPRM, it is impracticable to expect railroads to store the employee's most recent noise exposure assessment with the audiometric test records. Realistically speaking, the individual performing the employee's audiometric test would not have access to the noise measurement data and thus would not be able to enter it on the audiogram.

With respect to § 227.121(c), several commenters, including AIHA, ASHA, and Theresa Schulz, recommended that FRA require railroads to include additional information in the audiometric test records. Specifically, they suggested that railroads record: (1) The model and serial number of the audiometer used for testing; (2) the measurements of the background sound pressure levels in the audiometric test room; and (3) the name of the individual supervising the hearing conservation program. FRA, in conjunction with the Working Group, decided to require railroads to include the first item but not the second and third item.

With respect to the first item, there was consensus among the members of the Working Group that there was value in including the model and serial number of the audiometer. That information can help an employer to easily and readily identify a problem audiometer. This is especially the case where an employer uses several audiometers and has intermittent problem results. The Working Group members also noted that, practically speaking, the burden of including this information on the audiometric test record is minimal. Most audiometers already automatically include this information on the audiogram. Accordingly, FRA, with the Working Group consensus, added a provision whereby railroads must include the model and serial number of the audiometer used for testing on the audiometric test record. See § 227.121(c)(1)(vi).

With respect to the second item, the Working Group noted that this issue was already addressed elsewhere in the rule. Section 227.121(c)(1)(v) requires railroads to maintain in the audiometric test records "accurate records of the measurements of the background sound pressure levels in audiometric test rooms." As such, FRA thought it was unnecessary to include this additional item in the audiometric test record.

With respect to the third item, the Working Group felt that it was

unnecessary to include the name of the individual supervising the HCP. It is important to include the name of the individual conducting the test; therefore, the rule, in § 227.121(c)(1)(iii), requires railroads to include that information. Moreover, it is important to ensure that the individual conducting the test is qualified, and so the rule addresses that issue in § 227.109(c). However, neither the Working Group nor FRA saw the need to require railroads to record the name of the individual supervising the HCP, and so FRA does not require railroads to include this additional item in the audiometric test record.

FRA is "grandfathering" certain pre-existing baseline audiograms depending on the conditions under which the audiometric test for that baseline audiogram was conducted. For a complete discussion of the grandfathering provisions, see the section-by-section analysis for § 227.109(e)(2). In short, FRA expects railroads to make a good faith effort in obtaining the audiometric test records for grandfathered baseline audiograms. At the same time, FRA understands that, in certain cases it might be very difficult, if not impossible, since the baseline audiograms were, in many cases, obtained years ago. Accordingly, FRA recognizes that railroads will sometimes be unable to provide some of the required information from the audiometric testing records for grandfathered baseline audiograms.

Section 227.121(d) requires railroads to maintain a record of all positions and/or persons designated by the railroad to be placed in a HCP. The rule requires railroads to retain these records for the duration of the designation. LIRR wrote that, because of the their bidding and bumping process, it would be administratively burdensome and costly for them to comply with this requirement. The preamble to the NPRM (see 69 FR 35169) had been missing the word "or," which may have been what generated this comment. Given the "and/or" nature of this provision, a railroad is compliant with this provision if they simply list the positions that are required to be placed in a HCP (although they can also, or in addition, list the persons that are required to be placed in a HCP). Neither FRA nor the Working Group believe that this is overly burdensome, and so FRA is retaining the proposed requirement in the final rule.

Section 227.121(e) requires railroads to maintain copies of the training materials required by § 227.119 and a record of all employees trained. The final rule requires railroads to retain

these copies and records for three years. This is a requirement that is new to FRA's rule; it is not in OSHA's general industry standard for noise. ASHA, AIHA, and Theresa Schulz suggested that it might be too burdensome for railroads to have to keep copies of all the training materials, and so they suggested that FRA instead require railroads to document the date, content, attendees, and faculty for each training program. The Working Group considered this recommendation but decided not to adopt it. FRA agrees and accordingly, FRA is leaving this provision as proposed in the NPRM.

Section 227.121(f) requires railroads to maintain a list of employees who have experienced a standard threshold shift (STS) within the prior calendar year. A STS should be noted on the list for the year in which it occurred; the STS need not be re-entered on the list for subsequent years. The final rule requires railroads to retain this list for five years. Although OSHA does not require employers to maintain this information, FRA requires this information, because it can help assess the effectiveness of a railroad's HCP over time. This information is not reportable per se, under part 225. However, it triggers an evaluation as to work-relatedness⁶⁷ and if it is work-related, then the railroad would have to record/report it as required by part 225. With respect to § 227.121(f), FRA sought comment as to whether five years was an appropriate amount of time for railroads to retain a list of STSs. FRA did not receive any comments and accordingly is leaving it as proposed.

Appendices to Part 227

In the proposed rule, FRA had adopted appendices A–F from OSHA's noise standard. For the most part, FRA's proposed appendices were virtually identical to the appendices for OSHA's general industry standard. FRA has since made a number of substantive changes to the appendices. Those changes are discussed below and/or in the relevant section-by-section analysis above. Also please note that FRA has re-numbered much of the appendices that were carried over from the proposed rule so that the numbering is consistent across appendices.

With respect to appendices in general, one commenter suggested that FRA add a non-mandatory appendix that contains

⁶⁷ For purposes of the § 227.121(f) list, a railroad must maintain a list of all STSs regardless of work-relatedness. For purposes of part 225, a railroad must report STSs that meet the reporting criteria (*i.e.*, among other things, only those that are work-related). See § 225.5 for the definition of "occupational hearing loss" and § 225.19(d).

two tables, Tables 1–1 and 1–2, from the 1998 NIOSH Revised Criteria Document.⁶⁸ The NIOSH tables are analogous to Tables A–1 and A–2 in mandatory Appendix A in FRA’s rule. The difference is that the NIOSH tables are based on an 85 dB(A) exposure limit and a 3 dB exchange rate, and the FRA tables are based on a 90 dB(A) exposure limit and a 5 dB exchange rate. NIOSH believes that the additional non-mandatory appendix would supply additional materials to help users make informed decisions about preventing hearing loss among railroad employees. FRA and the Working Group decided not to add these tables based on the view that including several conflicting tables is more likely to create confusion than provide assistance.

Appendix A to Part 227

Appendix A is a mandatory appendix that provides tables with which an employer can compute an employee’s noise dose. FRA has made some changes to Appendix A, most of which are discussed above in the section-by-section analysis for § 227.105. FRA also made a purely cosmetic change, which is discussed here. At the suggestion of Aearo Company and with the agreement of the RSAC Working Group, FRA italicized all levels above 115 dB(A) in Table A–1. FRA (and OSHA, from whom FRA adopted this appendix) included these levels, not because they are permitted levels, but because they can be necessary for the computation of noise dose. The commenter pointed out that OSHA had written in the preamble to their 1981 Hearing Conservation Amendment⁶⁹ that they were italicizing these levels, however, there were no italics in the regulatory text of OSHA’s final rule. By italicizing these levels and including a footnote to Table A–1, FRA makes it clear that these levels are different from the others. It allows FRA to avoid giving the impression that these levels are permitted.

Appendix B to Part 227

Appendix B is a mandatory appendix. FRA identifies the methods which railroads should use for estimating the adequacy of HP attenuation. FRA has revised this appendix since the proposed rule. For a discussion of the changes, see the section-by-section analysis for § 227.117.

Appendix C to Part 227

Appendix C is a mandatory appendix that contains procedures for revising baseline audiograms. Appendix C as

proposed in the NPRM was adopted from OSHA’s general industry noise standard. Proposed Appendix C discussed self-recording audiometers and also included one sentence addressing a requirement in the event that pulsed-tone audiometers are used. Several commenters recommended that FRA delete all references in the rule to self-recording audiometers. The commenters explained that self-recording audiometers are no longer produced, supported, or used, and so there is no point to reference them. Another commenter explained that it was unnecessary to discuss the “possibility” of using pulsed-tone audiometers, since they are routinely used.

FRA and the RSAC Working Group agreed to incorporate these technical changes in the final rule. FRA removed all references to self-recording audiometers, including references in the proposed § 227.111(c) and the proposed Appendix C. With the self-recording audiometer discussion removed, there was almost nothing left in Appendix C. FRA modified the remaining sentence to address the commenter’s concern by removing the phrase “in the event that pulsed-tone audiometers are used” and moved the modified sentence to § 227.111(b)(1).

FRA further revised the requirement for pulsed-tone audiometers, as a result of CAOHC’s comments. CAOHC recommended that FRA’s specifications for pulsed stimuli should be 200 milliseconds on and 200 milliseconds off. They explained this would be consistent with audiometric instrumentation. FRA agreed that requirement should be expanded but chose to do so in a different manner. Using the requirement from ANSI S3.6–2004, FRA wrote that “Pulsed-tone audiometers, where used, should be used with the following on and off times: F–J and J–K shall each have values of 225 ± 35 milliseconds.”

Because FRA had removed proposed Appendix C, FRA also removed the language in the proposed § 227.109(d) that referred to Appendix C. Rather than renumber the remaining paragraphs of § 227.109, FRA has intentionally left § 227.109(d) blank in the final rule.

In this final rule, FRA has inserted a new Appendix C. For a discussion of new Appendix C, please see the section-by-section analysis for § 227.109(i).

Appendix D to Part 227

Appendix D addresses the requirements for audiometric test rooms; it is a mandatory appendix. FRA has added a row to the Table in

Appendix D. It sets the background noise levels for hearing tests conducted with insert earphones. For a discussion of the changes made in the final rule, see the section-by-section analysis for § 227.111(e).

Appendix E to Part 227

The proposed Appendix E addressed the acoustic calibration of audiometers. Most of the information in that appendix was based on an outdated ANSI standard, and so FRA removed the appendix. FRA put the relevant requirements for calibration in § 227.111(f)(2). For a discussion of the changes in the final rule, see the section-by-section analysis for § 227.111(f)(2).

In this final rule, FRA has placed the requirements for insert earphones in Appendix E. Appendix E is a mandatory appendix that establishes the requirements that railroads must use if they choose to conduct hearing tests with insert earphones. For a discussion of this appendix, see the section-by-section analysis for § 227.111(c).

Appendix F to Part 227

Appendix F is a non-mandatory appendix that employers can use to calculate and apply age correction to audiograms. For a discussion of the comments that FRA received related to Appendix F, see the section-by-section analysis for § 227.109(j).

Appendix G to Part 227

In the final rule, FRA has placed in Appendix G the schedule of civil penalties that FRA will use in connection with part 227. This is different than the Appendix G that was proposed in the NPRM. The proposed Appendix G was an informational index that provided employers with basic information on complying with the noise monitoring provisions contained in the rule. It was the same as OSHA’s Appendix G. In the proposed rule, FRA sought comment on whether or not FRA should adopt this appendix. FRA did not receive any comments on that issue. FRA has since removed the proposed Appendix G from this final rule. It addressed conventional workplaces, rather than the railroad industry. As such, it did not accurately characterize the noise environment in the locomotive cab. In addition, much of the general material in that appendix is also covered in the preamble discussion of this NPRM, and so it is unnecessary to repeat in an appendix.

⁶⁸ See § III(D) above for a related analysis.

⁶⁹ 46 FR 4078–1 (January 16, 1981).

Part 229—Railroad Locomotive Safety Standards

Section 229.4 Information Collection

This section notes the provisions of this part that have been submitted to the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 et seq.

Section 229.5 Definitions

The term “Decibel” refers to a unit of measurement of sound pressure levels, and the term “dB(A)” refers to the sound pressure levels in decibels measured on the A-weighted scale. These terms are commonly accepted and widely used by noise professionals.

The term “Excessive Noise Report,” as used in § 229.121(b), refers to a report filed by a locomotive cab occupant that indicates that the locomotive is producing an unusual level of noise such that the noise significantly interferes with normal cab communications or that the noise raises a concern with respect to hearing conservation.

When a cab occupant in a locomotive operating in service experiences an unusual noise level, he or she may file a report with the railroad. In that report, the occupant should indicate those items which he or she believes are substantially contributing to the noise. An “unusual level of noise” refers to a noise level in the cab that is much higher or much different than that to which the occupant is normally accustomed; it is, for example, a banging or squealing sound. It is, however, not just any irritating noise. Not only must the noise level be excessive and unusual, but it must also either (1) significantly interfere with normal cab communications and/or (2) raise hearing conservation concerns.

A noise level significantly interferes with normal cab communications if it prevents the locomotive cab occupants from safely and effectively conducting their job assignments. Noise can degrade job safety in several ways. Certain parameters, such as high noise levels, high-frequency noise; and intermittent, unexpected, uncontrollable, or continuous noise can jeopardize job safety by distracting, disrupting, or annoying an individual. In addition, noise can be a safety hazard if it “masks” alarm signals or warning shouts. Masking is “an increase in the threshold of audibility of one sound (the masked sound) caused by the presence of another sound (the *masking* sound or

masker).”⁷⁰ In the railroad operating environment, the masked sound can be an alarm or warning sound, speech from a coworker or over a radio, or a sound produced by a machine (e.g., air brake exhaust, engine noise). Masking becomes a problem when an intentional or incident sound that is conveying useful information is rendered inaudible or when speech that is conveying critical information is rendered unintelligible. Where noise masks necessary speech or other warning signals, it disrupts speech, interferes with the communication, and prevents a cab occupant from safely performing his or her job. As these employees operate large pieces of equipment and transport large quantities of (sometimes dangerous) materials, there are serious consequences for errors in operation.

This rule does not identify the precise decibel level at which communication is deemed to have been “significantly interfered,” because it is impossible to identify any single number due to the fact each individual has a different sensitivity to hearing and different susceptibility to hearing loss. Moreover, the identification of a single decibel level would be meaningless to cab occupants. As crew members do not have measurement instrumentation with them on their runs (nor do they know how to use them), the crew occupants would be unable to determine the precise decibel levels during any single run.

A noise level raises hearing conservation concerns if, for example, it causes the occupant to question the effectiveness of his or her hearing protection or if the occupant is experiencing new occupant-related medical conditions such as tinnitus (i.e., a ringing, buzzing, roaring, or other sound in the ear). This rule operates under the assumption that the person identifying this hearing conservation concern is an individual who has been trained in hearing protection (as most employees likely will be) and understands the basic principles of hearing protection and attenuation—that is why this person is informed enough to determine that there is a hearing conservation concern.

The term “Upper 99% Confidence Limit” is a statistical probability statement. A confidence limit refers to the lower and upper boundaries of a statistic confidence interval. A confidence interval gives an estimated range of values which is likely to include an unknown population parameter. The estimated range is

⁷⁰ “Speech Communications and Signal Detection in Noise,” G.S. Robinson & J.G. Casali in *The Noise Manual*, 569 (2000).

calculated from a given set of sample data. For example, if the upper 99% confidence limit for the noise level of a population of locomotives is 87 dB(A), then in a sample of 100 locomotives, at least 99 will be found to have a noise level of 87 dB(A) or less.

Section 229.121 Locomotive Cab Noise

(a) Performance Standards for Locomotives

FRA commends, railroads and manufacturers for their efforts in making locomotives quieter. In recent years, locomotive manufacturers have built new locomotives with better sound reduction techniques and with lower noise exposure levels. Many new locomotives now have several of the following features, which reduce the cab noise exposure level: Horn placement in the center of the locomotive; insulation of the cab; insulation of the cab floor; venting the exhaust from the air brake system outside of the cab; and installation of air conditioning in the cab to allow cab windows to be closed.

In addition to the above features, manufacturers have developed and offered “quiet cabs,” which isolate the cab occupant from noise sources of both high and low frequencies. One manufacturer, in particular, has developed a locomotive cab that is vibrationally isolated from the locomotive body, thereby resulting in substantially less noise in the cab and arguably less vibration in the cab. The manufacturer has recently discontinued offering this feature. Another manufacturer has developed a locomotive design that isolates the diesel engine, which decreases the transfer of noise and vibration throughout the locomotive. Manufacturers claim that they can achieve normal noise exposure levels of 75 dB(A) in these locomotive cabs. At the time of the issuance of this rule, these units are not yet pervasive throughout the industry.

Section 229.21(a)(1) establishes a design requirement for all locomotives that are manufactured by a specified date. That date is 12 months after this rule is published in the **Federal Register**. The proposed rule had set that date at January 1, 2005. Given that time has passed, FRA decided to extend that date. This section provides that all locomotives of each design or model shall average less than or equal to 85 dB(A), with an upper 99% confidence limit of 87 dB(A). This performance standard ensures that newly-built locomotives will not produce excessive noise levels. For the most part, this section imposes requirements that

reflect current equipment and design, and, therefore, they should not impose a substantial burden on railroads or locomotive manufacturers. FRA has specifically chosen to use the terms "design" and "model." While the term "model" tends to be accepted terminology in the U.S., the term "design" is used more internationally, and, therefore, the inclusion of both terms provides a more complete understanding of this provision.

FRA received two comments on this requirement. First, an individual BLET member suggested that FRA require railroads to check all locomotives in a fleet, not just a percentage. It is a common industry practice and an accepted statistical practice to use a sampling strategy, and FRA does not see any reason to veer from that practice. In this rule, FRA specifies a quality control process that is consistent with good practice in modern manufacturing. FRA proposed a 99% upper confidence limit for determining that new locomotives are being produced in accordance with the following characteristics: Where the mean noise level equals 85 dB and the upper limit equals 87 dB, there is a 1% chance that sample of locomotives will exceed a mean noise level of 87 dB (1 in 100 samples of appropriate size). This procedure is desirable, because it allows a quality control check on the manufacture of the locomotives with regard to the rule without imposing undue expense on the manufacturer. There would surely be undue expense on the manufacturer if the manufacturer had to test all locomotives.

Second, Wilson, Ihrig, & Associates wrote that the design requirement of 85 dB(A) with an upper 99% confidence limit of 87 dB(A) should be a minimum requirement. They assert that locomotives that have been tested to lower levels should be required to maintain those lower levels. They further explained that locomotives with isolated cabs are well known to achieve noise levels well below 85 dB(A), and they believe those locomotives should be required to maintain that lower level. The RSAC Working Group has recommended, and the FRA has agreed, to leave this provision as proposed. FRA and the Working Group is satisfied with the previous consensus that was achieved and do not see any reason at this point to revise this provision.

Section 229.121(a)(1) also includes requirements for a build provision. A manufacturer may determine the average by testing a representative sample of locomotives or an initial series of locomotives, provided that there are suitable manufacturing quality controls and verification procedures in

place to ensure product consistency. To determine whether the standard in this regulation is met, the railroad may rely on certification from the equipment manufacturer for a production run.

Section 229.121(a)(2) discusses the issue of alterations on locomotives that are manufactured in accordance with paragraph (a)(1). If the average sound level for a particular locomotive design or model is less than 82 dB(A), a railroad shall not make any alterations that cause the average sound level for that locomotive design or model to exceed 82 dB(A). If the average sound level for a particular locomotive design or model is 82 dB(A) to 85 dB(A), inclusive, then a railroad shall not make any alterations that cause the average sound level for that locomotive design or model to increase to 85 dB(A). The purpose underlying this provision is FRA's desire that railroads retain equipment's essential quiet cab status through the life of that locomotive and especially after the railroad performs maintenance on the locomotive. Please note that FRA has re-formatted this section slightly since the proposed rule and after the post-NPRM RSAC Working Group meeting. The changes are intended to better clarify this provision and do not change the substance of this section.

For purposes of the maintenance conducted pursuant to § 229.121(a), replacement in kind is not considered to be an alteration. Replacement in kind refers to a situation where an individual removes a part and replaces that part with the identical part of the same make and model. That identical part must be of equivalent or better quality.

In developing this provision, the RSAC Working Group considered several other possible provisions. One of those provisions stated that the railroad should not alter any portion of the equipment originally designed to reduce interior noise unless the alteration essentially maintained the existing noise level or decreased the existing noise level. As that provision was somewhat vague, the Working Group sought to better define the term "alteration." FRA suggested that an alteration would be permissible if it only resulted in a modest increase in noise. A modest increase referred to the lesser amount as between an increase of 3 dB or 85 dB(A). An alteration could not increase the noise level by more than 3 dB and where the noise level was 83 dB(A), an alteration could not increase the noise level by more than 2 dB. If the noise level was 84 dB(A), an alteration could not increase the noise level by more than 1 dB. In all cases, the maximum permissible noise level

would be 85 dB(A). Certain railroad representatives of the Working Group opposed this provision, because they felt that it limited their ability to conduct maintenance on equipment. To address those concerns and to produce a better defined standard, FRA is using the provision now found in the rule text, which was the provision ultimately recommended by the RSAC.

The AAR was not pleased with this maintenance provision for newly-built locomotives and suggested that FRA instead set the maintenance limit at the same level as the level for new equipment level, 85 dB(A). The AAR believes that 82 dB(A) is "an artificial number that is not grounded in hearing science" and that ignores other potentially important realities. As example, they explained that if there was a new technology that permitted increased safety to occupants or increased fuel efficiency but resulted in sound levels about 82 dB(A), railroads could buy this new technology on newly-built equipment but could not modify existing newly-built equipment to include it. The AAR stated that their experience has shown that "reducing sound levels cannot be permitted to drive design changes focused on a single issue (in this case, noise) at the expense of reliability and other safety issues."

The AAR, an active participant in the RSAC Working Group throughout the entire process for this rulemaking, was present during the post-NPRM Working Group meeting. The AAR reiterated the point above, stating that they believe 85 dB(A) is a "safe level" from a noise perspective, and so they believe it should be the standard for the design and the maintenance of locomotives. Other Working Group members expressed serious reservations about that change, explaining that this proposed rule was a compromise document, of which the 85 dB(A) provision represented a great deal of compromise. The Working Group had initially considered, among other things, setting the noise level for newly built locomotives at 75 dB(A), but had lowered that level as a result of concerns of Working Group members. To attempt to change the terms now would veer from the spirit of the compromise and from what the RSAC Working Group had decided was the most appropriate level. Given that background and given the fact that there was no new information upon which to act, the Working Group decided to leave this level as proposed.

Section 229.121(a)(3) directs railroads and manufacturers to conduct static testing, as specified in Appendix H. Appendix H to part 229 contains a set

of procedures for conducting in-cab static test measurements on locomotives. Through the static test, railroads and manufacturers can determine whether newly-built locomotives meet the requirements of § 229.121. The rule states that a railroad or manufacturer shall follow the Appendix H static test protocols to determine compliance with paragraph (a)(1). The rule also states that a railroad or manufacturer shall also follow the Appendix H static test protocols to determine compliance with paragraph (a)(2), but only to the extent reasonably necessary to evaluate the effect of alterations during maintenance. In sum, then, a railroad or manufacturer must conduct static testing pursuant to paragraph (a)(1) and may conduct static testing to determine compliance with paragraph (a)(2) if they find it is needed. FRA did not receive any comments on this provision and therefore it remains as proposed in the NPRM.

(b) Maintenance of Locomotives

Section 229.121(b) governs the noise-related maintenance requirements for locomotives. Please note that FRA has made some minor editorial changes in this section since the proposed rule and after the post-NPRM RSAC Working Group meeting. These changes are meant to clarify the language in the rule. They are minor in nature and do not change any of the substantive provisions.

Upon receiving an excessive noise report pursuant to § 229.121(b)(1), a railroad must immediately correct any conditions that are required to be immediately corrected under part 229. Examples are broken or missing windows or broken or loose handholds that are hitting the car body. For all other items, the railroad can allow the locomotive to operate until that locomotive's next 92-day periodic inspection (as per § 229.23). At that time, the railroad must inspect the locomotive and attempt to identify the item or items that it believes is substantially contributing to the noise. The mechanical employee inspecting the locomotive will be held to the standard of a reasonably prudent and competent mechanical employee. When the railroad can identify that item, FRA expects that the railroad will repair and/or replace that item. FRA understands that there might be situations in which a railroad brings a locomotive to the shop and makes reasonable efforts to identify a condition but is unable to do so. FRA does not intend to penalize a railroad in those situations. The railroad shall maintain a record of the excessive noise report, as well as records of any

maintenance or *attempted* maintenance. (Records are discussed further in § 229.121(b)(4)).

If the repair of the item supposedly contributing to the noise requires significant shop or material resources that are not readily available, the railroad is not required to repair that locomotive at the 92-day periodic inspection. In that situation, the railroad shall schedule its maintenance of that item to coincide with other major equipments repairs commonly used for the particular type of maintenance needed. The types of repairs to which FRA is referring include difficult-to-access equipment; vibration-isolating systems such as bushings or elastomers; and situations where the railroad had to replace the insulation padding under the cab or remove the insulation from the inside of the cab walls.

A few commenters suggested that FRA should require railroads to perform regular, routine maintenance on locomotives (such as adding window seals or installing minor installation) as a means of noise control. One locomotive engineer wrote that he believes that maintenance would greatly reduce the noise levels in locomotive cabs. Another engineer wrote that he believes that interior noise, such as "worn bearing in the refrigerator" is the most harmful to one's ears, followed by "'undercarriage squeaks'" at certain speeds and over certain bumps in the track." The RSAC Working Group, along with the FRA, considered this recommendation, but decided to leave the language as proposed. The Working Group put a great deal of time and thought into developing these maintenance standards. Without any new information upon which to act, the FRA and RSAC Working Group do not think it is appropriate to revise this provision.

Section 229.121(b)(2) identifies specific conditions which might lead a locomotive cab occupant to file an excessive noise report. This list is not meant to be exhaustive; other items not on this list may also lead an employee to file an excessive noise report. These listed maintenance items, along with the design and build requirements in § 229.121(a), FRA believes, embody the concept of OSHA's engineering controls. Whereas OSHA imposes a general requirement on employers to use engineering controls, FRA identifies specific items that railroads must address. This particular list evolved out of discussions of an engineering controls task force, a smaller group

within the RSAC Working Group.⁷¹ This list contains items that are likely to deteriorate over time and thus would contribute to the noise level in the cab. This includes: defective cab window seals, defective cab door seals, broken or inoperative windows, deteriorated insulation or insulation that has been removed for other reasons, and unsecured panels in the cab. The list also notes that air brakes that vent inside the cab can be a noise source.

The task force recommended the list of items to the Working Group, which in turn recommended them to the RSAC. The RSAC accepted this list and recommended it to FRA. FRA adopted the RSAC's list, though with one exception. FRA removed "unsecured appurtenances in the cab" from the list. One of FRA's existing regulations, § 229.7, addresses this item, so FRA believes it is unnecessary to also include that item here. Section 229.7 identifies prohibited acts for locomotive safety standards. It provides that a locomotive and its appurtenances must be in proper condition and safe to operate.

While some of the other listed items might appear duplicative of other regulatory provisions, they are, in fact, not fully addressed by FRA's existing regulations. For example, cab doors are mentioned in § 229.119(a); that section provides that "cab doors shall be equipped with a secure and operable latching device." While a secure and operable latching device is one component of a door, there are several other components to a door; some of which could result in noisy conditions, such as door hinges, missing doors, or a damaged door. Another item on the list is cab windows; they are mentioned in § 229.119(b), which provides that windows of the lead locomotive shall provide an undistorted view of the right-of-way for the crew from their normal position in the cab, and in section 223, which discusses window glazing. But there are other conditions that might exist. Worn window framing that permits a window to rattle is probably not viewed as a defect under FRA's existing regulations but it might be an unwanted noise source. The other listed items—cab window seals, cab door seals, and insulation—are not currently covered in this context in any of FRA's existing regulations.

Section 229.121(b)(3) prescribes the railroad response to an excessive noise report. The rule provides that a railroad has an obligation to respond to an excessive noise report that a locomotive

⁷¹ See § III(C) for a discussion of the engineering controls task force.

cab occupant files with the railroad. This sentence, which was not contained in the RSAC's recommendation for the NPRM, makes explicit a railroad's obligation to make an appropriate response to cab occupant noise concerns. FRA added this sentence as a result of OSHA's review of the NPRM. The rest of this section was part of the consensus document from the RSAC.

The rule also provides that a railroad meets its obligation to appropriately respond to an excessive noise report if the railroad makes a good faith effort to identify the cause of the reported noise. In addition, if the railroad successfully determines the cause of the reported noise, then the railroad meets its obligation to respond to the excessive noise report if it repairs or replaces the items causing the noise.

Section 229.121(b)(3) addresses a concern that railroad representatives raised during Working Group discussions. The representatives were concerned that they might be cited for violations in situations where they had inspected a condition (in response to a excessive noise report) but were unable to find a problem or where they had inspected the locomotive, identified the problem, and repaired that problem only to later find out that the noise concern continued to persist. It is not FRA's intention to cite railroads in these situations. The purpose of this regulation is to address unusually noisy conditions in the cab and commensurate with that, to ensure that railroads make concerted, good faith efforts to identify and, if possible, correct, such noisy conditions.

Section 229.121(b)(4) contains the recordkeeping requirements for this section. The basic requirement is located in § 229.121(b)(4)(i). Railroads shall maintain a record of any excessive noise report, inspection, test, maintenance, replacement, or repair that occurred pursuant to § 229.121(b)(1). In that record, the railroad shall include the date on which the employee filed the excessive noise report; and the date on which the railroad conducted the inspection, test, maintenance, replacement, and/or repair. The railroad shall note any attempts to identify conditions and any attempts to correct conditions. The railroad may maintain these records in written or electronic form. If a railroad elects to maintain the records electronically, the railroad must satisfy the conditions listed in § 227.121(a)(2)(i) through (v). These conditions are almost identical to the electronic recordkeeping requirements found in FRA's existing track safety standards, § 213.241(e). These conditions are intended to safeguard the

integrity and authenticity of each record.

Pursuant to § 229.121(b)(4)(ii), railroads shall retain these records for 92 days if they are made pursuant to § 229.21; or for one year if they are made pursuant to § 229.23. During RSAC Working Group discussions, several members suggested that railroads retain these records for two years. Other members suggested that a two-year retention requirement was unreasonable. The RSAC Working Group discussed this two-year retention option and instead decided to recommend the 92 day/1 year retention proposal. FRA adopted the RSAC Working Group's recommendation. FRA believes the 92 day/1 year retention proposal is most appropriate, because it is consistent with the retention requirements in existing FRA locomotive inspection regulations at § 229.21 ("Daily Inspection") and § 229.23 ("Periodic inspection: General").

There were commenters on both sides of the issue regarding the record retention period. Wilson, Ihrig, & Associates wrote that the proposed retention periods were too short and that FRA should require railroads to keep these records for the life of the locomotive. With those records, railroads could then follow a trail of noise problems and identify locomotives with chronic noise problems. Wilson et al pointed out that proposed retention period is particularly inadequate given current computer technology.

During RSAC Working Group discussions, some members noted that they do retain repair records for extended periods of times. However, Working Group members felt that they did not want to require railroads to keep records for extended periods of times. Because they believe it makes the most sense to treat repairs items related to noise the same as other related items in part 229, the RSAC Working Group, and FRA, decided to leave this requirement as proposed.

On the other side of the issue, LIRR asserted that the retention requirement was too long and that it would result in an administrative burden and significant cost for their commuter railroad. In addition, LIRR asserted that the re-creation of potential noise reports of crews might be impossible during static testing, thereby resulting in an additional maintenance burden. For example, the crew scenario might include an Automatic Speed Control warning sound while the whistle is blowing, the bell is ringing, and the engine is in high throttle position, but

that would not necessarily be replicable during static testing.

The RSAC Working Group, with FRA, again concluded that it is best to retain the proposed language. Railroad interests are represented on the RSAC by several railroad representatives, who had agreed to this position. Moreover, this recordkeeping requirement is consistent with existing requirements under §§ 229.21 and 229.23. Presumably, railroads have a framework in place for maintaining records for this time frame and so railroads should easily be able to add these excessive noise reports to that framework. Finally, FRA notes that there is no static testing requirement associated with the requirements in § 229.121(b). The static testing requirements apply to § 229.121(a).

Section 229.121(b)(4)(iii) requires railroads to establish an internal, auditable monitorable system that tracks the above-mentioned records, i.e., the noise-related maintenance tasks. The system should include, at a minimum, information such as the locomotive number, the date of the complaint or inspection (from which the maintenance task arose), the items thought to have caused the problem, and the actions taken to correct the problem. These records can be maintained in writing or electronically. As this is an auditable system, FRA will review these records as part of compliance audits.

Nothing in § 227.121(b) should be read to discourage or limit the use of equipment improvements or innovations that arise after publication of the final rule. In addition, nothing in § 227.121(b) should be read to compromise existing duties found in part 229 to make prompt repairs to other components and systems (e.g., to malfunctioning turbo chargers) that generate noise in the cab and along the wayside.

Appendix B to Part 229

FRA has amended the existing schedule of civil penalties in Appendix B to Part 229 and listed the penalties that FRA will use in connection with § 229.121.

Appendices F–G to Part 229

Appendices F through G are being reserved for future use.

Appendix H to Part 229

Appendix H is a set of procedures for conducting in-cab static test measurements of locomotives. Railroads and locomotive manufacturers should use this protocol to determine whether they have built and, where necessary, maintained locomotives that meet the

performance standards prescribed in § 229.121(a). In formulating this protocol, FRA looked to several sources, including the procedures used by General Electric and General Motors' Electric Motor Division, other regulations concerning railroad noise measurement,⁷² and various measurement manuals and technical reports on transportation noise measurement and analysis.⁷³

FRA presented an initial draft of Appendix H at a RSAC Working Group meeting in July 2002. At that meeting, the Working Group established an Appendix H task force to further develop the procedures. The Task Force, which consisted of FRA, railroad, locomotive manufacturers, and labor representatives met several times and produced several drafts. The Task Force made recommendations to the Working Group, which in turn made recommendations to the full RSAC. RSAC ultimately recommended a version of Appendix H to FRA that FRA found acceptable. FRA considered all of the factors and arguments raised in these extensive discussions and produced this appendix. With the exception of changing the measurement metric, FRA did not make any changes to this appendix between the proposed rule and final rule.

Earlier drafts of the appendix set forth procedures that covered a wide range of topics and addressed many elements associated with measurement. Those drafts contained specific provisions for data collection, compliance, environmental criteria, test site requirements, and record keeping. Most notably, those drafts contained recommended measurement practices for each of those provisions.

Some members of the Working Group expressed concern with that approach. They asserted that it was unnecessary to include most of those recommended measurement practices in the protocol, since some of those recommended practices are common practices already used in the industry, are frequently incorporated in ANSI standards, and are often explained in manufacturer's instructions.⁷⁴

⁷² See 40 CFR part 201, EPA's "Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers," and 49 CFR part 210, FRA's "Railroad Noise Emission Compliance Regulation."

⁷³ See "Railroad Noise Control: The Handbook for the Measurement, Analysis, and Abatement of Railroad Noise," Report No. DOT/FRA/ORD-82/02-H (1982). See also "Measurement of Highway-Related Noise," Report No. DOT/VNTSC/FHWA-96-5 (1996).

⁷⁴ Many of the recommended practices, which were removed from this appendix, are discussed in the paragraphs below. They include the following: the SLM should be calibrated annually, and/or the

After discussing these concerns, the Working Group reformulated its approach. The RSAC ultimately agreed with this reformulated approach and recommended it to FRA. FRA adopted that recommendation. The overall goal for Appendix H changed from the development of an all-encompassing specific, step-by-step measurement procedure for testing entities to the development of a minimum set of measurement requirements necessary for compliance with § 229.121(a). The testing entities could use these requirements as a basis for developing their own more detailed measurement procedures, if they so desired. Accordingly, the recommended practices were revised, modified, and in some cases, removed. The paragraphs below will discuss many of the recommended practices that were found in the earlier versions of the appendix but have been removed from this version.

While most of these recommended practices have been removed from this document, FRA still acknowledges their utility and encourages railroads and manufacturers to use them. FRA would like to emphasize that if the agency were to conduct a compliance test (or re-test), its representatives (i.e., inspectors) would probably employ many of these recommended practices, along with the minimum standards set out in Appendix H. FRA is likely to use these measurement practices, because they constitute good measurement practices and add to the validity, accuracy, and repeatability of measurements. As an aside, FRA notes that railroads and manufacturers are free to use procedures that are more stringent than those provided in this protocol.

I. Measurement Instrumentation

This section discusses the instrumentation that the testing entity should use when conducting measurements. This testing entity shall use an integrating sound level meter (iSLM) that meets the requirements of ANSI S1.43-1997 (Reaffirmed 2002), "Specification for Integrating-Averaging Sound Level Meters" and shall calibrate the iSLM with an acoustic calibrator that meets the requirements of ANSI S1.40-1984 (Reaffirmed 2001), "Specification for Acoustical Calibrators." The testing entity should

SLM should be used with a tripod mountings or positioned with a secure handhold. This provision was ripe for removal, since it is often covered in the manufacturer's instructions and is also discussed in ANSI S1.43-1997 (Reaffirmed 2002), "Specifications for Integrating-Averaging Sound Level Meters."

use a Type 1 instrument, but where a Type 1 instrument is not available, the testing entity may use a Type 2 instrument.

An earlier draft of the appendix included more specific calibration requirements, meter specifications, and mounting/orientation requirements. The provisions in that draft required the testing entity to follow the manufacturer's instruction for mounting and orienting the microphone; to calibrate the sound level measurement system at least annually (as well as conduct field/routine calibration); and to use iSLMs that have the capability to store for later retrieval the A-weighted, equivalent sound level and maximum sound level. In addition, the draft suggested that the testing entity use an iSLM with tripod mountings or with a secured handhold. Some members of the RSAC Working Group suggested the removal of these specific requirements. As one RSAC Working Group member explained, these provisions are not relevant to this section because they apply to procedures, not instrumentation specifications. FRA decided that, overall, the removal of these provisions would not be detrimental since most of these items are already addressed within the ANSI standard, and many of these items would be addressed in other sections of this appendix. The original draft also contained citations to certain International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) standards.⁷⁵ At the request of an RSAC Working Group member, FRA removed these citations. The RSAC Working Group member had explained that ISO and IEC standards were unnecessary and that the ANSI standards were sufficient.

FRA sought comment from the public on whether FRA should include ANSI standards only or whether FRA should also include reference to these ISO and/or IEC standards. The AAR submitted comments, reiterating its support for using ANSI standards only. ASHA and AIHA also noted its approval of using ANSI standards only. Given that response, FRA decided not to add cites to the additional standards. In this final rule, FRA has cited only to ANSI standards.

The decision whether to require a Type 1 or Type 2 instrument generated a great deal of discussion. FRA had considered requiring the use of Type 1

⁷⁵ For example, the relevant IEC standards were International Standard IEC 61672-1 (2002-05) (concerning SLMs) and International Standard IEC 60942 (1997-11) (concerning microphone windscreens and acoustic calibrators).

instruments, because they are more precise instruments and because they are used by other U.S. DOT modes.⁷⁶ Some RSAC Working Group members felt strongly that testing entities should not be required to use Type 1 instruments. They asserted that the minimal benefit derived from using Type 1 instruments did not justify the expensive cost of Type 1 instruments. They asserted that there would be little variance in the readings for the two instruments, yet a Type 1 instrument would cost \$600 to \$3,000 more than a Type 2 instrument. In addition, they pointed to other noise-related federal regulations that allow the use of Type 2 devices.⁷⁷ After extensive discussions, the Working Group agreed to the proposal in its current state. The RSAC Working Group adopted that proposal, as did the FRA. The proposal reflects a compromise between FRA's initial preference to use Type 1 instruments and certain industry member's concerns about a Type 1 requirement.

II. Test Site Requirements

This section sets forth the requirements for the testing site where in-cab static measurements are conducted. This section specifies the placement of the locomotive, the installation of locomotive appurtenances, the operational requirements for locomotives, and the condition of the testing environment. Number 1 provides that a locomotive should not be positioned in an area where large reflective surfaces are directly adjacent to or within 25 feet of the locomotive cab, and number 2 provides that a locomotive should not be positioned where other locomotives or rail cars are present on directly adjacent tracks next to or within 25 feet of the locomotive cab.

FRA had considered more specific requirements for numbers 1 and 2. FRA considered an initial draft listed types of large reflective surfaces from which the test site should be free (barriers, hills, signboards, parked vehicles, locomotives, or rail cars on adjacent tracks, bridges, or buildings); required both sides of the locomotive to be clear of large reflective surfaces (for a minimum distance of 400 feet); and excluded locomotives and rail cars

directly in front of or behind the test locomotive from that 400 foot requirement. Subsequent drafts also considered minimum distances of 100 feet, 25 feet, and zero feet. FRA decided that the 25 foot requirement was the most appropriate distance, because it did not impose a financial burden on the testing entities (as a 100 or 400 foot requirement would have) yet it still provided a minimum distance of separation between the locomotive and reflective surfaces. Also, 25 feet is a smaller distance, so it allows for an easily-duplicated test area. An earlier draft also specified track conditions (tie and ballast track that is free of track work, bridges, and trestles) and recommended the removal of all unnecessary equipment from the cab. The intent of these more restrictive provisions for numbers 1 and 2 was to ensure that there was an adequate distance between the tested locomotive and other noise sources and/or reflective surfaces. This would isolate in-cab noise (due to the locomotive) from other contaminating noise sources, which in turn, would produce the best quality measurements.

Members of the RSAC Working Group raised several concerns with these provisions. They felt that several of these requirements were ambiguous. They also explained that noise sources and reflecting objects, for the most part, affect measurements by making the in-cab noise levels higher, so if a locomotive complies with FRA's regulatory requirements when measured in these noisy circumstances, then the locomotive is performing better than expected. In addition, they stated that the creation of a specified test area free of large, reflecting surfaces and other noise sources would create an economic burden on the testing entities. Following lengthy discussions, Working Group consensus, and RSAC approval, FRA adopted the current proposal—i.e., the testing entity has discretion to decide whether it wants to conduct these measurements in a test area that is free of reflecting objects and noise sources or in a test area that is a less ideal environment.

Number 3 specifies the condition of locomotive appurtenances during testing. It provides that “[a]ll windows, doors, cabinets, seals, etc., must be installed in the locomotive and be closed.” Numbers 4 and 5 contain operational requirements. They specify that a locomotive must be warmed up to standard operating temperature and that the heating/ventilation/air conditioning (HVAC) system must be operating on high. FRA has included these operational requirements to ensure that

a tested locomotive's performance is typical of a normally-operating locomotive, and to ensure that any results are replicable based on a standardized locomotive operational criteria.

Number 6 provides that “[t]he locomotive shall not be tested in any site specifically designed to artificially lower in-cab noise levels.” For example, a site should not contain sound absorbent materials. This concept was originally contemplated in more specific terms, i.e., the “test site railroad track shall be tie and ballast, free of special track work and bridges or trestles.” The purpose of that concept was to ensure that testing entities did not create conditions that artificially lower the noise measurements. In order to capture this concept in broader and more generic terms, the FRA drafted this provision with this current language.

III. Procedures for Measurement

This section provides detailed measurement procedures to be used during testing. Number 1 specifies the settings for the integrating-averaging sound level meters (iSLM). FRA has made a change to this provision since the NPRM. FRA changed the metric here and in two other locations (§§ III(8) and (9)). In the proposed rule, FRA used L_{av} . L_{av} is a non-ANSI metric that was developed for this regulation in order to accommodate certain RSAC Working Group members' desire to use a 5 dB exchange rate for this measurement. In this final rule, FRA is using the $L_{Aeq, T}$. $L_{Aeq, T}$ is a standardized metric defined in ANSI S1.1-1994, “Acoustical Terminology” and is a commonly used acoustic metric.

One commenter explained that the L_{av} was an inappropriate measure. He stated that most sound level meters do not have the capability to measure the L_{av} ; they instead measure the $L_{Aeq, T}$. Under the requirement in the proposed rule, railroads would have had to purchase completely new equipment, which would be very costly. Another commenter wrote that use of the L_{av} was not justified technically, since the acoustical community would normally use $L_{Aeq, T}$. FRA, and the Working Group, agreed with these commenters and changed Appendix H accordingly.

Numbers 2 and 3 address the calibration procedure for iSLMs. Calibration is a method of validating the performance of the measurement equipment and is important, because it verifies the accuracy of measurements. Both field system (routine) and laboratory (comprehensive) calibration should be conducted on iSLMs.

⁷⁶ Federal Aviation Administration (FAA) standards require the use of Type 1 instruments. See 14 CFR part 36, Appendix G, Section G36.105(b). Federal Highway Administration (FHWA) standards recommend the use of Type 1 meters. See “Measurement of Highway-Related Noise,” Report No. DOT/VNTSC/FHWA-96-5 (1996) for the specific FHWA criteria and recommendations.

⁷⁷ See e.g., 49 CFR 393.94(c)(4); 40 CFR 201.22(a); and 49 CFR 229.129(b).

Number 4 identifies the four locations at which microphones should be placed and measurements taken. There are four measurements in the cab: above the left seat, above the right seat, between the seats, and near the center of the back wall. FRA had considered the inclusion of two additional microphone positions—one above the toilet and one in the front vestibule of the locomotive cab. As explained by various RSAC Working Group members, these positions are not representative of positions inside the locomotive cab where crew members spend a substantial amount of time; they are merely transient points through which cab employees pass through to enter or exit the cab or to go to the bathroom. In addition, these locations vary by locomotive, including some locomotives that do not have these positions. Accordingly, FRA did not include those two measurement positions.

Number 5 specifies that the individual conducting the test should be as far away as possible from the measurement microphone. This is so that the individual does not impact the measurement, e.g., shield the microphone from noise sources. For the same reason, the procedure also specifies that only two people can be inside the locomotive cab during testing.

Number 6 requires the manufacturer or railroad to test a locomotive under self-loading conditions if the locomotive is equipped with self-load. The purpose of this provision is to ensure that the in-cab noise level during testing is representative of the in-cab noise level during operation (i.e., under load). Conducting the test in self-load mode simulates the operation of a locomotive that is pulling cars. It is important that the noise measurements are obtained under self-load, because the locomotive is under additional stress and generates more noise while under self-load. In-cab noise levels of a locomotive that is self-loaded are noticeably louder than those in a locomotive that is not self-loaded and so this provision is necessary.

If the locomotive is not equipped with the ability to operate in the self-load mode, the manufacturer or railroad shall test the locomotive with “no-load” and add three decibels to the measured level. “No-load” is defined as maximum RPM, with no electric load. The AAR submitted a report to FRA in June 2003. The report, “Locomotive Static Noise Tests,” provided data on the noise levels for locomotives that are self-loading and those that are not self-loading. The testing data showed little correlation between the condition of various cab features and noise levels,

however the data indicated a mean and median sound level difference of two decibels between locomotives under load and locomotives not under load. FRA had proposed a four decibel adjustment (i.e., the mean of approximately two decibels plus one standard deviation of 1.518). The Working Group, and ultimately the RSAC, recommended an adjustment of three decibels.

After considering the RSAC Working Group recommendation, FRA decided to use a three decibel adjustment. However, FRA is also requiring manufacturers and railroads to record the load conditions during testing. The records requirement is located in the record keeping section; it states that a testing entity should maintain records of testing conditions and procedures, including whether or not the locomotive was tested under self loading conditions. (See § IV, number 5).

Number 7 requires manufacturers and railroads to record the sound level at the highest horsepower or throttle setting. These settings were selected, because they produce the highest noise level inside the locomotive cab.

Number 8 specifies the metric, sampling rate, and measurement duration for in-cab static measurements. FRA has changed the metric from L_{av} to $L_{Aeq, T}$, as discussed in § III(1) above. $L_{Aeq, T}$ represents a level of continuous constant sound that is equivalent to the same amount of A-weighted acoustic energy of the actual time-varying source.

For this rulemaking, the following equation should be used to calculate $L_{Aeq, T}$.

$$L_{Aeq, T} = 10 \times \log_{10} \left\{ \frac{1}{T} \sum_{i=1}^N t_i \times 10^{L_i/10} \right\}$$

Where:

N = number of time intervals over which the measurements are taken,
 t_i = time duration of the I-th interval,
 T = the total time duration of the measurement (i.e.: = $t_1 + t_2 + * * * + t_N$),
 and
 L_i = the A-weighted sound level of the I-th interval.

$L_{Aeq, T}$ should be measured, either directly or by using a one second sampling interval, for a minimum duration of 30 seconds ($L_{Aeq, 30s}$). The sampling rate and measurement duration rate specify how often samples are taken over a specified time range and are used to compute the equivalent sound level. FRA determined that, due to the continuous nature of in-cab noise, a 30-second measurement duration was sufficient to accurately represent in-cab noise levels.

The $L_{Aeq, T}$ equation obtained from the relevant ANSI standard (ANSI S1.1–1994, “Acoustical Terminology”) is a calculus equation while the $L_{Aeq, T}$ equation used in FRA’s rule is a non-calculus equation. The two equations are equivalent, as described below.

The $L_{Aeq, T}$ equation from the relevant ANSI standard is as follows:

$$L_{Aeq, T} = 10 \times \log_{10} \left\{ \frac{1}{T} \sum_{i=1}^N t_i \times \frac{p_{A_i}^2}{p_o^2} \right\}$$

Where:

T = the total time duration of the measurement;
 $p_A(t)$ = instantaneous, A-weighted sound pressure as a function of time (t); and
 p_o = the reference pressure.

This equation deals with a continuous sound pressure as a function of time ($p_A(t)$), and the integral of that continuous sound pressure over the measurement interval divided by the duration represents an average of that sound pressure. When looking at discretely sampled sound pressure data, this average may be represented by a sum of the discrete samples divided by the measurement duration. See below.

$$L_{Aeq, T} = 10 \times \log_{10} \left\{ \frac{1}{T} \int_0^T \frac{p_A^2(t)}{p_o^2} dt \right\}$$

Where:

N = number of time intervals over which the measurements are taken;
 t_i = time duration of the I-th interval;
 T = the total time duration of the measurement (i.e.: = $t_1 + t_2 + * * * + t_N$);
 p_{A_i} = the A-weighted sound pressure of the I-th interval.

Sound pressure level is related to sound pressure by the following equation:

$$\frac{p_{A_i}^2}{p_o^2} = 10^{L_i/10}$$

Where: L_i = the A-weighted sound level of the I-th interval.

The combination of the two above equations produces the equation for calculating $L_{Aeq, T}$ presented in this rulemaking.

Number 9 specifies the standard for determining compliance with 49 CFR 229.121(a). It provides that the highest (i.e., loudest) measurement of the four $L_{Aeq, 30s}$ measurements in the locomotive cab should be used as the end metric to determine whether the locomotive complies with § 229.121(a). Although this standard uses a measurement that is not representative of all four measurements in the locomotive cab, it provides a measurement that is most

representative of how loud it can be in a locomotive cab. It accounts for the worse noise levels in the locomotive cab. Also, the 'highest $L_{Aeq, 30s}$ standard' has the advantage of requiring little processing. In addition, locomotive manufacturers currently use the 'highest $L_{Aeq, 30s}$ standard.' Please note that, as discussed in § III(1) above, FRA has changed the metric from L_{av} to $L_{Aeq, T}$.

While drafting the NPRM, FRA had considered energy-averaging across the four measurement positions. While energy-averaging is a very good representation of the overall noise levels in the locomotive cab (because it averages together all the energy levels), averaging, in general, is not representative of the worst, or loudest, noise levels in the cab. Accordingly, FRA chose not to energy-average across the four positions.

Number 10 provides that if a locomotive fails to meet the requirements of § 229.121, the locomotive may be re-tested according to the requirements of Section II of this appendix, "Test Site Requirements." This concept originated as a provision allowing a re-test in an area free of reflective surfaces and noise sources for a locomotive that fails a test. That provision provided that: "If the test fails under original acoustical field conditions, adverse weather, or other factors that may have contributed to the failure, the test may be repeated in an acoustic free field, fair weather, etc." RSAC Working Group members explained that railroads and manufacturers already conduct these types of tests, and they wanted to ensure that this appendix allowed them to continue doing so. As an alternative to that provision, the RSAC Working Group considered permitting such a test as long as the test area was well-defined, e.g., where the test area was defined as an area free of large reflecting surfaces or noise sources and that there was a minimum distance of 200 feet around the locomotive. That proposal was also rejected, because some RSAC Working Group members felt that the 200-foot minimum distance was too restrictive.

Ultimately, then, FRA decided to include the provision contained here in number 9 (in the "Procedures for Measurement" section); it provides that a railroad or manufacturer may re-test a locomotive if that locomotive fails a static test. FRA also decided that the testing entity must record the suspected reason for the failure in its records. That requirement is located in the record keeping section (see § IV, number 7).

IV. Recordkeeping

This section requires testing entities to maintain records of their testing. They must retain these records for a minimum of three years and may keep these records in either written or electronic form. Those records include: the name of the person conducting the test and date of the test; the description of the tested locomotive; the description of the sound level meter and calibrator; the recorded measurement during calibration and for each microphone location during operating conditions; any other information necessary to describe the testing conditions and procedures (e.g., whether the locomotive was tested under self-loading conditions); and, where applicable, the suspected reason for a test failure (where a locomotive fails a test and can be re-tested under § III(9)).

V. Removed Sections

There were several provisions which were considered but ultimately were not included in the appendix. In particular, there were two notable sections: Environmental Criteria and Quantities Measured, as well as the requirement of pre- and post-background testing.

A. Environmental Criteria

The Environmental Criteria specified optimal meteorological conditions that should be followed during testing. The criteria provided that meteorological conditions, such as precipitation or wind, should not interact with the locomotive or rail car such that they are audible from within the cab. The purpose of specifying this criteria was to prevent those factors from interfering with the measurements and invalidating the test. In general, conducting noise measurements under favorable meteorological conditions is a good, and common, practice. However, some RSAC Working Group members believed that these conditions should be left up to the testing entity's best judgement. Moreover, they asserted that they did not believe that entities would conduct noise testing during severe weather conditions that would be audible in the cab. Because these conditions would only serve to raise the noise level inside the cab (and would only make it more difficult, not easier, for a locomotive to pass a test), this requirement was not included in the appendix.

The Environmental Criteria also provided that the air temperature and relative humidity inside the cab should be within the manufacturer's recommended operational ranges for the iSLM or the individual measurement

instrumentation. This requirement was initially placed in the appendix to account for the temperature and humidity restrictions specified by microphone and acoustic measurement instrumentation manufacturers in their supplemental literature. Members of the RSAC Working Group acknowledged that these restrictions are mentioned in the ANSI standard and are part of the proper operation of a sound level meter. As a result, FRA decided that it was unnecessary to repeat these requirements in this appendix.

B. Quantities Measured

The "Quantities Measured" section specified the metrics that should be used in the measurement procedure. It noted that all instances of exterior noise contamination that is audible inside the cab should be noted and that any noise level above 115 dB(A) would invalidate the noise test. All of the information contained in this section was already stated in other parts of the appendix and NPRM, so FRA decided to simplify the appendix and remove this section.

C. Pre- and Post-Background Testing

FRA had considered pre- and post-background testing requirements. There was much discussion about this requirement, and ultimately, the RSAC Working Group recommended not to include it in this protocol. In an early proposal, this provision required manufacturers and railroads to observe the sound levels before and after the static test measurements (at each of the in-cab measurement locations) and ensure that those sound levels were at least 10 dB(A) below the sound level observed during the in-cab static measurements. Manufacturers and railroads were to measure the pre- and post-tests when the locomotive was shut down, and the sound level measurements were to be representative of the ambient noise in the cab during the test. In a later revised form, this provision required manufacturers and railroads to establish baseline noise levels in the cab (on a locomotive that has been shut down) after completing the testing at the high horsepower/throttle setting.

FRA presented this requirement because of the utility of background noise measurements; they provide key pieces of information that can be vital to the procedure and the validity of the measurements. First, pre- and post-noise measurements ensure that ambient noise does not interfere with the test measurement. If the background noise is the same (or at least very similar) during the pre- and post-background noise measurement, one can infer that the

background noise did not impact the noise measurement test. Second, pre- and post-testing, along with notation of extraneous noise contamination during the test measurement, ensures that the measurements are not affected by additional noise sources that are atypical of the in-cab noise environment. If there is a variation between the pre- and post-noise measurements and there are notations of extraneous noises during the test measurement, that might indicate that there were changes in the test environment (e.g., changing weather conditions, additional noise sources, etc.). Third, the use of pre- and post-testing ensures that the measurements obtained are actually from the source that is being measured. They ensure that the sound levels measured in the locomotive cab are actually due to the loaded locomotive, and not due to some other noise source.

Several RSAC Working Group members did not want to include a pre- and post-background noise measurement requirement in the appendix. They explained that they were not concerned with background noise if it did not impact the locomotive's ability to pass the test. They further asserted that a background noise level shift, even if it were 10 dB or more, is still probably below the criterion level and thus, is most likely irrelevant to whether or not the locomotive meets the criteria of this protocol. They also explained that, if there were external noise occurrences during the static test and those external noise occurrences effected the test, then the testing entity would simply conduct another test. Finding these arguments persuasive, FRA has decided to remove the pre- and post-background testing requirement, in accordance with RSAC Working Group's recommendation.

VI. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this final rule. For access to the docket to read the regulatory analysis, 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 am and 5

pm, Monday through Friday, except Federal holidays.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs expected from the adoption of this final rule. Over a twenty-year period, the Present Value (PV) of the estimated costs is \$15.4 million. The analysis also includes qualitative discussions and quantified examples of the benefits for this final rule. The analysis concludes that an average savings of 24 noise-induced hearing loss cases per year would cover the average annual costs of the final rule.

The costs anticipated from adopting this final rule include: implementation of noise monitoring programs, implementation of hearing conservation programs, audiometric testing, hearing protection, provisions of hearing conservation training, and additional locomotive maintenance related to noise issues.

The major benefit anticipated from implementing this final rule will be the savings from a reduction in noise-induced hearing loss cases among railroad operating employees. Other quantifiable benefits include: reductions in employee absenteeism due to noise exposures, reductions in employee injuries related to noise exposures, and reductions in human factor caused train accidents. In addition, qualitative benefits should accrue from improved cab crew communications; increased employee performance due to decreased noise exposures; decreased vision issues related to noise exposures; and decreased stress and fatigue.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket a Regulatory Flexibility Assessment (RFA) which assesses the small entity impact. For access to the docket to read the RFA, 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 am and 5 pm, Monday through Friday, except Federal holidays.

Executive Order No. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," requires a Federal agency, *inter alia*, to notify the Chief Counsel for Advocacy of the U.S. Small Business Administration (SBA) of any of its draft rules that would have a significant economic impact on a substantial number of small entities, to consider any comments provided by the

SBA, and to include in the preamble to the rule the agency's response to any written comments by the SBA unless the agency head certifies that including such material would not serve the public interest. See 67 FR 53461 (August 16, 2002).

The SBA stipulates in its Table of Size Standards⁷⁸ that the largest a "for-profit" railroad business firm can be, and still be classified as a "small entity," is 1,500 employees for "Line-Haul Operating" Railroads and 500 employees for "Switching and Terminal Establishments." "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. SBA's "size standards" may be altered by Federal agencies in consultation with the SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy which formally establishes "small entities" as being railroads which 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 (STB's) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.⁷⁹ The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. However, in this rule, FRA is using a different size standard. Consistent with FRA's proposal in the NPRM, FRA is defining small entities as those having "less than 400,000 annual employee hours." FRA has used this standard in the past⁸⁰ to alleviate reporting requirements. By using this standard for small railroads, FRA is capturing most small entities that would be defined by the SBA as small businesses. Since FRA published this alternate standard in the NPRM, FRA has sought and received written permission from the SBA to use the alternative size standard for purposes of this rulemaking. FRA did not receive any comments during the public comments related to this issue or request.

For this rulemaking there are approximately 410 small railroads that could potentially be affected by this

⁷⁸ 13 CFR part 121.

⁷⁹ For further information on the calculation of the specific dollar limit please see 49 CFR Part 1201.

⁸⁰ See 49 CFR parts 217, 219, and 220.

regulation.⁸¹ FRA does not expect this regulation to impose a significant burden on these small railroads. Tourist, Steam and Historic operations are not required to meet any of the requirements. Thus, approximately 220 very small railroad operations will incur no burden from this rulemaking.

This final rule will also not extend to contractors who operate historic equipment in occasional service, as long as those contractors have been provided with hearing protection and are required (where necessary) to use the hearing protection while operating the historic equipment. Most of these type of contractors are very small businesses operated by self-employed current, former, or retired railroad employees. These operations would certainly be classified as a small business. FRA does not know how many of these types of operations could potentially be affected by this final rule. Since this regulation is not extending coverage to these operations, none of them would be impacted.

FRA's final rule requires railroads to establish a hearing conservation program for railroad operating employees' who have noise exposures that equal or exceed an 8-hour time-weighted average of 85 dB(A), *i.e.*, the action level. Railroad noise monitoring data⁸² indicates that only about 45 percent of the employee assignments would require inclusion in a hearing conservation program. Therefore, FRA expects that less than 50 percent of the affected employees on small railroads will be included in a hearing conservation program. FRA expects that after initial noise exposure monitoring, some small railroads will not need to establish hearing conservation programs, because none of their work assignments will meet or exceed the action level.

This final rule contains a few reporting and recordkeeping requirements. The requirements that do exist primarily involve records that are needed for medical purposes, compliance assessment, and program evaluation.

The impacts from this final rule are primarily a result of complying with the requirements for establishing hearing conservation programs and the elements

of these programs. In general, the costs are proportional to the number of employees that would be affected on a railroad. Thus, the impacts on small entities should be relatively less than they would be for medium and large railroads. However, most large and some medium railroads currently have voluntary and/or OSHA hearing conservation programs, which would simplify and ease compliance with this final rule. FRA anticipates that the burdens would be from developing hearing conservation programs, conducting noise monitoring, providing hearing protectors, and locomotive noise maintenance related to responding excessive noise reports.

The two requirements that have the greatest impact are the audiometric testing requirement and the training requirement. The purpose of FRA's audiometric testing program section is to provide the requirements for railroads to establish and maintain an audiometric testing program for employees that are covered by the hearing conservation program. It requires railroads to establish a baseline audiogram and then to conduct periodic audiograms. It also specifies the requirements for conducting, evaluating, and following-up with the audiograms. FRA estimates that the average cost of audiograms, (*i.e.*, hearing tests) is \$40 each, and that each audiogram will take an average of 25 minutes. FRA also requires railroads to conduct periodic audiometric testing of covered employees at least once every three years. FRA requires that audiograms be offered annually to all covered employees.

FRA's training program, in general, is similar to OSHA's hearing conservation training program. FRA requires each employee to complete the hearing training program at least once every three years. By contrast, OSHA requires employees to complete a hearing training program at least once a year. FRA anticipates that the short line railroad association will develop a generic program for training that its members can utilize.

For compliance purposes, this final rule provides an exception for Tourist, Steam and Historic railroad operations. In addition, railroads with less than

400,000 annual employee hours will receive additional time to comply with the three most significant burdens and costs. First, these railroads will have an additional 18 months to establish hearing conservation programs. Second, these railroads will have an additional 12 months to establish valid baseline audiograms for employees that have been placed in the FRA hearing conservation program. Third, these railroads will have an additional 12 months to establish hearing conservation training programs. The rulemaking process for this final rule included outreach to small entities. The proposal for the NPRM and this final rule was produced by the RSAC. Representation on this committee included the ASLRRRA.

This final Regulatory Flexibility Assessment (RFA) concludes that the rule would not have a significant economic impact on a substantial number of small entities. Thus, the FRA certifies that this final rule is not expected to have an "significant" economic impact on a "substantial" number of small entities. In order to determine the significance of the economic impact for the final rule's RFA, FRA reviewed and considered all pertinent comments from all interested parties concerning the potential economic impact on small entities.

As noted above Executive Order No. 13272 requires Federal agencies to notify the SBA Office of Advocacy of any of its draft rules that would have a significant economic impact on a substantial number of small entities. Since FRA has determined that this final rule would not have significant impact on a substantial number of small entities, FRA has not provided any notification to the SBA.

C. Paperwork Reduction Act of 1995

The information collection requirements in this final rule will be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
227.13—Waivers	460 Railroads	5 petitions	1 hour	5	\$190
227.103—Noise Monitoring Program	460 Railroads	460 programs	2 hours/8 hours/600 hours	5,165	0 (incl. in RIA)
—Notification to Employee of Monitoring.	460 Railroads	905 lists	30 minutes	453	17,214

⁸¹ 680 railroads – 220 (Tourist, Steam & Historic) railroads – 50 (large, medium, passenger and commuter) = 410 railroads.

⁸² See FRA's Regulatory Impact Analysis, Appendix C.

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
227.107—Hearing Conservation Program (HCP).	460 Railroads	461 HCPs	150 hours/2 hours/31 hours/7.5 hours.	2,875	0 (incl. in RIA).
—Revised Hearing Conservation Programs (HCPs).	460 Railroads	92 HCPs	1.74 hours	160	0 (incl. in RIA).
227.109—Audiometric Testing Prog.—Existing Employees; Baseline Audiograms.	78,000 Employees	60,000 audiograms + 6,000 audiograms.	7 min./25 min	7,000 + 2,500	0 (incl. in RIA).
—Periodic Audiograms	78,000 Employees	8,000 audiograms	25 minutes	3,333	0 (incl. in RIA).
—Evaluation of Audiograms	78,000 Employees	2,330 evaluations + 93 retests	6 min./2.5 hours	466	0 (incl. in RIA).
—Problem Audiograms	8,000 Employees	45 documents	10 minutes	8	304.
—Follow-up Procedures—Notifications.	8,000 Employees	93 notifications	15 minutes	24	912.
—Fitting/Training of Employees: Hearing Protectors.	240 Employees	240 training sess	2 minutes	8	0 (incl. in RIA).
—Referrals for Clinical/Otological Examinations.	240 Employees	20 referrals/result	2 hours	40	4,800.
—Notification to Employee of Need: Otological Exam.	240 Employees	20 notifications	5 minutes	2	76.
—New Audiometric Interpretation.	240 Employees	20 notifications	20 notifications	2	76.
227.111—Audiometric Test Requirements.	1,000 Mobile Vans	1,000 tests	45 minutes	750	52,500.
227.117—Hearing Protection Attenuation Evaluation.	460 Railroads	50 evaluations	30 minutes	25	1,750.
—Re-Evaluations	460 Railroads	10 re-evaluations	30 minutes	5	350.
227.119—Hearing Conservation Training Prog—Development.	460 Railroads	461 programs	8 hours/2 hours/116 hours/1 hour.	956	0 (incl. in RIA).
—Employee Training	460 Railroads	26,000 trained employees	30 minutes	13,000	0 (incl. in RIA).
—Periodic Training	460 Railroads	7,000 tr. empl	30 minutes	3,500	0 (incl. in RIA).
227.121—Record Keeping—Authorization: Records.	460 Railroads	10 requests + 10 responses	10 min. + 15 min	5	130.
—Requests for Copies of Reports.	460 Railroads	150 requests + 150 responses	21 min. + 45 min	166	0 (incl. in RIA).
—Records Transfer When Carrier Becomes Defunct.	460 Railroads	10 records	24 minutes	4	152.
—Railroad Audiometric Test Records.	460 Railroads	26,000 records	2 minutes	867	0 (incl. in RIA).
—Hearing Conservation Program (HCP) Records.	460 Railroads	54,000 records	45 seconds	675	0 (incl. in RIA).
—HCP Training Records of Employees.	460 Railroads	26,000 records	30 seconds	217	8,246.
—Records: Standard Threshold Shifts of Employees.	460 Railroads	280 records	7 minutes	33	0 (incl. in RIA).
229.121—Locomotive Cab Noise—Tests/Certifications.	3 Equipment Manuf	700 tests/certific	40 min. + 5 min	111	7,770.
—Equipment Maintenance: Excessive Noise Reports.	460 Railroads	3,000 reports + 3,000 records	10 min. + 5 min	750	22,500.
—Maintenance Records	460 Railroads	3,750 records	8 minutes	500	0 (incl. in RIA).
—Internal Auditable Monitoring Systems.	570 Railroads	570 systems	36 min. + 8.25 hour	572	0 (incl. in RIA).
Appendix H—Static Test Protocols/Records.	700 Locomotives	2 retests + 2	35 min. + 5 min	1	0 (incl. in RIA).

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 Mr. Robert Brogan, FRA's Information Clearance Officer, at 202-493-6292.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**.

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 this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the proposed regulation. Where a regulation has Federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This is a rule with preemptive effect. Subject to a limited exception for

essentially local safety hazards, its requirements will establish a uniform Federal safety standard that must be met, and State requirements covering the same subject are displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of State law, including State common law. Preemption is addressed in § 227.7 “Preemptive effect,” as it was in the NPRM. As stated in the corresponding preamble language for § 227.7, 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. The RSAC, which recommended the final rule, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials (AASHTO), and the Association of State Rail Safety Managers (ASRSM). The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members.

E. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

F. 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 the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) 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. This final rule will not result in the expenditure, in the aggregate, of \$128,100,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” See 66 FR 28355; May 22, 2001. Under the Executive Order a “significant energy action” is defined as any action by an agency 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 final rule is not a “significant energy action” within the meaning of the Executive Order.

H. Privacy Act

Anyone is able to search the electronic form of all comments received into any of DOT’s 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 published in the **Federal Register** 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 227

Incorporation by reference, Locomotives, Noise Control, Occupational Safety and Health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Incorporation by reference, Locomotives, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ For the reasons discussed in the preamble, the Federal Railroad Administration amends chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

■ 1. Part 227 is added to read as follows:

PART 227—OCCUPATIONAL NOISE EXPOSURE

Subpart A—General

Sec.

- 227.1 Purpose and scope.
- 227.3 Application.
- 227.5 Definitions.
- 227.7 Preemptive effect.
- 227.9 Penalties.
- 227.11 Responsibility for compliance.
- 227.13 Waivers.
- 227.15 Information collection.

Subpart B—Occupational Noise Exposure for Railroad Operating Employees

- 227.101 Scope and applicability.
- 227.103 Noise monitoring program.
- 227.105 Protection of employees.
- 227.107 Hearing conservation program.
- 227.109 Audiometric testing program.
- 227.111 Audiometric test requirements.
- 227.113 Noise operational controls.
- 227.115 Hearing protectors.
- 227.117 Hearing protector attenuation.
- 227.119 Training program.
- 227.121 Recordkeeping.
- Appendix A to Part 227—Noise Exposure Computation
- Appendix B to Part 227—Methods for Estimating the Adequacy of Hearing Protector Attenuation
- Appendix C to Part 227—Audiometric Baseline Revision
- Appendix D to Part 227—Audiometric Test Rooms
- Appendix E to Part 227—Use of Insert Earphones for Audiometric Testing
- Appendix F to Part 227—Calculations and Application of Age Corrections to Audiograms
- Appendix G to Part 227—Schedule of Civil Penalties

Authority: 49 U.S.C. 20103, 20103 (note), 20701–20702; 49 CFR 1.49.

Subpart A—General

§ 227.1 Purpose and scope.

(a) The purpose of this part is to protect the occupational health and

safety of employees whose predominant noise exposure occurs in the locomotive cab.

(b) This part prescribes minimum Federal health and safety noise standards for locomotive cab occupants. This part does not restrict a railroad or railroad contractor from adopting and enforcing additional or more stringent requirements.

§ 227.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads and contractors to railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation;

(2) A rapid transit operation in an urban area that is not connected to the general railroad system of transportation;

(3) A rapid transit operation in an urban area that is connected to the general system and operates under a shared use waiver;

(4) A railroad that operates tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation; or

(5) Foreign railroad operations that meet the following conditions: Employees of the foreign railroad have a primary reporting point outside of the U.S. but are operating trains or conducting switching operations in the U.S.; and the government of that foreign railroad has implemented requirements for hearing conservation for railroad employees; the foreign railroad undertakes to comply with those requirements while operating within the U.S.; and FRA's Associate Administrator for Safety determines that the foreign requirements are consistent with the purpose and scope of this part. A "foreign railroad" refers to a railroad that is incorporated in a place outside the U.S. and is operated out of a foreign country but operates for some distance in the U.S.

§ 227.5 Definitions.

As used in this part—

Action level means an eight-hour time-weighted-average sound level (TWA) of 85 dB(A), or, equivalently, a dose of 50 percent, integrating all sound levels from 80 dB(A) to 140 dB(A).

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Artifact means any signal received or recorded by a noise measuring instrument that is not related to occupational noise exposure and may

adversely impact the accuracy of the occupational noise measurement.

Audiogram means a record of audiometric testing, showing the thresholds of hearing sensitivity measured at discrete frequencies, as well as other recordkeeping information.

Audiologist means a professional, who provides comprehensive diagnostic and treatment/rehabilitative services for auditory, vestibular, and related impairments and who

(1) Has a Master's degree or doctoral degree in audiology and

(2) Is licensed as an audiologist by a State; or in the case of an individual who furnishes services in a State which does not license audiologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time audiology services after obtaining a master's or doctoral degree in audiology or a related field, and successfully completed a national examination in audiology approved by the Secretary of the U.S. Department of Health and Human Services.

Audiometry means the act or process of measuring hearing sensitivity at discrete frequencies. Audiometry can also be referred to as audiometric testing.

Baseline audiogram means an audiogram, recorded in accordance with § 227.109, against which subsequent audiograms are compared to determine the extent of change of hearing level.

Class I, Class II, and Class III railroads have the meaning assigned by the regulations of the Surface Transportation Board (49 CFR part 120; General Instructions 1–1).

Continuous noise means variations in sound level that involve maxima at intervals of 1 second or less.

Decibel (dB) means a unit of measurement of sound pressure levels.

dB(A) means the sound pressure level in decibels measured on the A-weighted scale.

Employee means any individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

Exchange rate means the change in sound level, in decibels, which would require halving or doubling of the allowable exposure time to maintain the same noise dose. For purposes of this part, the exchange rate is 5 decibels.

FRA means the Federal Railroad Administration.

Hearing protector means any device or material, which is capable of being

worn on the head, covering the ear canal or inserted in the ear canal; is designed wholly or in part to reduce the level of sound entering the ear; and has a scientifically accepted indicator of its noise reduction value.

Hertz (Hz) means a unit of measurement of frequency numerically equal to cycles per second.

Medical pathology means a condition or disease affecting the ear which is medically or surgically treatable.

Noise operational controls means a method used to reduce noise exposure, other than hearing protectors or equipment modifications, by reducing the time a person is exposed to excessive noise.

Occasional service means service of not more than a total of 20 days in a calendar year.

Otolaryngologist means a physician specializing in diagnosis and treatment of disorders of the ear, nose, and throat.

Periodic audiogram is a record of follow-up audiometric testing conducted at regular intervals after the baseline audiometric test.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; an owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; an independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Professional Supervisor of the Audiometric Monitoring Program in a hearing conservation program means an audiologist, otolaryngologist, or a physician with experience and expertise in hearing and hearing loss.

Qualified Technician is a person who is certified by the Council for Accreditation in Occupational Hearing Conservation or equivalent organization; or who has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining, and checking calibration and proper functioning of the audiometers used; and is responsible to the Professional Supervisor of the Audiometric Testing Program.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guide-ways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was

operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads. The term "railroad" is also intended to mean a person that provides transportation by railroad, whether directly or by contracting out operation of the railroad to another person. The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Representative personal sampling means measurement of an employee's noise exposure that is representative of the exposures of other employees who operate similar equipment under similar conditions.

Sound level or Sound pressure level means ten times the common logarithm of the ratio of the square of the measured A-weighted sound pressure to the square of the standard reference pressure of twenty micropascals, measured in decibels. For purposes of this regulation, SLOW time response, in accordance with ANSI S1.43-1997 (Reaffirmed 2002), "Specifications for Integrating-Averaging Sound Level Meters," is required. The Director of the Federal Register approves this incorporation by reference of this standard 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 National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Room, 1120 Vermont Ave., NW., Suite 700, Washington, DC 20005, 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.

Standard threshold shift (STS) means a change in hearing sensitivity for the worse, relative to the baseline audiogram, or relative to the most recent revised baseline (where one has been established), of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

Time-weighted-average eight-hour (or 8-hour TWA) means the sound level, which, if constant over 8 hours, would result in the same noise dose as is

measured. For purposes of this part, the exchange rate is 5 decibels.

Tourist, scenic, historic, or excursion operations means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose.

§ 227.7 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

§ 227.9 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$550 and not more than \$11,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix H to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 227.11 Responsibility for compliance.

Although the duties imposed by this part are generally stated in terms of the duty of a railroad, any person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

§ 227.13 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section must be filed in the manner and

contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 227.15 Information collection.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and are assigned OMB control number 2130-NEW.

(b) The information collection requirements are found in the following sections: §§ 227.13, 227.103, 227.107, 227.109, 227.111, 227.117, 227.119, and 227.121.

Subpart B—Occupational Noise Exposure for Railroad Operating Employees.

§ 227.101 Scope and applicability.

(a) This subpart shall apply to the noise-related working conditions of—

(1) Any person who regularly performs service subject to the provisions of the hours of service laws governing "train employees" (see 49 U.S.C. 21101(5) and 21103), but, subject to a railroad's election in paragraph (a)(3) of this section, does not apply to:

(i) Employees who move locomotives only within the confines of locomotive repair or servicing areas, as provided in §§ 218.5 and 218.29(a) of this chapter, or

(ii) Employees who move a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes, or

(iii) Contractors who operate historic equipment in occasional service, provided that the contractors have been provided with hearing protectors and, where necessary, are required to use the hearing protectors while operating the historic equipment;

(2) Any direct supervisor of the persons described in paragraph (a)(1) of this section whose duties require frequent work in the locomotive cab; and

(3) At the election of the railroad, any other person (including a person excluded by paragraph (a)(1) of this section) whose duties require frequent work in the locomotive cab and whose primary noise exposure is reasonably expected to be experienced in the cab, if the position occupied by such person is designated in writing by the railroad, as required by § 227.121(d).

(b) Occupational noise exposure and hearing conservation for employees not covered by this subpart is governed by the appropriate occupational noise exposure regulation of the U.S. Department of Labor, Occupational Safety and Health Administration located at 29 CFR 1910.95.

§ 227.103 Noise monitoring program.

(a) *Schedule.* A railroad shall develop and implement a noise monitoring program to determine whether any employee covered by the scope of this subpart may be exposed to noise that may equal or exceed an 8-hour TWA of 85 dB(A), in accordance with the following schedule:

(1) Class 1, passenger, and commuter railroads no later than February 26, 2008.

(2) Railroads with 400,000 or more annual employee hours that are not Class 1, passenger, or commuter railroads no later than August 26, 2008.

(3) Railroads with fewer than 400,000 annual employee hours no later than August 26, 2009.

(b) *Sampling strategy.*

(1) In its monitoring program, the railroad shall use a sampling strategy that is designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protection.

(2) Where circumstances such as high worker mobility, significant variations in sound level, or a significant component of impulse noise make area monitoring generally inappropriate, the railroad shall use representative personal sampling to comply with the monitoring requirements of this section, unless the railroad can show that area sampling produces equivalent results.

(c) *Noise measurements.*

(1) All continuous, intermittent, and impulse sound levels from 80 decibels to 140 decibels shall be integrated into the noise measurements.

(2) Noise measurements shall be made under typical operating conditions using:

(i) A sound level meter conforming, at a minimum, to the requirements of ANSI S1.4–1983 (Reaffirmed 2001) (incorporated by reference, see § 227.103(h)), Type 2, and set to an A-weighted SLOW response;

(ii) An integrated sound level meter conforming, at a minimum, to the requirements of ANSI S1.43–1997 (Reaffirmed 2002) (incorporated by reference, see § 227.103(h)), Type 2, and set to an A-weighted slow response; or

(iii) A noise dosimeter conforming, at a minimum, to the requirements of ANSI S1.25–1991 (Reaffirmed 2002) (incorporated by reference, see

§ 227.103(h)) and set to an A-weighted SLOW response.

(3) All instruments used to measure employee noise exposure shall be calibrated to ensure accurate measurements.

(d) The railroad shall repeat noise monitoring, consistent with the requirements of this section, whenever a change in operations, process, equipment, or controls increases noise exposures to the extent that:

(1) Additional employees may be exposed at or above the action level; or

(2) The attenuation provided by hearing protectors being used by employees may be inadequate to meet the requirements of § 227.103.

(e) In administering the monitoring program, the railroad shall take into consideration the identification of work environments where the use of hearing protectors may be omitted.

(f) *Observation of monitoring.* The railroad shall provide affected employees or their representatives with an opportunity to observe any noise dose measurements conducted pursuant to this section.

(g) *Reporting of monitoring results.*

(1) The railroad shall notify each monitored employee of the results of the monitoring.

(2) The railroad shall post the monitoring results at the appropriate crew origination point for a minimum of 30 days. The posting should include sufficient information to permit other crews to understand the meaning of the results in the context of the operations monitored.

(h) *Incorporation by reference.* The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated materials from the American National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standards at the Federal Railroad Administration, Docket Room, 1120 Vermont Ave., NW., Suite 700, Washington, DC 20005, 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.

(1) ANSI S1.4–1983 (Reaffirmed 2001), Specification for Sound Level

Meters, incorporation by reference (IBR) approved for § 227.103(c)(2)(i).

(2) ANSI S1.43–1997 (Reaffirmed 2002), Specifications for Integrating-Averaging Sound Level Meters, IBR approved for § 227.103(c)(2)(ii).

(3) ANSI S1.25–1991 (Reaffirmed 2002), Specification for Personal Noise Dosimeters, IBR approved for § 227.103(c)(2)(iii).

§ 227.105 Protection of employees.

(a) A railroad shall provide appropriate protection for its employees who are exposed to noise, as measured according to § 227.103, that exceeds the limits specified in appendix A of this part.

(b) In assessing whether exposures exceed 115 dB(A), as set forth in paragraph (a) of this section and appendix A to this part, the apparent source of the noise exposures shall be observed and documented and measurement artifacts may be removed.

(c) Except as set forth in paragraph (d) of this section, exposure to continuous noise shall not exceed 115dB(A).

(d) Exposures to continuous noise greater than 115 dB(A) and equal to or less than 120 dB(A) are permissible, provided that the total daily duration does not exceed 5 seconds.

§ 227.107 Hearing conservation program.

(a) Consistent with the requirements of the noise monitoring program required by § 227.103, the railroad shall administer a continuing, effective hearing conservation program, as set forth in §§ 227.109 through 227.121, for all employees exposed to noise at or above the action level.

(b) For purposes of the hearing conservation program, employee noise exposure shall be computed in accordance with the tables in appendix A of this part, and without regard to any attenuation provided by the use of hearing protectors.

§ 227.109 Audiometric testing program.

(a) Each railroad shall establish and maintain an audiometric testing program as set forth in this section and include employees who are required to be included in a hearing conservation program pursuant to § 227.107.

(b) *Cost.* The audiometric tests shall be provided at no cost to employees.

(c) *Tests.* Audiometric tests shall be performed by:

(1) An audiologist, otolaryngologist, or other physician who has experience and expertise in hearing and hearing loss; or

(2) A qualified technician.

(d) [Reserved]

(e) *Baseline audiogram.* This paragraph (e) applies to employees who

are required by § 227.107 to be included in a hearing conservation program.

(1) *New employees.*

(i) Except as provided in paragraph (e)(1)(ii), for employees hired after February 26, 2007, the railroad shall establish a valid baseline audiogram within 6 months of the new employee's first tour of duty.

(ii) Where mobile test vans are used to meet the requirement in paragraph (e)(1)(i), the railroad shall establish a valid baseline audiogram within one year of the new employee's first tour of duty.

(2) *Existing employees.*

(i) For all employees without a baseline audiogram as of February 26, 2007, Class 1, passenger, and commuter railroads, and railroads with 400,000 or more annual employee hours shall establish a valid baseline audiogram by February 26, 2009; and railroads with less than 400,000 annual employee hours shall establish a valid baseline audiogram by February 26, 2010.

(ii) If an employee has had a baseline audiogram as of February 26, 2007, and it was obtained under conditions that satisfy the requirements found in 29 CFR 1910.95(h), the railroad must use that baseline audiogram.

(iii) If the employee has had a baseline audiogram as of February 26, 2007, and it was obtained under conditions that satisfy the requirements in 29 CFR 1910.95(h)(1), but not the requirements found in 29 CFR 1910.95(h)(2) through (5), the railroad may elect to use that baseline audiogram provided that the Professional Supervisor of the Audiometric Monitoring Program makes a reasonable determination that the baseline audiogram is valid and is clinically consistent with other materials in the employee's medical file.

(3) Testing to establish a baseline audiogram shall be preceded by at least 14 hours without exposure to occupational noise in excess of the action level. Hearing protectors may be used as a substitute for the requirement that baseline audiograms be preceded by 14 hours without exposure to occupational noise.

(4) The railroad shall notify its employees of the need to avoid high levels of non-occupational noise exposure during the 14-hour period immediately preceding the audiometric examination.

(f) *Periodic audiogram.*

(1) The railroad shall offer an audiometric test to each employee included in the hearing conservation program at least once each calendar year. The interval between the date offered to any employee for a test in a

calendar year and the date offered in the subsequent calendar year shall be no more than 450 days and no less than 280 days.

(2) The railroad shall require each employee included in the hearing conservation program to take an audiometric test at least once every 1095 days.

(g) *Evaluation of audiogram.*

(1) Each employee's periodic audiogram shall be compared to that employee's baseline audiogram to determine if the audiogram is valid and to determine if a standard threshold shift has occurred. This comparison may be done by a qualified technician.

(2) If the periodic audiogram demonstrates a standard threshold shift, a railroad may obtain a retest within 90 days. The railroad may consider the results of the retest as the periodic audiogram.

(3) The audiologist, otolaryngologist, or physician shall review problem audiograms and shall determine whether there is a need for further evaluation. A railroad shall provide all of the following information to the person performing this review:

(i) The baseline audiogram of the employee to be evaluated;

(ii) The most recent audiogram of the employee to be evaluated;

(iii) Measurements of background sound pressure levels in the audiometric test room as required in appendix D of this part: Audiometric Test Rooms; and

(iv) Records of audiometer calibrations required by § 227.111.

(h) *Follow-up procedures.*

(1) If a comparison of the periodic audiogram to the baseline audiogram indicates that a standard threshold shift has occurred, the railroad shall inform the employee in writing within 30 days of the determination.

(2) Unless a physician or audiologist determines that the standard threshold shift is not work-related or aggravated by occupational noise exposure, the railroad shall ensure that the following steps are taken:

(i) Employees not using hearing protectors shall be fitted with hearing protectors, shall be trained in their use and care, and shall be required to use them.

(ii) Employees already provided with hearing protectors shall be refitted, shall be retrained in the use of hearing protectors offering greater attenuation, if necessary, and shall be required to use them.

(iii) If subsequent audiometric testing is necessary or if the railroad suspects that a medical pathology of the ear is caused or aggravated by the wearing of

hearing protectors, the railroad shall refer the employee for a clinical audiological evaluation or an otological examination.

(iv) If the railroad suspects that a medical pathology of the ear unrelated to the use of hearing protectors is present, the railroad shall inform the employee of the need for an otological examination.

(3) If subsequent audiometric testing of an employee, whose exposure to noise is less than an 8-hour TWA of 90 dB, indicates that a standard threshold shift is not persistent, the railroad shall inform the employee of the new audiometric interpretation and may discontinue the required use of hearing protectors for that employee.

(i) *Revised baseline.* A railroad shall use the following methods for revising baseline audiograms:

(1) Periodic audiograms from audiometric tests conducted through February 26, 2009, may be substituted for the baseline measurement by the Professional Supervisor of the Audiometric Monitoring Program who is evaluating the audiogram if:

(i) The standard threshold shift revealed by the audiogram is persistent; or

(ii) The hearing threshold shown in the periodic audiogram indicates significant improvement over the baseline audiogram.

(2) Baseline audiograms from audiometric tests conducted after February 26, 2009, shall be revised in accordance with the method specified in appendix C of this part: Audiometric Baseline Revision.

(j) *Standard threshold shift.* In determining whether a standard threshold shift has occurred, allowance may be made for the contribution of aging (presbycusis) to the change in hearing level by correcting the annual audiogram according to the procedure described in appendix F of this part: Calculation and Application of Age Correction to Audiograms.

§ 227.111 Audiometric test requirements.

(a) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations, with test frequencies including 500, 1000, 2000, 3000, 4000, 6000, and 8000 Hz. Tests at each frequency shall be taken separately for each ear.

(b) Audiometric tests shall be conducted with audiometers (including microprocessor audiometers) that meet the specifications of and are maintained and used in accordance with ANSI S3.6-2004 "Specification for Audiometers." The Director of the Federal Register approves the

incorporation by reference of this standard 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 National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Room, 1120 Vermont Ave., NW., Suite 700, Washington, DC 20005, or at the National Archives and Records Administration (NARA). For more 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.

(1) Pulsed-tone audiometers should be used with the following on and off times: F–J and J–K shall each have values of 225 ± 35 milliseconds (ms).

(2) Use of insert earphones shall be consistent with the requirements listed in appendix E of this part: Use of Insert Earphones for Audiometric Testing.

(c) Audiometric examinations shall be administered in a room meeting the requirements listed in appendix D of this part: Audiometric Test Rooms.

(d) *Audiometer calibration.*

(1) The functional operation of the audiometer shall be checked before each day's use by testing a person with known, stable hearing thresholds or by appropriate calibration device, and by listening to the audiometer's output to make sure that the output is free from distorted or unwanted sounds. Deviations of 10 decibels or greater require an acoustic calibration.

(2) Audiometer calibration shall be checked acoustically at least annually according to the procedures described in ANSI S3.6–2004. Frequencies below 500 Hz and above 8000 Hz may be omitted from this check. The audiometer must meet the sound pressure accuracy requirements of section 7.2 of ANSI S3.6–2004 of 3 dB at any test frequency between 500 and 5000 Hz and 5 dB at any test frequency 6000 Hz and higher for the specific type of transducer used. For air-conduction supra-aural earphones, the specifications in Table 6 of ANSI S3.6–2004 shall apply. For air-conduction insert earphones, the specifications in Table 7 of ANSI S3.6–2004 shall apply. Audiometers that do not meet these requirements must undergo an exhaustive calibration.

(3) Exhaustive Calibration. An exhaustive calibration shall be performed in accordance with ANSI S3.6–2004, according to the following schedule:

(i) At least once every two years on audiometers not used in mobile test vans. Test frequencies below 500 Hz and above 6000 Hz may be omitted from this calibration.

(ii) At least annually on audiometers used in mobile test vans.

§ 227.113 Noise operational controls.

(a) Railroads may use noise operational controls at any sound level to reduce exposures to levels below those required by Table A–1 of appendix A of this part.

(b) Railroads are encouraged to use noise operational controls when employees are exposed to sound exceeding an 8-hour TWA of 90 dB(A).

§ 227.115 Hearing protectors.

(a) *General requirements for hearing protectors.*

(1) The railroad shall provide hearing protectors to employees at no cost to the employee.

(2) The railroad shall replace hearing protectors as necessary.

(3) When offering hearing protectors, a railroad shall consider an employee's ability to understand and respond to voice radio communications and audible warnings.

(4) The railroad shall give employees the opportunity to select their hearing protectors from a variety of suitable hearing protectors. The selection shall include devices with a range of attenuation levels.

(5) The railroad shall provide training in the use and care of all hearing protectors provided to employees.

(6) The railroad shall ensure proper initial fitting and supervise the correct use of all hearing protectors.

(b) *Availability of hearing protectors.* A railroad shall make hearing protectors available to all employees exposed to sound levels that meet or exceed the action level.

(c) *Required use at action level.* A railroad shall require the use of hearing protectors when an employee is exposed to sound levels that meet or exceed the action level, and the employee has:

(1) Not yet had a baseline audiogram established pursuant to § 227.109; or

(2) Experienced a standard threshold shift and is required to use hearing protectors under § 227.109(h).

(d) *Required use for TWA of 90 dB(A).* The railroad shall require the use of hearing protectors when an employee is exposed to sound levels equivalent to an 8-hour TWA of 90 dB(A) or greater. The hearing protectors should be used to reduce sound levels to within those levels required by appendix A of this part.

§ 227.117 Hearing protector attenuation.

(a) A railroad shall evaluate hearing protector attenuation for the specific noise environments in which the protector will be used. The railroad shall use one of the evaluation methods described in appendix B of this part; "Methods for Estimating the Adequacy of Hearing Protector Attenuation."

(b) Hearing protectors shall attenuate employee exposure to an 8-hour TWA of 90 decibels or lower, as required by § 227.115.

(c) For employees who have experienced a standard threshold shift, hearing protectors must attenuate employee exposure to an 8-hour time-weighted average of 85 decibels or lower.

(d) The adequacy of hearing protector attenuation shall be re-evaluated whenever employee noise exposures increase to the extent that the hearing protectors provided may no longer provide adequate attenuation. A railroad shall provide more effective hearing protectors where necessary.

§ 227.119 Training program.

(a) The railroad shall institute an occupational noise and hearing conservation training program for all employees included in the hearing conservation program.

(1) The railroad shall offer the training program to each employee included in the hearing conservation program at least once each calendar year. The interval between the date offered to any employee for the training in a calendar year and the date offered in the subsequent calendar year shall be no more than 450 days and no less than 280 days.

(2) The railroad shall require each employee included in the hearing conservation program to complete the training at least once every 1095 days.

(b) The railroad shall provide the training required by paragraph (a) of this section in accordance with the following:

(1) For employees hired after February 26, 2007, within six months of the employee's first tour of duty in a position identified within the scope of this part.

(2) For employees hired on or before February 26, 2007, by Class 1, passenger, and commuter railroads, and railroads with 400,000 or more annual employee hours, by no later than February 26, 2009;

(3) For employees hired on or before February 26, 2007, by railroads with fewer than 400,000 annual employee hours, by no later than February 26, 2010.

(c) The training program shall include and the training materials shall reflect, at a minimum, information on all of the following:

- (1) The effects of noise on hearing;
- (2) The purpose of hearing protectors;
- (3) The advantages, disadvantages, and attenuation of various types of hearing protectors;
- (4) Instructions on selection, fitting, use, and care of hearing protectors;
- (5) The purpose of audiometric testing, and an explanation of the test procedures;
- (6) An explanation of noise operational controls, where used;
- (7) General information concerning the expected range of workplace noise exposure levels associated with major categories of railroad equipment and operations (e.g., switching and road assignments, hump yards near retarders, etc.) and appropriate reference to requirements of the railroad concerning use of hearing protectors;
- (8) The purpose of noise monitoring and a general description of monitoring procedures;
- (9) The availability of a copy of this part, an explanation of the requirements of this part as they affect the responsibilities of employees, and employees' rights to access records under this part;
- (10) How to determine what can trigger an excessive noise report, pursuant to § 229.121(b); and
- (11) How to file an excessive noise report, pursuant to § 229.121(b).

§ 227.121 Recordkeeping.

- (a) *General requirements.*
- (1) *Availability of records.* Each railroad required to maintain and retain records under this part shall:
- (i) Make all records available for inspection and copying/photocopying to representatives of the FRA, upon request;
 - (ii) Make an employee's records available for inspection and copying/photocopying to that employee, former employee, or such person's representative upon written authorization by such employee;
 - (iii) Make exposure measurement records for a given run or yard available for inspection and copying/photocopying to all employees who were present in the locomotive cab during the given run and/or who work in the same yard; and
 - (iv) Make exposure measurement records for specific locations available to regional or national labor representatives, upon request. These reports shall not contain identifying information of an employee unless an employee authorizes the release of such information in writing.

(2) *Electronic records.* All records required by this part may be kept in electronic form by the railroad. A railroad may maintain and transfer records through electronic transmission, storage, and retrieval provided that:

- (i) The electronic system be designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;
- (ii) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;
- (iii) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;
- (iv) The electronic system shall provide for the maintenance of records as originally submitted without corruption or loss of data; and
- (v) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part shall be made available for inspection and copying/photocopying by representatives of the FRA.

(3) *Transfer of records.* If a railroad ceases to do business, it shall transfer to the successor employer all records required to be maintained under this subpart, and the successor employer shall retain them for the remainder of the period prescribed in this part.

(b) *Exposure measurements records.* The railroad shall:

- (1) Maintain an accurate record of all employee exposure measurements required by § 227.103; and
 - (2) Retain these records for the duration of the covered employee's employment plus thirty years.
- (c) *Audiometric test records.* The railroad shall:
- (1) Maintain employee audiometric test records required by § 227.109, including:
 - (i) The name and job classification of the employee;
 - (ii) The date of the audiogram;
 - (iii) The examiner's name;
 - (iv) The date of the last acoustic or exhaustive calibration of the audiometer;
 - (v) Accurate records of the measurements of the background sound pressure levels in audiometric test rooms;
 - (vi) The model and serial number of the audiometer used for testing; and

(2) Retain the records required by § 227.107 for the duration of the covered employee's employment plus thirty years.

(d) *Positions and persons designated records.* The railroad shall:

- (1) Maintain a record of all positions or persons or both designated by the railroad to be placed in a Hearing Conservation Program pursuant to § 227.107; and
 - (2) Retain these records for the duration of the designation.
- (e) *Training program materials records.* The railroad shall:
- (1) Maintain copies of all training program materials used to comply with § 227.119(c) and a record of employees trained; and
 - (2) Retain these copies and records for three years.

(f) *Standard threshold shift records.* The railroad shall:

- (1) Maintain a record of all employees who have been found to have experienced a standard threshold shift within the prior calendar year and include all of the following information for each employee on the record:
 - (i) Date of the employee's baseline audiogram;
 - (ii) Date of the employee's most recent audiogram;
 - (iii) Date of the establishment of a standard threshold shift;
 - (iv) The employee's job code; and
 - (v) An indication of how many standard threshold shifts the employee has experienced in the past, if any; and
- (2) Retain these records for five years.

Appendix A to Part 227—Noise Exposure Computation

This appendix is mandatory.

I. Computation of Employee Noise Exposure

A. Noise dose is computed using Table A-1 as follows:

1. When the sound level, L, is constant over the entire work day, the noise dose, D, in percent, is given by: $D = 100 C/T$, where C is the total length of the work day, in hours, and T is the duration permitted corresponding to the measured sound level, L, as given in Table A-1.

2. When the work day noise exposure is composed of two or more periods of noise at different levels, the total noise dose over the work day is given by:

$$D = 100 (C_1/T_1 + C_2/T_2 + \dots + C_n/T_n)$$

where C_n indicates the total time of exposure at a specific noise level, and T_n indicates the duration permitted for that level as given by Table A-1.

B. The eight-hour TWA in dB may be computed from the dose, in percent, by means of the formula: $TWA = 16.61 \log_{10} (D/100) + 90$. For an eight-hour work day with the noise level constant over the entire day, the TWA is equal to the measured sound level.

C. Exposure to impulsive or impact noise should not exceed 140 dB peak sound pressure level.

D. Any time that an employee spends deadheading shall be included in the calculation of the noise dose.

E. A table relating dose and TWA is given in Section II of this Appendix.

$$T = \frac{8}{2^{(L-90)/5}}$$

where L is the measured A-weighted sound level.

II. Conversion Between "Dose" and "8-Hour Time-Weighted Average" Sound Level

A. Compliance with subpart B of part 227 is determined by the amount of exposure to noise in the workplace. The amount of such exposure is usually measured with a dosimeter which gives a readout in terms of "dose." In order to better understand the requirements of the regulation, dosimeter readings can be converted to an "8-hour TWA."

B. In order to convert the reading of a dosimeter into TWA, see Table A-2, below. This table applies to dosimeters that are set by the manufacturer to calculate dose or percent exposure according to the relationships in Table A-1. So, for example, a dose of 91 percent over an eight-hour day results in a TWA of 89.3 dB, and a dose of 50 percent corresponds to a TWA of 85 dB.

C. If the dose as read on the dosimeter is less than or greater than the values found in Table A-2, the TWA may be calculated by using the formula: $TWA = 16.61 \log_{10} (D/100) + 90$ where TWA = 8-hour time-weighted average sound level and D = accumulated dose in percent exposure.

TABLE A-1¹

A-weighted sound level, L (decibel)	Duration permitted T (hour)
80	32
81	27.9
82	24.3
83	21.1
84	18.4
85	16
86	13.9
87	12.1
88	10.6
89	9.2
90	8
91	7.0
92	6.1
93	5.3
94	4.6
95	4
96	3.5
97	3.0
98	2.6
99	2.3
100	2
101	1.7
102	1.5
103	1.3
104	1.1
105	1
106	0.87
107	0.76
108	0.66
109	0.57
110	0.5
111	0.44
112	0.38
113	0.33
114	0.29
115	0.25
116	0.22
117	0.19
118	0.16
119	0.14
120	0.125
121	0.11
122	0.095
123	0.082
124	0.072
125	0.063
126	0.054
127	0.047
128	0.041
129	0.036
130	0.031
140	0.078

¹ Numbers above 115 dB(A) are italicized to indicate that they are noise levels that are not permitted. The italicized numbers are included only because they are sometimes necessary for the computation of noise dose.

In the above table the duration permitted, T, is computed by

TABLE A-2.—CONVERSION FROM "PERCENT NOISE EXPOSURE" OR "DOSE" TO "8-HOUR TIME-WEIGHTED AVERAGE SOUND LEVEL" (TWA)—Continued

Dose or percent noise exposure	TWA
99	89.9
100	90.0
101	90.1
102	90.1
103	90.2
104	90.3
105	90.4
106	90.4
107	90.5
108	90.6
109	90.6
110	90.7
111	90.8
112	90.8
113	90.9
114	90.9
115	91.1
116	91.1
117	91.1
118	91.2
119	91.3
120	91.3
125	91.6
130	91.9
135	92.2
140	92.4
145	92.7
150	92.9
155	93.2
160	93.4
165	93.6
170	93.8
175	94.0
180	94.2
185	94.4
190	94.6
195	94.8
200	95.0
210	95.4
220	95.7
230	96.0
240	96.3
250	96.6
260	96.9
270	97.2
280	97.4
290	97.7
300	97.9
310	98.2
320	98.4
330	98.6
340	98.8
350	99.0
360	99.2
370	99.4
380	99.6
390	99.8
400	100.0
410	100.2
420	100.4
430	100.5
440	100.7
450	100.8
460	101.0
470	101.2
480	101.3

TABLE A-2.—CONVERSION FROM “PERCENT NOISE EXPOSURE” OR “DOSE” TO “8-HOUR TIME-WEIGHTED AVERAGE SOUND LEVEL” (TWA)—Continued

Dose or percent noise exposure	TWA
490	101.5
500	101.6
510	101.8
520	101.9
530	102.0
540	102.2
550	102.3
560	102.4
570	102.6
580	102.7
590	102.8
600	102.9
610	103.0
620	103.2
630	103.3
640	103.4
650	103.5
660	103.6
670	103.7
680	103.8
690	103.9
700	104.0
710	104.1
720	104.2
730	104.3
740	104.4
750	104.5
760	104.6
770	104.7
780	104.8
790	104.9
800	105.0
810	105.1
820	105.2
830	105.3
840	105.4
850	105.4
860	105.5
870	105.6
880	105.7
890	105.8
900	105.8
910	105.9
920	106.0
930	106.1
940	106.2
950	106.2
960	106.3
970	106.4
980	106.5
990	106.5
999	106.6

Appendix B to Part 227—Methods for Estimating the Adequacy of Hearing Protector Attenuation

This appendix is mandatory.

Employers must select one of the following three methods by which to estimate the adequacy of hearing protector attenuation.

I. Derate by Type

Derate the hearing protector attenuation by type using the following requirements:

A. Subtract 7 dB from the published Noise Reduction Rating (NRR).

B. Reduce the resulting amount by:

1. 20% for earmuffs,
2. 40% for form-able earplugs, or
3. 60% for all other earplugs.

C. Subtract the remaining amount from the A-weighted TWA. You will have the estimated A-weighted TWA for that hearing protector.

II. Method B From ANSI S12.6-1997 (Reaffirmed 2002)

Use Method B, which is found in ANSI S12.6-1997 (Reaffirmed 2002) “Methods for Measuring the Real-Ear Attenuation of Hearing Protectors.” The Director of the Federal Register approves the incorporation by reference of this standard 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 National Standards Institute at 1819 L Street, NW., Washington, DC 20036, or <http://www.ansi.org>. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Room, 1120 Vermont Ave., Suite 700, Washington, DC 20005, 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.

III. Objective Measurement

Use actual measurements of the level of noise exposure (as an A-weighted SLOW response dose) inside the hearing protector when the employee wears the hearing protector in the actual work environment.

Appendix C to Part 227—Audiometric Baseline Revision

This appendix is mandatory beginning on February 26, 2009.

I. General

A. A professional reviewer (audiologist, otolaryngologist, or physician) shall use these procedures when revising baseline audiograms.

B. Although these procedures can be programmed by a computer to identify records for potential revision, the final decision for revision rests with a human being. Because the goal of the guidelines is to foster consistency among different professional reviewers, human override of the guidelines must be justified by specific concrete reasons.

C. These procedures do not apply to: The identification of standard threshold shifts (STS) other than an FRA STS¹ or to the calculation of the 25-dB average shifts that are reportable on the Form FRA F 6180.55a.

D. Initially, the baseline is the latest audiogram obtained before entry into the hearing conservation program. If no appropriate pre-entry audiogram exists, the baseline is the first audiogram obtained after entry into the hearing conservation program. Each subsequent audiogram is reviewed to

¹ OSHA and FRA use the same definition for Standard Threshold Shift (STS). FRA’s definition is located in § 227.5. OSHA’s definition is located in 29 CFR 1910.95(g)(10)(i).

detect improvement in the average (average of thresholds at 2, 3, and 4 kHz) and to detect an FRA STS. The two ears are examined separately and independently for improvement and for worsening. If one ear meets the criteria for revision of baseline, then the baseline is revised for that ear only. Therefore, if the two ears show different hearing trends, the baseline for the left ear may be from one test date, while the baseline for the right ear may be from a different test date.

E. Age corrections do not apply in considering revisions for improvement (Rule 1). The FRA-allowed age corrections from appendix F of Part 227² may be used, if desired, before considering revision for persistent STS. Rule 2 operates in the same way, whether age corrections are used or not.

II. Rule 1: Revision for Persistent Improvement

If the average of the thresholds for 2, 3, and 4 kHz for either ear shows an improvement of 5 dB or more from the baseline value, and the improvement is present on one test and persistent on the next test, then the record should be identified for review by the audiologist, otolaryngologist, or physician for potential revision of the baseline for persistent improvement. The baseline for that ear should be revised to the test which shows the lower (more sensitive) value for the average of thresholds at 2, 3, and 4 kHz unless the audiologist, otolaryngologist, or physician determines and documents specific reasons for not revising. If the values of the three-frequency average are identical for the two tests, then the earlier test becomes the revised baseline.

III. Rule 2: Revision for Persistent Standard Threshold Shift

A. If the average of thresholds for 2, 3, and 4 kHz for either ear shows a worsening of 10 dB or more from the baseline value, and the STS persists on the next periodic test (or the next test given at least 6 months later), then the record should be identified for review by the audiologist, otolaryngologist, or physician for potential revision of the baseline for persistent worsening. Unless the audiologist, otolaryngologist, or physician determines and documents specific reasons for not revising, the baseline for that ear should be revised to the test which shows the lower (more sensitive) value for the average of thresholds at 2, 3, and 4 kHz. If both tests show the same numerical value for the average of 2, 3, and 4 kHz, then the audiologist, otolaryngologist, or physician should revise the baseline to the earlier of the two tests, unless the later test shows better (more sensitive) thresholds for other test frequencies.

B. Following an STS, a retest within 90 days of the periodic test may be substituted for the periodic test if the retest shows better (more sensitive) results for the average threshold at 2, 3, and 4 kHz.

C. If the retest is used in place of the periodic test, then the periodic test is retained in the record, but it is marked in

² FRA and OSHA use the same age-correction provisions. FRA’s is found in appendix F of part 227 and OSHA’s in appendix F of 29 CFR 1910.95.

such a way that it is no longer considered in baseline revision evaluations. If a retest within 90 days of periodic test confirms an FRA STS shown on the periodic test, the baseline will not be revised at that point because the required six-month interval between tests showing STS persistence has not been met. The purpose of the six-month requirement is to prevent premature baseline revision when STS is the result of temporary medical conditions affecting hearing.

D. Although a special retest after six months could be given, if desired, to assess whether the STS is persistent, in most cases, the next annual audiogram would be used to evaluate persistence of the STS.

Appendix D to Part 227—Audiometric Test Rooms

This appendix is mandatory.

A. Rooms used for audiometric testing shall not have background sound pressure levels exceeding those in Table D-1 when measured by equipment conforming at least to the Type 2 requirements of ANSI S1.4-1983 (Reaffirmed 2001) and to the Class 2 requirements of ANSI S1.11-2004, “Specification for Octave-Band and Fractional-Octave-Band Analog and Digital Filters.”

B. The Director of the Federal Register approves the incorporation by reference of ANSI S1.4-1983 (Reaffirmed 2001) and

S.1.11-2004 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 National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Room, 1120 Vermont Ave., NW., Suite 700, Washington, DC 20005, 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.

TABLE D-1.—MAXIMUM ALLOWABLE OCTAVE-BAND SOUND PRESSURE LEVELS FOR AUDIOMETRIC TEST ROOMS

Octave-band center frequency (Hz)	500	1000	2000	4000	8000
Sound pressure levels—supra-aural earphones	40	40	47	57	62
Sound pressure levels—insert earphones	50	47	49	50	56

Appendix E to Part 227—Use of Insert Earphones for Audiometric Testing

This appendix is mandatory.

Section 227.111(d) allows railroads to use insert earphones for audiometric testing. Railroads are not required to use insert earphones, however, where they elect to use insert earphones, they must comply with the requirements of this appendix.

I. Acceptable Fit

A. The audiologist, otolaryngologist, or other physician responsible for conducting the audiometric testing, shall identify ear canals that prevent achievement of an acceptable fit with insert earphones, or shall assure that any technician under his/her authority who conducts audiometric testing with insert earphones has the ability to identify such ear canals.

B. Technicians who conduct audiometric tests must be trained to insert the earphones correctly into the ear canals of test subjects and to recognize conditions where ear canal size prevents achievement of an acceptable insertion depth (fit).

C. Insert earphones shall not be used for audiometric testing of employees with ear canal sizes that prevent achievement of an acceptable insertion depth (fit).

II. Proper Use

The manufacturer’s guidelines for proper use of insert earphones must be followed.

III. Audiometer Calibration

A. Audiometers used with insert earphones must be calibrated in accordance with ANSI S3.6-2004, “Specification for Audiometers.” The Director of the Federal Register approves the incorporation by reference of this standard 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 National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standard at the Federal Railroad Administration,

Docket Room, 1120 Vermont Ave., NW., Suite 700, Washington, DC 20005, 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.

B. Audiometers used with insert earphones must be calibrated using one of the couplers listed in Table 7 of ANSI S3.6-2004.

C. The acoustical calibration shall be conducted annually.

D. The functional calibration must be conducted before each day’s use of the audiometer.

IV. Background Noise Levels

Testing shall be conducted in a room where the background ambient noise octave-band sound pressures levels meet appendix D to this part.

V. Conversion From Supra Aural Earphones

At the time of conversion from supra-aural to insert earphones, testing must be performed with both types of earphones.

A. The test subject must have a quiet period of at least 14 hours before testing. Hearing protectors may be used as a substitute for the quiet period.

B. The supra-aural earphone audiogram shall be compared to the baseline audiogram, or the revised baseline audiogram if appropriate, to check for a Standard Threshold Shift (STS). In accordance with § 227.109(f)(2), if the audiogram shows an STS, retesting with supra-aural earphones must be performed within 90 days. If the resulting audiogram confirms the STS, then it is adopted as the current test instead of the prior one.

C. If retesting with supra-aural earphones is performed, then retesting with insert earphones must be performed at that time to establish the baseline for future audiometric tests using the insert earphones.

VI. Revised Baseline Audiograms

A. If an STS is confirmed by the re-test with supra-aural earphones, the audiogram may become the revised baseline audiogram per the requirements of § 227.109(i) for all future hearing tests with supra-aural earphones. The insert-earphone audiogram will become the new reference baseline audiogram for all future hearing tests performed with insert earphones.

B. If an STS is not indicated by the test with supra-aural earphones, the baseline audiogram remains the reference baseline audiogram for all future supra-aural earphone tests, until such time as an STS is observed. In this case, the insert-earphone audiogram taken at the same time will become the new reference baseline audiogram for all future hearing tests performed with insert earphones.

C. Transitioning Employees with Partial Shifts. Employers must account for the workers who are in the process of developing an STS (e.g., demonstrate a 7 dB average shift), but who at the time of the conversion to insert earphones do not have a 10 dB average shift. Employers who want to use insert earphones must enter the 7 dB shift information in the employee’s audiometric test records although it is not an “STS”. When the next annual audiogram using insert earphones shows an average threshold shift at 2000, 3000 and 4000 Hz of 3 dB, completing the full shift (7 dB + 3 dB), employers must then label that average shift as an STS. This triggers the follow-up procedures at § 227.109(h).

VII. Records

All audiograms (including both those produced through the use of insert earphones and supra-aural headsets), calculations, pure-tone individual and average threshold shifts, full STS migrations, and audiometric acoustical calibration records, are to be preserved as records and maintained according to § 227.121(c).

Appendix F to Part 227—Calculations and Application of Age Corrections to Audiograms

This appendix is non-mandatory. In determining whether a standard threshold shift (STS) has occurred, allowance may be made for the contribution of aging to the change in hearing level by adjusting the most recent audiogram. If the employer chooses to adjust the audiogram, the employer shall follow the procedure described below. This procedure and the age correction tables were developed by the

National Institute for Occupational Safety and Health in a criteria document. See “Criteria for a Recommended Standard: Occupational Exposure to Noise,” Department of Health and Human Services (NIOSH) Publication No. 98-126. For each audiometric test frequency:
 I. Determine from Tables F-1 or F-2 the age correction values for the employee by:
 A. Finding the age at which the most recent audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz;

B. Finding the age at which the baseline audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz.
 II. Subtract the values found in step (I)(B) from the value found in step (I)(A).
 III. The differences calculated in step (II) represented that portion of the change in hearing that may be due to aging.
Example: Employee is a 32-year-old male. The audiometric history for his right ear is shown in decibels below.

Employee's age	Audiometric test frequency (Hz)				
	1000	2000	3000	4000	6000
26	10	5	5	10	5
27*	0	0	0	5	5
28	0	0	0	10	5
29	5	0	5	15	5
30	0	5	10	20	10
31	5	10	20	15	15
32*	5	10	10	25	20

a. The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists

at 4000 Hz between the audiograms taken at ages 27 and 32.
 b. (The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25). A retest audiogram has

confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner:
 c. Go to Table F-1 and find the age correction values (in dB) for 4000 Hz at age 27 and age 32.

	Frequency (Hz)				
	1000	2000	3000	4000	6000
Age 32	6	5	7	10	14
Age 27	5	4	6	7	11
Difference	1	1	1	3	3

d. The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3

dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is

subtracted from the adjusted annual audiogram hearing threshold at 4000 Hz (22). Thus the age-corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

TABLE F-1.—AGE CORRECTION VALUES IN DECIBELS FOR MALES

Years	Audiometric test frequencies (Hz)				
	1000	2000	3000	4000	6000
20 or younger	5	3	4	5	8
21	5	3	4	5	8
22	5	3	4	5	8
23	5	3	4	6	9
24	5	3	5	6	9
25	5	3	5	7	10
26	5	4	5	7	10
27	5	4	6	7	11
28	6	4	6	8	11
29	6	4	6	8	12
30	6	4	6	9	12
31	6	4	7	9	13
32	6	5	7	10	14
33	6	5	7	10	14
34	6	5	8	11	15
35	7	5	8	11	15

TABLE F-1.—AGE CORRECTION VALUES IN DECIBELS FOR MALES—Continued

Years	Audiometric test frequencies (Hz)				
	1000	2000	3000	4000	6000
36	7	5	9	12	16
37	7	6	9	12	17
38	7	6	9	13	17
39	7	6	10	14	18
40	7	6	10	14	19
41	7	6	10	14	20
42	8	7	11	16	20
43	8	7	12	16	21
44	8	7	12	17	22
45	8	7	13	18	23
46	8	8	13	19	24
47	8	8	14	19	24
48	9	8	14	20	25
49	9	9	15	21	26
50	9	9	16	22	27
51	9	9	16	23	28
52	9	10	17	24	29
53	9	10	18	25	30
54	10	10	18	26	31
55	10	11	19	27	32
56	10	11	20	28	34
57	10	11	21	29	35
58	10	12	22	31	36
59	11	12	22	32	37
60 or older	11	13	23	33	38

TABLE F-2.—AGE CORRECTION VALUES IN DECIBELS FOR FEMALES

Years	Audiometric test frequencies (Hz)				
	1000	2000	3000	4000	6000
20 or younger	7	4	3	3	6
21	7	4	4	3	6
22	7	4	4	4	6
23	7	5	4	4	7
24	7	5	4	4	7
25	8	5	4	4	7
26	8	5	5	4	8
27	8	5	5	5	8
28	8	5	5	5	8
29	8	5	5	5	9
30	8	6	5	5	9
31	8	6	6	5	9
32	9	6	6	6	10
33	9	6	6	6	10
34	9	6	6	6	10
35	9	6	7	7	11
36	9	7	7	7	11
37	9	7	7	7	12
38	10	7	7	7	12
39	10	7	8	8	12
40	10	7	8	8	13
41	10	8	8	8	13
42	10	8	9	9	13
43	11	8	9	9	14
44	11	8	9	9	14
45	11	8	10	10	15
46	11	9	10	10	15
47	11	9	10	11	16
48	12	9	11	11	16
49	12	9	11	11	16
50	12	10	11	12	17
51	12	10	12	12	17
52	12	10	12	13	18
53	13	10	13	13	18
54	13	11	13	14	19
55	13	11	14	14	19

TABLE F-2.—AGE CORRECTION VALUES IN DECIBELS FOR FEMALES—Continued

Years	Audiometric test frequencies (Hz)				
	1000	2000	3000	4000	6000
56	13	11	14	15	20
57	13	11	15	15	20
58	14	12	15	16	21
59	14	12	16	16	21
60 or older	14	12	16	17	22

Appendix G to Part 227—Schedule of Civil Penalties

Section	Violation	Willful violation
Subpart A—General		
227.3 Application:		
(b)(4) Failure to meet the required conditions for foreign railroad operations	\$2,500	\$5,000
Subpart B—General Requirements		
227.103 Noise monitoring program:		
(a) Failure to develop and/or implement a noise monitoring program	7,500	10,000
(b) Failure to use sampling as required	2,500	5,000
(c) Failure to integrate sound levels and/or make noise measurements as required	2,500	5,000
(d) Failure to repeat noise monitoring where required	2,500	5,000
(e) Failure to consider work environments where hearing protectors may be omitted	2,500	5,000
(f) Failure to provide opportunity to observe monitoring	2,000	4,000
(g) Reporting of Monitoring Results:		
(1) Failure to notify monitored employee	2,500	5,000
(2) Failure to post results as required	2,500	5,000
227.105 Protection of employees:		
(a) Failure to provide appropriate protection to exposed employee	7,500	10,000
(b) Failure to observe and document source(s) of noise exposures	2,500	5,000
(c)–(d) Failure to protect employee from impermissible continuous noise	5,000	7,500
227.107 Hearing conservation program:		
(a) Failure to administer a HCP	7,500	10,000
(b) Failure to compute noise exposure as required	3,500	7,000
227.109 Audiometric testing program:		
(a) Failure to establish and/or maintain an audiometric testing program	7,500	10,000
(b) Failure to provide audiometric test at no cost to employee	2,500	5,000
(c) Failure to have qualified person perform audiometric test	2,500	5,000
(d) [Reserved]		
(e) Failure to establish baseline audiogram as required	3,500	7,000
(f) Failure to offer and/or require periodic audiograms as required	2,500	5,000
(g) Failure to evaluate audiogram as required	2,500	5,000
(h) Failure to comply with follow-up procedures as required	2,500	5,000
(i) Failure to use required method for revising baseline audiograms	2,500	5,000
227.111 Audiometric test requirements:		
(a) Failure to conduct test as required	2,500	5,000
(b) Failure to use required equipment	2,500	5,000
(c) Failure to administer test in room that meets requirements	2,500	5,000
(d) Complete failure to calibrate	5,000	7,500
(1) Failure to perform daily calibration as required	2,000	4,000
(2) Failure to perform annual calibration as required	2,000	4,000
(3) Failure to perform exhaustive calibration as required	2,000	4,000
227.115 Hearing protectors (HP):		
(a) Failure to comply with general requirements	3,000	6,000
(b) Failure to make HP available as required	2,500	5,000
(c) Failure to require use of HP at action level	5,000	7,500
(d) Failure to require use of HP at TWA of 90 dB(A)	5,000	7,500
227.117 Hearing protector attenuation:		
(a) Failure to evaluate attenuation as required	2,500	5,000
(b)–(c) Failure to attenuate to required level	2,500	5,000
(d) Failure to re-evaluate attenuation	2,500	5,000
227.119 Training program:		
(a) Failure to institute a training program as required	5,000	7,500
(b) Failure to provide training within required time frame	2,500	5,000
(c) Failure of program and/or training materials to include required information	2,500	5,000
227.121 Recordkeeping:		
(a) General Requirements:		
(1) Failure to make record available as required	2,500	5,000

Section	Violation	Willful violation
(3) Failure to transfer or retain records as required	2,000	4,000
(b)-(f) Records:		
(1) Failure to maintain record or failure to maintain record with required information	2,000	4,000
(2) Failure to retain records for required time period	2,000	4,000

PART 229—[AMENDED]

■ 2. 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; 49 CFR 1.49.

■ 3. Section 229.4 is amended by revising paragraph (b) to read as follows:

§ 229.4 Information collection.

* * * * *

(b) The information collection requirements are found in the following sections: §§ 229.9, 229.17, 229.21, 229.23, 229.25, 229.27, 229.29, 229.31, 229.33, 229.55, 229.103, 229.105, 229.113, 229.121, 229.135, and appendix H to part 229.

■ 4. Section 229.5 is amended by adding, in alphabetical order, the following definitions.

§ 229.5 Definitions.

* * * * *

dB(A) means the sound pressure level in decibels measured on the A-weighted scale.

* * * * *

Decibel (dB) means a unit of measurement of sound pressure levels.

* * * * *

Excessive noise report means a report by a locomotive cab occupant that the locomotive is producing an unusual level of noise that significantly interferes with normal cab communications or that is a concern with respect to hearing conservation.

* * * * *

Upper 99% confidence limit means the noise level below which 99% of all noise level measurements must lie.

* * * * *

■ 5. Section 229.121 is revised to read as follows:

§ 229.121 Locomotive cab noise

(a) *Performance Standards for Locomotives.*

(1) When tested for static noise in accordance with paragraph (a)(3) of this

section, all locomotives of each design or model that are manufactured after October 29, 2007, shall average less than or equal to 85 dB(A), with an upper 99% confidence limit of 87 dB(A). The railroad may rely on certification from the equipment manufacturer for a production run that this standard is met. The manufacturer may determine the average by testing a representative sample of locomotives or an initial series of locomotives, provided that there are suitable manufacturing quality controls and verification procedures in place to ensure product consistency.

(2) In the maintenance of locomotives that are manufactured in accordance with paragraph (a)(1) of this section, a railroad shall not make any alterations that cause the average sound level for that locomotive design or model to exceed:

(i) 82 dB(A) if the average sound level for a locomotive design or model is less than 82 dB(A); or

(ii) 85 dB(A) if the average sound level for a locomotive design or model is 82 dB(A) to 85 dB(A), inclusive,

(3) The railroad or manufacturer shall follow the static test protocols set forth in appendix H of this part to determine compliance with paragraph (a)(1) of this section; and, to the extent reasonably necessary to evaluate the effect of alterations during maintenance, to determine compliance with paragraph (a)(2) of this section.

(b) *Maintenance of Locomotives.*

(1) If a railroad receives an excessive noise report, and if the condition giving rise to the noise is not required to be immediately corrected under part 229, the railroad shall maintain a record of the report, and repair or replace the item identified as substantially contributing to the noise:

(i) on or before the next periodic inspection required by § 229.23; or

(ii) if the railroad determines that the repair or replacement of the item requires significant shop or material resources that are not readily available, at the time of the next major equipment

repair commonly used for the particular type of maintenance needed.

(2) Conditions that may lead a locomotive cab occupant to file an excessive noise report include, but are not limited to: defective cab window seals; defective cab door seals; broken or inoperative windows; deteriorated insulation or insulation that has been removed for other reasons; broken or inoperative doors; and air brakes that vent inside of the cab.

(3) A railroad has an obligation to respond to an excessive noise report that a locomotive cab occupant files. The railroad meets its obligation to respond to an excessive noise report, as set forth in paragraph (b)(1) of this section, if the railroad makes a good faith effort to identify the cause of the reported noise, and where the railroad is successful in determining the cause, if the railroad repairs or replaces the items cause the noise.

(4) *Recordkeeping.*

(i) A railroad shall maintain a written or electronic record of any excessive noise report, inspection, test, maintenance, replacement, or repair completed pursuant to § 229.121(b) and the date on which that inspection, test, maintenance, replacement, or repair occurred. If a railroad elects to maintain an electronic record, the railroad must satisfy the conditions listed in § 227.121(a)(2)(i) through (v).

(ii) The railroad shall retain these records for 92 days if they are made pursuant to § 229.21, or for one year if they are made pursuant to § 229.23.

(iii) The railroad shall establish an internal, auditable, monitorable system that contains these records.

■ 6. Appendix B to part 229 is amended by revising the entry related to § 229.121 to read as follows:

Appendix B to Part 229—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
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* * * * *
 229.121 Locomotive Cab Noise:
 (a) Performance Standards

Section	Violation	Willful violation
(1) Failure to meet sound level	5,000	7,500
(2) Improper maintenance alterations	2,500	5,000
(3) Failure to comply with static test protocols	2,500	5,000
(b) Maintenance of Locomotives		
(1) Failure to maintain excessive noise report record or respond to report as required	2,500	5,000
(3) Failure to make good faith effort as required	2,500	5,000
(4) Failure to maintain record as required	2,000	4,000
* * * * *		

- * * * * *
- 7. Appendices F and G are added to part 229 and reserved.
- 8. Appendix H is added to part 229 to read as follows:

Appendix H to Part 229: Static Noise Test Protocols—In-Cab Static

This appendix prescribes the procedures for the in-cab static measurements of locomotives.

I. Measurement Instrumentation

The instrumentation used should conform to the following: An integrating-averaging sound level meter shall meet all the requirements of ANSI S1.43-1997 (Reaffirmed 2002), "Specifications for Integrating-Averaging Sound Level Meters," for a Type 1 Instrument. In the event that a Type 1 instrument is not available, the measurements may be conducted with a Type 2 instrument. The acoustic calibrator shall meet the requirement of the ANSI S1.40-1984 (Reaffirmed 2001), "Specification for Acoustical Calibrators." The Director of the Federal Register approves the incorporation by reference of ANSI S1.43-1997 (Reaffirmed 2002) and ANSI S1.40-1984 (Reaffirmed 2001) 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 standards from the American National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standards at the Federal Railroad Administration, Docket Room, 1120 Vermont Ave., NW., Suite 700, Washington, DC 20005, 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. Test Site Requirements

- The test site shall meet the following requirements:
- (1) The locomotive to be tested should not be positioned where large reflective surfaces are directly adjacent to or within 25 feet of the locomotive cab.
 - (2) The locomotive to be tested should not be positioned where other locomotives or rail cars are present on directly adjacent tracks next to or within 25 feet of the locomotive cab.
 - (3) All windows, doors, cabinets seals, etc., must be installed in the locomotive cab and be closed.
 - (4) The locomotive must be running for sufficient time before the test to be at normal operating temperature.

- (5) The heating, ventilation and air conditioning (HVAC) system or a dedicated heating or air conditioner system must be operating on high, and the vents must be open and unobstructed.
- (6) The locomotive shall not be tested in any site specifically designed to artificially lower in-cab noise levels.

III. Procedures for Measurement

- (1) $L_{Aeq, T}$ is defined as the A-weighted, equivalent sound level for a duration of T seconds, and the sound level meter shall be set for A-weighting with slow response.
- (2) The sound level meter shall be calibrated with the acoustic calibrator immediately before and after the in-cab static tests. The calibration levels shall be recorded.
- (3) Any change in the before and after calibration level(s) shall be less than 0.5 dB.
- (4) The sound level meter shall be measured at each of the following locations:
 - (A) 30 inches above the center of the left seat;
 - (B) Centered in the middle of the cab between the right and left seats, and 56 inches above the floor;
 - (C) 30 inches above the center of the right seat; and
 - (D) One foot (0.3 meters) from the center of the back interior wall of the cab and 56 inches above the floor. See Figure 1.

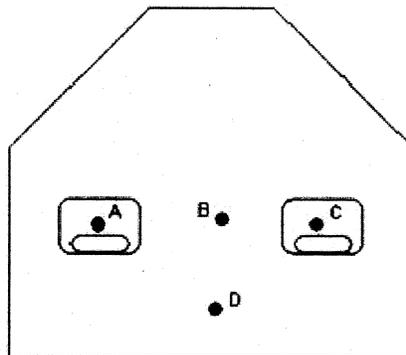


Figure 1. Microphone Locations inside Typical Locomotive Cab

(5) The observer shall stand as far from the microphone as possible. No more than two

people (tester, observers or crew members) shall be inside the cab during measurements.

(6) The locomotive shall be tested under self-loading conditions if so equipped. If the locomotive is not equipped with self load,

the locomotive shall be tested with no-load (No-load defined as maximum RPM—no electric load) and an adjustment of 3 dB added to the measured level.

(7) The sound level shall be recorded at the highest horsepower or throttle setting.

(8) After the engine speed has become constant and the in-cab noise is continuous, $L_{Aeq, T}$ shall be measured, either directly or using a 1 second sampling interval, for a minimum duration of 30 seconds at each measurement position ($L_{Aeq, 30s}$).

(9) The highest $L_{Aeq, 30s}$ of the 4 measurement positions shall be used for determining compliance with § 229.121(a).

(10) A locomotive that has failed to meet the static test requirements of this regulation may be re-tested in accordance with the requirements in section II of this appendix.

IV. Recordkeeping

To demonstrate compliance, the entity conducting the test shall maintain records of the following data. The records created under this procedure shall be retained and made readily accessible for review for a minimum of three years. All records may be maintained in either written or electronic form.

(1) Name(s) of persons conducting the test, and the date of the test.

(2) Description of locomotive being tested, including: make, model number, serial number, and date of manufacture.

(3) Description of sound level meter and calibrator, including: make, model, type, serial number, and manufacturer's calibration date.

(4) The recorded measurement during calibration and for each microphone location during operating conditions.

(5) Other information as appropriate to describe the testing conditions and procedure, including whether or not the locomotive was tested under self-loading conditions, or not.

(6) Where a locomotive fails a test and is re-tested under the provisions of § III(9) of this appendix, the suspected reason(s) for the failure.

Issued in Washington, DC, on September 29, 2006.

Joseph H. Boardman,

Federal Railroad Administrator.

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Federal Register

**Friday,
October 27, 2006**

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final Grant Guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2007 State Justice Institute grants, cooperative agreements, and contracts.

DATES: October 27, 2006.

FOR FURTHER INFORMATION CONTACT:

Kevin Linskey, Executive Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684-6100 X201, klinskey@statejustice.org.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Pending appropriations legislation passed by the House (H.R. 5672) would appropriate \$2,000,000 for SJI in fiscal year (FY) 2007; the Senate-passed version of the bill proposes to appropriate \$4,500,000.

Regardless of the final amount provided to SJI for FY 2007, the Institute's Board of Directors intends to solicit grant applications across the range of grant programs available.

The following Grant Guideline is adopted by the State Justice Institute for FY 2007:

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I. The Mission of the State Justice Institute

The Institute was established by Public Law 98-620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is

charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the Federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by a Board of Directors appointed by the President, with the consent of the Senate. The Board is statutorily composed of six judges; a State court administrator; and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

- Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;
- Provide for the preparation, publication, and dissemination of information regarding State judicial systems;
- Participate in joint projects with Federal agencies and other private grantors;
- Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;
- Encourage and assist in furthering judicial education; and,
- Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative

agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies* (42 U.S.C. 10705(b)(1)(A)).

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments* (42 U.S.C. 10705(b)(1)(B)).

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments* (42 U.S.C. 10705(b)(1)(C)). An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients* (42 U.S.C. 10705 (b)(2)(A)-(D)).

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

- a. Nonprofit organizations with expertise in judicial administration;
- b. Institutions of higher education;
- c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and
- d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

III. Scope of the Program

SJI is offering five types of grants in FY 2007: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Scholarships, and Partner Grants. Effective immediately, SJI will no longer award Continuation Grants to extend previous or future Project or Partner Grants.

A. Project Grants

Project Grants are intended to support innovative education and training, research and evaluation, demonstration, and technical assistance projects that can improve the administration of

justice in State courts locally or nationwide. Project Grants may ordinarily not exceed \$300,000. Grant periods for Project Grants ordinarily may not exceed 36 months. No Continuation Grants will be awarded.

Applicants for Project Grants will be required to contribute a cash match of not less than 50% of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties.

Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the guidelines prior to beginning the application process. If questions arise, applicants are strongly encouraged to consult with the Institute.

As set forth in Section I., the Institute is authorized to fund projects addressing a broad range of program areas. Though the Board is likely to favor Project Grant applications focused on the Special Interest program categories described below, potential applicants are also encouraged to bring to the attention of the Institute innovative projects outside those categories. Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

1. Special Interest Program Categories

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the State judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other States; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a Special Interest project if it meets the four criteria set forth above and it falls within the scope of the Board-designated Special Interest program categories listed below.

The order of listing does not imply any ordering of priorities among the categories.

a. *Court Budgeting.* Unlike the legislative and executive branches, the judiciary seems to weather regular periods of budgetary feast and famine. This has proven very disruptive to court staffing, services, technology investment, and professional education and development. The Institute is interested in pursuing “how to” projects that focus on “best practices” regarding budget structure and formulation, sources of revenue, inter-branch relations, and other methods that contribute to stabilizing court budgets and improving their long-term financial prospects.

b. *Courts and the Media.* Recent repeated public attacks on courts have gone largely unanswered, because judges were unwilling and/or courts were unable to respond effectively. No one is better prepared than a judge to describe decision-making on the bench within the law and the Constitution. The Institute is interested in projects that explore the role of judge as public commentator within ethical and professional bounds. The Institute is also interested in judicial education or other programs that prepare judges and court officials to serve as spokesmen in short notice, high profile circumstances, especially in situations where courts lack dedicated press secretaries. Finally, the Institute is interested in promoting initiatives that improve relations between the judiciary and the media, since much of the recent rancor between the two seems based on unfamiliarity with one another's duties, responsibilities, and limitations. In particular, the Institute is interested in proposals that focus on cultivating trust and open communication between the Third Branch and the Fourth Estate on a day-to-day basis, because dialogue between strangers is rarely started and never sustained in a crisis.

c. *Elder Issues.* This category includes research, demonstration, evaluation, and education projects designed to improve management of guardianship, probate, fraud, Americans with Disability Act, and other types of elder-related cases. The Institute is particularly interested in projects that would develop and evaluate judicial branch education programs addressing elder law and related issues.

d. *Performance Standards and Outcome Measures.* This category includes projects that will develop and measure performance standards and outcomes for all aspects of court operations. The Institute is particularly interested in projects that take the

National Center for State Courts' “CourTools” to the next level. Other initiatives designed to further professionalize court staff and operations, or to objectively evaluate the costs and benefits and cost-effectiveness of problem solving courts, are also welcome.

e. *Defending the Institution.* The perils facing courts today include attacks on our system of justice and judges and catastrophes natural and manmade. The Institute is seeking proposals to address each.

Attacks on courts and judges have increased. These attacks are often not scrutinized because many citizens in this country lack education or knowledge about the role of the courts in our system of government. The Institute remains interested in supporting the creation of public education projects that would develop and test materials that judges and court leaders can use to inform community groups and constituencies about the nature and importance of federalism, separation and balance of powers, and judicial independence. In addition, as mentioned above, projects that would improve the relationship between courts and the media are encouraged.

Catastrophes, natural and manmade, can destroy the ability of our courts to help provide law and order. The Board is interested in: (1) Continuity of operations proposals that go beyond planning and table top exercises to include “no notice” drills and “red team” exercises involving all personnel integral to court operations, including those from outside agencies such as sheriffs' offices, (2) innovative and secure court security information-sharing projects that piggyback on, or otherwise exploit, existing capabilities and technologies (because new resources for new systems are apt to be limited), and (3) piloting a low cost “virtual” 24/7 threat center (replacing costly “bricks and mortar” proposals) netting Federal, State, and local court security first responders with analysts conducting real-time threat assessments.

Though “Managing Self-Represented Litigation”, “Application of Technology in the Courts”, and “Children and Families in Court” are no longer listed as Special Interest program categories, the SJI Board retains a keen interest in these areas and would welcome ground breaking proposals in all three.

Project Grant application procedures can be found in section IV.A.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide State or local courts, particularly small, rural, or impoverished urban courts or

regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed \$30,000, and shall only cover the cost of obtaining the services of expert consultants. Examples of expenses not covered by TA Grants include the salaries, benefits, travel, or training costs of full-or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 24 months. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project. The SJI Board intends to reserve up to \$250,000 for TA Grants. Sufficient funds will be reserved each quarter to assure the availability of TA Grants throughout the year.

Applicants for TA Grants will be required to contribute a match of not less than 50% of the grant amount requested, of which 20% must be cash. In other words, a grantee seeking a \$30,000 TA grant must provide a \$15,000 match, of which up to \$12,000 can be in-kind and not less than \$3,000 must be cash. Applicants considering cash matches well in excess of \$3,000 should consider applying for Project Grants and are strongly urged to consult with the Institute prior to applying.

TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: (1) Enable courts and regional or national court associations to modify and adapt model curricula, course modules, or conference programs to meet States' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT Grants may not exceed \$20,000. Grant periods for CAT Grants ordinarily may not exceed 12 months. The SJI Board intends to reserve up to \$100,000 for CAT Grants.

Applicants for CAT Grants will be required to contribute a match of not less than 50% of the grant amount requested, of which 20% must be cash. In other words, a grantee seeking a \$20,000 CAT grant must provide a \$10,000 match, of which up to \$8,000

can be in-kind and not less than \$2,000 must be cash. Applicants considering cash matches well in excess of \$2,000 should consider applying for Project Grants and are strongly urged to consult with the Institute prior to applying.

CAT Grant application procedures can be found in section IV.C.

D. Scholarships for Judges and Court Managers

Scholarships are intended to enhance the skills, knowledge, and abilities of State court judges and court managers by enabling them to attend out-of-State, or to enroll in online, educational and training programs sponsored by national and State providers that they could not otherwise attend or take online because of limited State, local, and personal budgets. Scholarships may not exceed \$1,500. The SJI Board intends to reserve up to \$250,000 for scholarships. Sufficient funds will be reserved each quarter to assure the availability of scholarships throughout the year.

Scholarship application procedures can be found in section IV.D.

E. Partner Grants

Partner Grants are intended to allow SJI and Federal, State, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. Though many, if not most, Partner Grants will fall under the Special Interest program categories cited in section III.A., proposals addressing other emerging or high priority court-related problems will be considered on a case-by-case basis. SJI and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award; applicants for Partner Grants may request any amount of funding. Grant periods for Partner Grants ordinarily may not exceed 36 months. Absent extraordinary circumstances, no grant will continue for more than five years.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by SJI must be matched at least dollar for dollar. Applicants may contribute the required cash match directly or in cooperation with third parties. A Federal third party may contribute up to 49% of the total cost of a project, but only to purchase a service. A Federal third party's contribution cannot be used as a grantee's match.

Partner Grant application procedures can be found in section IV.E.

IV. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See Appendix B for the Project Grant application forms. For a summary of the application process, visit the Institute's Web site (<http://www.statejustice.org>) and click on On-Line Tutorials, then Project Grant.

1. Forms

a. *Application Form (Form A)*. The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. *Certificate of State Approval (Form B)*. An application from a State or local court must include a copy of Form B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if the Institute approved funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. *Budget Form (Form C)*. Applicants must submit a Form C. In addition to Form C, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (see subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. *Assurances (Form D)*. This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. *Disclosure of Lobbying Activities*. Applicants other than units of State or

local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (see section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. *Project Objectives.* The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

b. *Program Areas To Be Covered.* The applicant should note the Special Interest category or categories that are addressed by the proposed project (see section III.A.).

c. *Need for the Project.* If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the

relevant literature and to the experience in the field.

d. *Tasks, Methods and Evaluations.*

(1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) For research and evaluation projects, the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) For education and training projects, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) For demonstration projects, the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) For technical assistance projects, the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) *Evaluation.* Every project must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes, or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment of what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the

reactions of participants and faculty as indicated above.

(c) The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of the evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. *Project Management.* The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30), per section VI.A.13.

Applicants should be aware that the Institute is unlikely to approve a limited extension of the grant period without very good cause. Therefore, the management plan should be as realistic as possible and fully reflect the time

commitments of the proposed project staff and consultants.

f. *Products.* The program narrative in the application should contain a description of the products to be developed (e.g., training curricula and materials, audiotapes, videotapes, DVDs, computer software, CD-ROM disks, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library (see Appendix A), State chief justice, State court administrator, and other appropriate judges or court personnel.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (i.e., whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VI.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support (see Appendix A). Applicants proposing to develop Web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product (i.e., a written report with a reference to the Web site).

Fifteen (15) copies of all project products must be submitted to the Institute, along with an electronic version in .html or .pdf format.

(2) *Types of Products and Press Releases.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national

import should describe how they would make their data available for secondary analysis after the grant period (see section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use outside the classroom so that they may be used again by the original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) *Institute Review.* Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD-ROM format, applicants must provide for Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute (see section VI.A.11.f.).

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past three years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments, or a national non-profit organization for the education and training of State court judges and support personnel (see section II.). If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. *Staff Capability.* The applicant should include a summary of the training and experience of the key staff members and consultants that qualify

them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. Organizational Capacity.

Applicants that have not received a grant from the Institute within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire, which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities.

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts (see Appendix B).

k. Letters of Cooperation or Support.

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of

cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received by the deadlines set below in subsection A.5.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation. The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. Fringe Benefit Computation. The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria. The applicant should describe the tasks each consultant would perform, the estimated total

amount to be paid to each consultant, the basis for compensation rates (e.g., the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.I.2.c. Prior written Institute approval is required for any consultant rate in excess of \$800 per day; Institute funds may not be used to pay a consultant more than \$1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel. Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment. Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section VII.I.2.b.

f. Supplies. The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction. Construction expenses are prohibited except for the limited purposes set forth in section VI.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone. Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget

narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. *Postage*. Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. *Printing/Photocopying*. Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. *Indirect Costs*. Recoverable indirect costs are limited to no more than 75% of a grantee's direct personnel costs, i.e. salaries plus fringe benefits (see section VII.I.4.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section VII.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement must be attached to the application.

l. *Match*. Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made (see sections VI.A.8., and VII.E.1.).

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of Form A; Form B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. Applications will be considered on a rolling basis. Applications received less than 30 days before a quarterly Board meeting will be

considered at the next Board meeting. Please mark *Project Application* on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged by letter or e-mail.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

For a summary of the application procedures for TA Grants, visit the Institute's Web site (<http://www.statejustice.org>) and click On-Line Tutorials, then Technical Assistance Grant.

In lieu of formal applications, applicants for TA Grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project as well as a Form A, "State Justice Institute Application" (see Appendix B). Letters from individual trial or appellate courts must be signed by the presiding judge or manager of that court. Letters from State court systems must be signed by the Chief Justice or State Court Administrator. Letters from regional court associations must be signed by the president of the association.

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding*. What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description*. What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the

consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation*. What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council*. If a State or local court submits a request for technical assistance, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI FORM B (see Appendix B) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

3. Budget and Matching State Contribution

A completed Form E, "Line-Item Budget Form" (see Appendix C), and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the

technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above \$800 per day must be approved in advance by the Institute, and that no consultant will be paid more than \$1,100 per day from Institute funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of TA Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VI.A.3.).

4. Submission Requirements

Letters of application may be submitted at any time. Applications will be considered on a rolling basis. Applications received less than 30 days before a quarterly Board meeting will be considered at the next Board meeting.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Grant Committee, letters sent under separate cover must be received by the same date as the technical assistance request being supported.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

For a summary of the application procedures for CAT Grants, visit the Institute's Web site (<http://www.statejustice.org>) and click on On-Line Tutorials, then Curriculum Adaptation and Training Grant.

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter as well as a Form A, "State Justice Institute Application" (see Appendix B).

2. Application Format

Although there is no prescribed format for the letter, or a minimum or

maximum page limit, letters of application should include the following information:

a. For adaptation of a curriculum:

(1) *Project Description*. What is the title of the model curriculum to be adapted and who originally developed it? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (e.g., from a single local jurisdiction, from across the State, from a multi-State region, from across the nation)?

(2) *Need for Funding*. Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using State or local funds, once it has been successfully adapted and tested?

(3) *Likelihood of Implementation*. What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? [Note: Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.]

(4) *Expressions of Interest by Judges and/or Court Personnel*. Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? [Note: Applicants may demonstrate this by attaching letters of support.]

(5) *Chief Justice's Concurrence*. Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee (see Appendix B, Form B).

b. For training assistance:

(1) *Need for Funding*. What is the court reform or initiative prompting the need for training? How would the proposed training help the applicant implement planned changes at the

court? Why cannot State or local resources fully support the costs of the required training?

(2) *Project Description*. What tasks would the trainer(s) be expected to perform, and how would they be accomplished? Which organization or individual would be hired, if in-house personnel are not the trainers, to provide the training, and how was the trainer selected? If a trainer has not yet been identified, what procedures and criteria would be used to select the trainer? [Note: Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.] What specific tasks would the trainer and court staff or regional court association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost. The trainer must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

(3) *Likelihood of Implementation*. What steps have been or would be taken to coordinate the implementation of the new reform, initiative, etc. and the training to support the same? For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the reform and initiate the training proposed, how would they be involved in the review of the recommendations and development of the implementation plan?

(4) *Support for the Project from the State Supreme Court or its Designated Agency or Council*. If a State or local court submits an application, it must include written concurrence on the need for the technical assistance. This concurrence may be a copy of SJI Form B (see Appendix B) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the

applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix C) and a budget narrative (see subsection A.4. above) that describes the basis for the computation of all project-related costs and the source of the match offered.

5. Submission Requirements

Letters of application may be submitted at any time. Applications will be considered on a rolling basis. Applications received less than 30 days before a quarterly Board meeting will be considered at the next Board meeting.

For curriculum adaptation requests, applicants should allow at least 60 days between the Board meeting and the date of the proposed program to allow sufficient time for needed planning. For example, a court that plans to conduct an education program in June 2007 should submit its application no later than 30 days before the Board's winter (March) meeting.

D. Scholarships

1. Limitations

An applicant may apply for a scholarship for only one educational program during any given application cycle. Applicants may not receive more than one scholarship in a three-year period unless the course specifically assumes multi-year participation or the course is part of a graduate degree program in judicial studies in which the applicant is currently enrolled (neither exception should be taken as a commitment on the part of the SJI Board to approve serial scholarships).

Scholarship funds may be used only to cover the costs of tuition, transportation, and reasonable lodging expenses (not to exceed \$150 per night, including taxes). Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (e.g., reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive \$.445/mile up to the amount of the advanced-purchase round-trip airfare

between their homes and the program sites. Funds to pay tuition, transportation, and lodging expenses in excess of \$1,500 and other costs of attending the program—such as conference fees, meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

For a summary of the scholarship award process, visit the Institute's Web site at <http://www.statejustice.org> and click on On-Line Tutorials, then Scholarship.

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State, or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A scholarship can be awarded only for: (1) A course presented in a State other than the one in which the applicant resides or works, or (2) an online course. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

3. Forms

a. *Scholarship Application—Form S1 (Appendix D).* The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. *Scholarship Application Concurrence—Form S2 (Appendix D).* Judges and court managers applying for scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix D). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

January 1 and February 23, 2007, for programs beginning between April 1 and June 30, 2007;

April 2 and May 25, 2007 for programs beginning between July 1 and September 30, 2007;

July 2 and August 24, 2007 for programs beginning between October 1 and December 31, 2007; and

October 1 and November 30, 2007 for programs beginning between January 1 and March 31, 2008.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week after the beginning of that application period. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

E. Partner Grants

SJI and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting State and local courts. As often as not, SJI may solicit brief proposals from potential grantees to shop among fellow financial partners as a first step. Should SJI be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant. As with Project Grants, Partner Grants will be targeted at initiatives likely to have a significant national impact.

V. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter or e-mail acknowledging receipt of the application.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

- (1) The soundness of the methodology;
- (2) The demonstration of need for the project;
- (3) The appropriateness of the proposed evaluation design;
- (4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;
- (5) The applicant's management plan and organizational capabilities;
- (6) The qualifications of the project's staff;
- (7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for State courts across the nation;
- (8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;
- (9) The reasonableness of the proposed budget; and
- (10) The demonstration of cooperation and support of other agencies that may be affected by the project.

(11) The proposed project's relationship to one of the Special Interest categories set forth in section III.A.

b. In determining which projects to support, the Institute will also consider

whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

- a. Whether the assistance would address a critical need of the applicant;
- b. The soundness of the technical assistance approach to the problem;
- c. The qualifications of the consultant(s) to be hired or the specific criteria that will be used to select the consultant(s);
- d. The commitment of the court or association to act on the consultant's recommendations; and
- e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

- a. For curriculum adaptation projects:
 - (1) The goals and objectives of the proposed project;
 - (2) The need for outside funding to support the program;
 - (3) The appropriateness of the approach in achieving the project's educational objectives;
 - (4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and
 - (5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.
- b. For training assistance:
 - (1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be approved only for programs that either (1) enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel.

Scholarships will be awarded on the basis of:

- a. The date on which the application and concurrence (and support letter, if required) were sent ("first come, first served");
- b. The unavailability of State or local funds or scholarship funds from another source to cover the costs of attending the program, or participating online;
- c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;
- d. Geographic balance among the recipients;
- e. The balance of scholarships among educational providers and programs;
- f. The balance of scholarships among the types of courts and court personnel (trial judge, appellate judge, trial court administrator) represented; and
- g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

5. Partner Grants

It seems probable that the selection criteria for Partner Grants will be driven by the collective priorities of the "bankers' roundtable" that forms around this grant-making opportunity and the collective assessments of roundtable participants regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most

acceptable as pilots, laboratories, consultants, or the like. Should SJI be chosen as the lead grant manager, Project Grant application review procedures will apply to the proposed Partner Grant.

C. Review and Approval Process

1. Project Grant Applications

The Institute's Board of Directors will review the applications competitively. The Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. The staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the Institute.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board of Directors has delegated its authority to approve TA and CAT Grants to the committee established for each program. The committee will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of the Institute.

3. Scholarships

A committee of the Institute's Board of Directors will review scholarship applications quarterly. The Board of Directors has delegated its authority to approve scholarships to the committee established for the program. The committee will review the applications competitively. In the event of a tie vote, the Chairman will serve as the tie-breaker.

The Chairman of the Board will sign approved awards on behalf of the Institute.

4. Partner Grants

SJI's internal process for the review and approval of Partner Grants will depend upon negotiations with fellow financiers. SJI may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will have to be approved by the Board of Directors on whatever schedule makes sense at the time.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except scholarships), the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. The Institute will also notify the State court administrator when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Institute intends to notify each scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final award document will include a Special Condition that will require additional grantee reporting and Institute review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in situations where past poor performance by a grantee necessitates increased grant oversight.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds (see section VIII.A.7.).

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.K. for the requirements of such audits). Scholarship recipients, Curriculum Adaptation and Training Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures (see section VIII.K.).

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval (see section VIII.A.1.).

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant,

cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support

applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. Examples of cash match are the dedication of funds to support a new employee or purchase new equipment to carry out the project or the application of project income (e.g., tuition or the proceeds of sales of grant products) generated during the grant period to grant costs.

In-kind match consists of contributions of time and/or services of current staff members, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project or that portion of the grantee's Federally approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75% of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include the time of participants attending an education program. The amount and nature of required match depends on the type of grant (see section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.E.1.).

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions.

The match requirement may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State or the highest ranking official in

the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section V.B.1.b.).

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. *Acknowledgment, Logo, and Disclaimer.* (1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprints or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official

position or policies of the State Justice Institute.”

b. *Charges for Grant-Related Products/Recovery of Costs.* (1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (e.g., a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute’s prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than \$25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute (see section VII.G.).

c. *Copyrights.* Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. *Due Date.* All products and, for TA and CAT grants, consultant and/or trainer reports (see section VI.B.1 & 2) are to be completed and distributed (see below) not later than the end of the award period, not the 90-day close out period. The latter is only intended for grantee final reporting and to liquidate obligations (see section VII.L.).

e. *Distribution.* In addition to the distribution specified in the grant application, grantees shall send:

(1) Fifteen (15) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required;

(2) An electronic version of the product in .html or .pdf format to the Institute; and

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. A list of the libraries is contained in Appendix A. Labels for these libraries are available on the Institute’s Web site, <http://www.statejustice.org>.

(4) Bound copies of products, where possible and cost-effective, rather than hard copies in ring binders, to SJI depository libraries. Grantees that develop Web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the Web site or electronic product. Recipients of Technical Assistance and Curriculum Adaptation and Training Grants are not required to submit final products to State libraries.

(5) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

f. *Institute Approval.* No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes required by the Institute. Grantees must provide for timely reviews by the Institute of videotape, DVD or CD-ROM products at the treatment, script, rough cut, and final stages of development or their equivalents.

g. *Original Material.* All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee’s award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.L.1. of this Guideline.

14. Research

a. *Availability of Research Data for Secondary Analysis.* Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. *Confidentiality of Information.* Except as provided by Federal law other than the State Justice Institute Act, no

recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. *Human Subject Protection.* Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)). See section VII.C.2.

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological

techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of \$1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. (except the requirements pertaining to audits in subsection A.3. above and product dissemination and approval in subsection A.11.e. and f. above) and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other

background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the State (e.g., by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of the scholarship recipient's State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program), and a lodging receipt.

Scholarship Payment Vouchers must be submitted within 90 days after the end of the course which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

D. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;
2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;
3. Generating financial data to be used in planning, managing, and controlling projects; and
4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following circulars are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied (circulars may be obtained on the OMB Web site at <http://www.whitehouse.gov/omb>).

1. *Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions.*
2. *Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments.*
3. *Office of Management and Budget (OMB) Circular A-88, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.*
4. *Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.*
5. *Office of Management and Budget (OMB) Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.*
6. *Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-profit Organizations.*
7. *Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments.*
8. *Office of Management and Budget (OMB) Circular A-133, Audits of Institutions of Higher Education and Other Non-profit Institutions.*

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Matching contributions provided by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The State Supreme Court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The State Supreme Court or its designee will ensure that subgrantees comply with the match requirements specified in this Guideline (see section VI.A.8.).

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees meet the necessary audit requirements set

forth by the Institute (see sections K. below and VI.A.3.).

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a "Total Project Cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of

the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash or in-kind match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section (see subsection C.2. above).

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, subgrants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are

employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute (see subsection H.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior

written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income from the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of the Institute. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "check-issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) Is unable to submit reliable and/or timely reports; the Institute may

terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected. In extreme cases, grants may be terminated.

c. Principle of Minimum Cash on Hand. Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. General Requirements. To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Due Dates and Contents. A Financial Status Report is required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in OMB Circulars A-21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; A-87, Cost Principles for State and Local Governments; and A-122, Cost Principles for Non-profit Organizations.

No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at <http://www.whitehouse.gov/omb>.

2. Costs Requiring Prior Approval

a. Pre-agreement Costs. The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. Equipment. Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds \$10,000 or software to be purchased exceeds \$3,000.

c. Consultants. The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds \$800 a day. Institute funds may not be used to pay a consultant more than \$1,100 per day.

d. Budget Revisions. Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior Institute approval (see section VIII.A.1.).

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although the Institute's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a Federal agency as set forth below. However, recoverable indirect costs are limited to no more

than 75% of a grantee's direct personnel costs (salaries plus fringe benefits).

a. Approved Plan Available.

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. Establishment of Indirect Cost Rates. To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. No Approved Plan. If an indirect cost proposal for recovery of indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A-102*. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A-110*.

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A-102* and *A-110* apply to all Institute grantees and subgrantees except as provided in section VI.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new

property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A-128*, or *OMB Circular A-133*, will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a subsequent grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see subsection L.2. below), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report*. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report*. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship.

2. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may

result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of the Institute:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.I.2.d.).

2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see subsection E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see subsections F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VI.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see subsection H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section VII.I.2.a.).

13. The purchase of automated data processing equipment and software (see section VII.I.2.b.).

14. Consultant rates (see section VII.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his or her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section VII.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the

qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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Kevin Linskey,
Executive Director.

Appendix A—SJI Libraries: Designated Sites and Contacts*Alabama*

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court, Judicial Building, 300 Dexter Avenue, Montgomery, AL 36104, (334) 242-4347, director@alalinc.net.

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska State Court Law Library, 303 K Street, Anchorage, AK 99501, (907) 264-0583, cfellows@courts.state.ak.us.

Arizona

Supreme Court Library

Ms. Lani Orosco, Staff Assistant, Arizona Supreme Court, Staff Attorney's Office Library, 1501 W. Washington, Suite 445, Phoenix, AZ 85007, (602) 542-5028, lorosco@supreme.sp.state.az.us.

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, 625 Marshall Street, Little Rock, AR 72201, (501) 682-9400, jd.gingerich@arkansas.gov.

California

Administrative Office of the Courts

Mr. William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102, (415) 865-4235, william.vickrey@jud.ca.gov.

Colorado

Supreme Court Library

Ms. Linda Gruenthal, Deputy Supreme Court Law Librarian, 2 East 14th Avenue, Denver, CO 80203, (303) 837-3720, csltech@state.co.us.

Connecticut

State Library

Ms. Denise D. Jernigan, Law Librarian, Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106, (860) 757-6598, djernigan@cslib.org.

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 577-8481, michael.mclaughlin@state.de.us.

District of Columbia

Executive Office, District of Columbia Courts
Ms. Anne B. Wicks, Executive Officer,
District of Columbia Courts, 500 Indiana
Avenue NW., Suite 1500, Washington, DC
20001, (202) 879-1700, Wicksab@dcsc.gov.

Florida

Administrative Office of the Courts
Ms. Elisabeth H. Goodner, State Courts
Administrator, Office of the State Courts
Administrator, Florida Supreme Court,
Supreme Court Building, 500 South Duval
Street, Tallahassee, FL 32399, (850) 922-
5081, goodnerl@flcourts.org.

Georgia

Administrative Office of the Courts
Mr. David Ratley, Director, Administrative
Office of the Courts, 244 Washington
Street, SW., Suite 300, Atlanta, GA 30334,
(404) 656-5171, ratleydl@gaaoc.us.

Hawaii

Supreme Court Library
Ms. Ann Koto, State Law Librarian, The
Supreme Court Law Library, 417 South
King St., Room 119, Honolulu, HI 96813,
(808) 539-4964,
Ann.S.Koto@courts.state.hi.us.

Idaho

AOC Judicial Education Library/State Law
Library
Mr. Richard Visser, State Law Librarian,
Idaho State Law Library, Supreme Court
Building, 451 West State St., Boise, ID
83720, (208) 334-3316,
lawlibrary@isc.state.id.us.

Illinois

Supreme Court Library
Ms. Brenda Larison, Supreme Court of
Illinois Library, 200 East Capitol Avenue,
Springfield, IL 62701-1791, (217) 782-
2425, blarison@court.state.il.us.

Indiana

Supreme Court Library
Ms. Terri L. Ross, Supreme Court Librarian,
Supreme Court Library, State House, Room
316, Indianapolis, IN 46204, (317) 232-
2557, tross@courts.state.in.us.

Iowa

Administrative Office of the Court
Dr. Jerry K. Beatty, Director of Judicial
Branch Education, Iowa Judicial Branch,
Iowa Judicial Branch Building, 1111 East
Court Avenue, Des Moines, IA 50319, (515)
242-0190, jerry.beatty@jb.state.ia.us.

Kansas

Supreme Court Library
Mr. Fred Knecht, Law Librarian, Kansas
Supreme Court Library, Kansas Judicial
Center, 301 SW. 10th Avenue, Topeka, KS
66612, (785) 296-3257,
knechtf@kscourts.org.

Kentucky

State Law Library
Ms. Vida Vitagliano, Cataloging and Research
Librarian, Kentucky Supreme Court

Library, 700 Capitol Avenue, Suite 200,
Frankfort, KY 40601, (502) 564-4185,
vidavitagliano@mail.aoc.state.ky.us.

Louisiana

State Law Library
Ms. Carol Billings, Director, Louisiana Law
Library, Louisiana Supreme Court
Building, 400 Royal Street, New Orleans,
LA 70130, (504) 310-2401,
cbillings@lasc.org.

Maine

State Law and Legislative Reference Library
Ms. Lynn E. Randall, State Law Librarian, 43
State House Station, Augusta, ME 04333,
(207) 287-1600,
lynn.randall@legislature.maine.gov.

Maryland

State Law Library
Mr. Steve Anderson, Director, Maryland State
Law Library, Court of Appeal Building, 361
Rowe Boulevard, Annapolis, MD 21401,
(410) 260-1430,
steve.anderson@courts.state.md.us.

Massachusetts

Middlesex Law Library
Ms. Linda Hom, Librarian, Middlesex Law
Library, Superior Court House, 40
Thorndike Street, Cambridge, MA 02141,
(617) 494-4148, midlawlib@yahoo.com.

Michigan

Michigan Judicial Institute
Dawn F. McCarty, Director, Michigan Judicial
Institute, P.O. Box 30205, Lansing, MI
48909, (517) 373-7509,
mccartyd@courts.mi.gov.

Minnesota

State Law Library (Minnesota Judicial Center)
Ms. Barbara L. Golden, State Law Librarian,
G25 Minnesota Judicial Center, 25 Rev. Dr.
Martin Luther King Jr. Boulevard, St. Paul,
MN 55155, (612) 297-2089,
barb.golden@courts.state.mn.us.

Mississippi

Mississippi Judicial College
Hon. Leslie G. Johnson, Executive Director,
Mississippi Judicial College, P.O. Box
8850, University, MS 38677, (662) 915-
5955, lwleslie@olemiss.edu.

Montana

State Law Library
Ms. Judith Meadows, State Law Librarian,
State Law Library of Montana, P.O. Box
203004, Helena, MT 59620, (406) 444-
3660, jmeadows@mt.gov.

Nebraska

Administrative Office of the Courts
Ms. Janice Walker, State Court Administrator,
Nebraska Supreme Court, P.O. Box 98910,
Lincoln, NE 68509-8910.

Nevada

To be determined

New Hampshire

New Hampshire Law Library
Ms. Mary Searles, Technical Services Law
Librarian, New Hampshire Law Library,
Supreme Court Building, One Noble Drive,
Concord, NH 03301-6160, (603) 271-3777,
msearles@courts.state.nh.us.

New Jersey

New Jersey State Library
Mr. Thomas O'Malley, Supervising Law
Librarian, New Jersey State Law Library,
185 West State Street, P.O. Box 520,
Trenton, NJ 08625-0250, (609) 292-6230,
tomalley@njstatelib.org.

New Mexico

Supreme Court Library
Mr. Thaddeus Bejnar, Librarian, Supreme
Court Library, Post Office Drawer L, Santa
Fe, NM 87504, (505) 827-4850.

New York

Supreme Court Library
Ms. Barbara Briggs, Law Librarian, Syracuse
Supreme Court Law Library, 401
Montgomery Street, Syracuse, NY 13202,
(315) 671-1150, bbriggs@courts.state.ny.us.

North Carolina

Supreme Court Library
Mr. Thomas P. Davis, Librarian, North
Carolina Supreme Court Library, 500
Justice Building, 2 East Morgan Street,
Raleigh, NC 27601, (919) 733-3425,
tpd@sc.state.nc.us.

North Dakota

Supreme Court Library
Ms. Marcella Kramer, Assistant Law
Librarian, Supreme Court Law Library, 600
East Boulevard Avenue, Dept. 182, 2nd
Floor, Judicial Wing, Bismarck, ND 58505-
0540, (701) 328-2229,
mkramer@ndcourts.com.

Northern Mariana Islands

Supreme Court of the Northern Mariana
Islands
Ms. Margarita M. Palacios, Director of Courts,
Supreme Court of the Commonwealth of
the Northern Mariana Islands, P.O. Box
502165, Saipan, MP 96950, (670) 235-
9700, supremecourt@saipan.com.

Ohio

Supreme Court Library
Mr. Ken Kozlowski, Director, Law Library,
Supreme Court of Ohio, 65 South Front
Street, 11th Floor, Columbus, OH 43215-
3431, (614) 387-9666,
kozlowsk@sconet.state.oh.us.

Oklahoma

Administrative Office of the Courts
Mr. Michael D. Evans, State Court
Administrator, Administrative Office of the
Courts, 1915 North Stiles Avenue, Suite
305, Oklahoma City, OK 73105, (405) 521-
2450, mike.evans@oscn.net.

- Oregon*
Administrative Office of the Courts
Ms. Kingsley W. Click, State Court Administrator, Oregon Judicial Department, Supreme Court Building, 1163 State Street, Salem, OR 97301, (503) 986-5500, kingsley.w.click@ojd.state.or.us.
- Pennsylvania*
State Library of Pennsylvania
Ms. Kathleen Kline, Collection Management Librarian, State Library of Pennsylvania, Bureau of State Library, 333 Market Street, Harrisburg, PA 17126-1745, (717) 787-5718, kakline@state.pa.us.
- Puerto Rico*
Office of Court Administration
Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919.
- Rhode Island*
Roger Williams University
Ms. Gail Winson, Director of Law Library/ Associate Professor of Law, Roger Williams University, School of Law Library, 10 Metacom Avenue, Bristol, RI 02809, 401/254-4531, gwinson@law.rwu.edu.
- South Carolina*
Coleman Karesh Law Library (University of South Carolina School of Law)
Mr. Steve Hinckley, Director, Coleman Karesh Law Library, University of South Carolina, Main and Green Streets, Columbia, SC 29208, (803) 777-5944, hinckley@law.sc.edu.
- South Dakota*
State Law Library
Librarian, South Dakota State Law Library, 500 East Capitol, Pierre, South Dakota 57501, (605) 773-4898, donnis.deyo@ujs.state.sd.ud.
- Tennessee*
Tennessee State Law Library
Hon. Cornelia A. Clark, Executive Director, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219, (615) 741-2687, cclark@tscmail.state.tn.us.
- Texas*
State Law Library
Mr. Marcelino A. Estrada, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463-1722, tony.estrada@sll.state.tx.us.
- U.S. Virgin Islands*
Library of the Territorial Court of the Virgin Islands (St. Thomas)
Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00804.
- Utah*
Utah State Judicial Administration Library
Ms. Jessica Van Buren, Utah State Library, 450 South State Street, P.O. Box 140220, Salt Lake City, UT 84114-0220, (801) 238-7991, jessicavb@email.utcourts.gov.
- Vermont*
Supreme Court of Vermont
Mr. Paul J. Donovan, Law Librarian, Vermont Department of Libraries, 109 State Street, Pavilion Office Building, Montpelier, VT 05609, (802) 828-3268, paul.donovan@dol.state.vt.us.
- Virginia*
Administrative Office of the Courts
Ms. Gail Warren, State Law Librarian, Virginia State Law Library, Supreme Court of Virginia, 100 North Ninth Street, 2nd Floor, Richmond, VA 23219-2335, (804) 786-2075, gwarren@courts.state.va.us.
- Washington*
Washington State Law Library
Ms. Kay Newman, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504-0751, (360) 357-2136, kay.newman@courts.wa.gov.
- West Virginia*
Supreme Court of Appeals Library
Ms. Kaye Maerz, State Law Librarian, West Virginia Supreme Court of Appeals Library, 1900 Kanawha Boulevard East, Building 1, Room E-404, Charleston, WV 25305, (304) 558-2607, kaye.maerz@courts.wv.org.
- Wisconsin*
State Law Library
Ms. Jane Colwin, State Law Librarian, State Law Library, 120 M.L.K. Jr. Boulevard, Madison, WI 53703, (608) 261-2340, jane.colwin@wicourts.gov.
- Wyoming*
Wyoming State Law Library
Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, 2301 Capitol Avenue, Cheyenne, WY 82002, (307) 777-7509, kcarlson@courts.state.wy.us.
- National*
American Judicature Society
Ms. Deborah Sulzbach, Acquisitions Librarian, Drake University, Law Library, Opperman Hall, 2507 University Avenue, Des Moines, IA 50311-4505, (515) 271-3784, e-mail: deborah.sulzbach@drake.edu.
- JERITT
Dr. Maureen E. Conner, Executive Director, The JERITT Project, Michigan State University, 1407 S. Harrison Road, Suite 330 Nisbet, East Lansing, MI 48823-5239, (517) 353-8603, (517) 432-3965 (fax), connerm@msu.edu, Web site: <http://jeritt.msu.edu>.
- National Center for State Courts
Ms. Joan Cochet, Library Specialist, National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185-4147, (757) 259-1826, library@ncsc.dni.us.
- National Judicial College
Mr. Randall Snyder, Law Librarian, National Judicial College, Judicial College Building, MS 358, Reno, NV 89557, (775) 327-8278, snyder@judges.org.

BILLING CODE 6820-SC-P

Appendix B

STATE JUSTICE INSTITUTE APPLICATION

<p>1. APPLICANT</p> <p>a. Applicant Name _____</p> <p>b. Organization Unit _____</p> <p>c. Street/P.O. Box _____</p> <p>d. City _____</p> <p>e. State _____ f. Zip Code _____</p> <p>g. Phone Number _____</p> <p>h. Fax Number _____</p> <p>i. Web Site Address _____</p> <p>j. Name & Phone Number of Contact Person _____</p> <p>k. Title _____</p> <p>l. E-Mail Address _____</p>	<p>2. TYPE OF APPLICANT (Check appropriate box)</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> <input type="checkbox"/> State Court <input type="checkbox"/> National organization operating in conjunction with State court <input type="checkbox"/> National State court support organization <input type="checkbox"/> College or university </td> <td style="width: 50%; border: none; vertical-align: top;"> <input type="checkbox"/> Other non-profit organization or agency <input type="checkbox"/> Individual <input type="checkbox"/> Corporation or partnership <input type="checkbox"/> Other Unit of government <input type="checkbox"/> Other _____ (specify) _____ </td> </tr> </table> <p>3. PROPOSED START DATE _____</p> <p>4. PROJECT DURATION (Months) _____</p>	<input type="checkbox"/> State Court <input type="checkbox"/> National organization operating in conjunction with State court <input type="checkbox"/> National State court support organization <input type="checkbox"/> College or university	<input type="checkbox"/> Other non-profit organization or agency <input type="checkbox"/> Individual <input type="checkbox"/> Corporation or partnership <input type="checkbox"/> Other Unit of government <input type="checkbox"/> Other _____ (specify) _____
<input type="checkbox"/> State Court <input type="checkbox"/> National organization operating in conjunction with State court <input type="checkbox"/> National State court support organization <input type="checkbox"/> College or university	<input type="checkbox"/> Other non-profit organization or agency <input type="checkbox"/> Individual <input type="checkbox"/> Corporation or partnership <input type="checkbox"/> Other Unit of government <input type="checkbox"/> Other _____ (specify) _____		
<p>5. APPLICANT FINANCIAL CONTACT</p> <p>a. Applicant Name _____</p> <p>b. Organization Unit _____</p> <p>c. Street/P.O. Box _____</p> <p>d. City _____</p> <p>e. State _____ f. Zip Code _____</p> <p>g. Phone Number _____</p> <p>h. Fax Number _____</p> <p>i. Web Site Address _____</p> <p>j. Name & Phone Number of Contact Person _____</p> <p>k. Title _____</p> <p>l. E-Mail Address _____</p>	<p>6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:</p> <p>Source _____</p> <p>Date Submitted _____</p> <p>Amount Sought _____</p> <p>Disposition (if any) or Current Status _____</p> <hr/> <p>7. a. AMOUNT REQUESTED FROM SJI \$ _____</p> <p>b. AMOUNT OF MATCH</p> <p>Cash match \$ _____</p> <p>Non-cash Match \$ _____</p> <p>c. TOTAL MATCH \$ _____ 0</p> <p>d. OTHER CASH \$ _____</p> <p>e. TOTAL PROJECT COST \$ _____ 0</p>		
<p>8. TITLE OF PROPOSED PROJECT</p> <p>_____</p>			
<p>9. CONGRESSIONAL DISTRICT OF: _____</p> <p style="font-size: small; text-align: center;">Name of Representative; District Number Project (if different than applicant): Name of Representative; District Number</p>			
<p>10. CERTIFICATION</p> <p>On behalf of the applicant, I hereby certify that to the best of knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on the behalf of the applicant.</p> <p>_____ SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT TITLE DATE (For applications from State and local courts, Form B, Certificate of State Approval, must be attached)</p>			
<p>FOR INSTITUTE USE ONLY</p>			
<p>11. a. APPLICATION NUMBER _____</p> <p>b. CONCEPT PAPER NUMBER _____</p> <p>c. GRANT MUNBER _____</p>	<p>12. DATE RECEIVED</p> <p>_____</p>	<p>13. DATE OF ACTION</p> <p>_____</p>	

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR SJI APPLICATION FORM A

1. a-1 **Legal name of applicant** (court, entity or individual); **name of the organizational unit**, if any, that will conduct the project; complete **address** of the applicant, including phone and fax numbers and website addresses; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.
 - National organizations operating in conjunction with State court** include national non-profit organization controlled by, operating in conjunction with, and serving State courts.
 - National state court organizations** include national non-profit organizations with primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of State government.
 - College or university** includes all institutions of higher education.
 - Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).
 - Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.
 - Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.
 - Other unit of government** includes any governmental agency, office, or organization that is not a State or local court.

3. The **proposed start date** of the project should be the earliest feasible date on which applicant will be able to begin project activities following the date of award. (example 08/01/2006)

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.

5. a-1 The **applicant financial contact** is the court or organization employee that will administer and account for any monies awarded.

6. If this application or an application requesting support for the same project or an essentially similar project has been previously submitted to another funding source (Federal or private), enter the name of the **source**, the **date** of submission, the **amount** of funding sought, and the **disposition** (if any).
7.
 - a. Insert the **amount requested** from the State Justice Institute to conduct the project.
 - b. The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of State or local government, or private sources. See 42 U.S.C. 10705 (d).

Cash match refers to funds directly contributed by the applicant, a unit of State or local government or private sources to support the project.

Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government or private sources to support the project.
 - c. **Total match** refers to the sum of the cash and in-kind contributions to the project.
 - d. **Other cash** refers to other funds, such as funds from a federal agency, that cannot serve as a match but can be used for a project.
 - e. **Total project cost** represents the sum of the amount requested from the Institute and all contributions to the project.
8. The **title of the proposed project** should reflect the objectives of the activities to be conducted.
9. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district**, along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representative from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the State, the country, or from a particular region), enter *Statewide*, *national*, or *regional*, as appropriate, in the space provided.
10. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed.

(Form B)

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____,
Name of Applicant

approves its submission to the State Justice Institute, and

agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

Signature

Date

Name

Title

INSTRUCTIONS

The State Justice Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant: _____
 Project Title _____
 For Project Activity from _____ to _____
 Total Amount Requested for Project from SJI \$ _____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							0
Fringe Benefits							0
Consultant / Contractual							0
Travel							0
Equipment							0
Supplies							0
Telephone							0
Postage							0
Printing / Photocopying							0
Audit							0
Other (specify)							0
Direct Costs	0	0	0	0	0	0	0
Indirect Costs							0
Total	0	0	0	0	0	0	0

Remarks:

Application Budget Instructions

Applicants may submit the proposed project budget in either the tabular format of Form C or a spreadsheet format similar to Form C1. Applicants requesting more than \$100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding 12-month period or portion thereof beyond month 12.

In addition to Form C or C1, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category (see Guideline section VI.A.4.). If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs.

If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

COLUMN HEADINGS: For Budget Form C1, the columns should be labeled consecutively by task, e.g., TASK #1, TASK #2, etc. At the end of each 12-month period or portion thereof beyond month 12, the following 4 columns must be included: SJI FUNDS; MATCH; OTHER; TOTAL. Entries in these columns should include the line-item totals by source of funding per the column headings.

STATE JUSTICE INSTITUTE ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.
2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body.
3. In accordance with 42 U.S.C. 10706(a) and 10707(c):
 - a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;
 - b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,
 - c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute.
4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.
5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.
6. It will provide for an annual fiscal audit of the project.
7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.
8. In accordance with 42 U.S.C. 10708 (b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.
10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must be properly identified, whether the material is in a verbatim or extensive paraphrase format.
11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of the Institute. The recipient will submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.
12. The following statement will be prominently displayed on all products prepared as a result of the project:
This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.
13. THE "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by the Institute.
14. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.
15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.
16. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of \$1,000 or more shall vest in the Institute, which will direct the disposition of the property.
17. The person signing the application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by the Institute to directly or indirectly influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706 (a). It also is the policy of the Institute to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to the Institute to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

Title of Application: _____

Yes No Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered YES above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

Signature _____ Name (Typed) _____

Title _____ Date _____

Appendix C

(Form E)

STATE JUSTICE INSTITUTE**LINE-ITEM BUDGET FORM**

For Curriculum Adaptation and Training and Technical Assistance Grant Requests*

<u>Category</u>	<u>SJI Funds</u>	<u>Cash Match</u>	<u>In-Kind Match</u>
Personnel	\$ _____	\$ _____	\$ _____
Fringe Benefits	\$ _____	\$ _____	\$ _____
Consultant/Contractual	\$ _____	\$ _____	\$ _____
Travel	\$ _____	\$ _____	\$ _____
Equipment	\$ _____	\$ _____	\$ _____
Supplies	\$ _____	\$ _____	\$ _____
Telephone	\$ _____	\$ _____	\$ _____
Postage	\$ _____	\$ _____	\$ _____
Printing/Photocopying	\$ _____	\$ _____	\$ _____
Audit	\$ _____	\$ _____	\$ _____
Other	\$ _____	\$ _____	\$ _____
Indirect Costs (%)	\$ _____	\$ _____	\$ _____
TOTAL	\$ _____ 0	\$ _____ 0	\$ _____ 0

PROJECT TOTAL \$ _____ **0**

Financial assistance has been or will be sought for this project from the following other sources:

* Curriculum Adaptation and Training Grant requests, and Technical Assistance Grant requests should also include a budget narrative explaining the basis for each line-item listed above.

Appendix D

SJI Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

- 1. Applicant Name: _____
(Last) (First) (M.I.)
- 2. Position: _____
- 3. Name of Court: _____
- 4. Address: _____
Street/P.O. Box

City State Zip Code
- 5. Telephone No. _____
- 6. Email Address: _____
- 7. Congressional District: _____

PROGRAM INFORMATION:

- On-site Online
- 8. Course Name: _____
- 9. Course Dates: _____
- 10. Course Provider: _____
- 11. Location Offered: _____

ESTIMATED EXPENSES:

Please note: Scholarships are limited to tuition (excluding the conference fee), reasonable lodging up to \$150 per night (including taxes), and transportation expenses to and from the site of the course, up to a maximum of \$1,500.

Tuition: \$ _____ Transportation: \$ _____
(Airfare, train fare, or, if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Lodging: \$ _____ Total Amount Requested: \$ _____ 0.00

Are you seeking/have you received a scholarship for this course from another source?
 Yes No If so, please specify the source(s) and amount(s) _____

SJI SCHOLARSHIP APPLICATION

PAGE 2

ADDITIONAL INFORMATION:

*Please attach a current resume or professional summary, and provide the information requested below.
(You may attach additional pages if necessary.)*

1. Please describe your need to acquire the skills and knowledge taught in this course.

2. Please describe how will taking this course benefit you, your court, and the State's courts generally.

3. Is there an educational program currently available through your State on this topic?

4. Are State or local funds available to support your attendance at the proposed course?
If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager? _____

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
 0-1 year 2-4 years 5-7 years 8-10 years 11+ years

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Signature_____
Date

Please return this form and Form S-2 to:

Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

SJI Scholarship Application

Concurrence

I, _____,
Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled

prepared by _____,
Name of Applicant

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

Signature

Name

Title

Date



Federal Register

**Friday,
October 27, 2006**

Part IV

Office of Personnel Management

5 CFR Part 591

**Nonforeign Area Cost-of-Living Allowance
Rates; Alaska, Puerto Rico, and the U.S.
Virgin Islands; Proposed Rule and Notices**

**OFFICE OF PERSONNEL
MANAGEMENT**
5 CFR Part 591
RIN 3206-AL12
**Nonforeign Area Cost-of-Living
Allowance Rates; Alaska, Puerto Rico,
and the U.S. Virgin Islands**
AGENCY: Office of Personnel
Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is publishing a proposed regulation to change the cost-of-living allowance rates received by certain white-collar Federal and U.S. Postal Service employees in Alaska, Puerto Rico, and the U.S. Virgin Islands. The changes are the result of living-cost surveys conducted by OPM in 2005 and interim adjustments OPM calculated based on relative Consumer Price Index differences between the cost-of-living allowance areas and the Washington, DC area.

DATES: We will consider comments received on or before December 26, 2006.

ADDRESSES: Send or deliver written comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606-2838; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

SUPPLEMENTARY INFORMATION: Section 5941 of title 5, United States Code, authorizes Federal agencies to pay cost-of-living allowances (COLAs) to white-collar Federal and U.S. Postal Service employees stationed in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands (USVI). Executive Order 10000, as amended, delegates to the Office of Personnel Management (OPM) the authority to administer nonforeign area COLAs and prescribes certain operational features of the program. OPM conducts living-cost surveys in each allowance area and in the Washington, DC area to determine whether, and to what degree, COLA area living costs are higher than those in the DC area. OPM sets the COLA rate for each area based on the results of these surveys.

As required by section 591.223 of title 5, Code of Federal Regulations, OPM conducts COLA surveys once every 3 years on a rotating basis. For areas not surveyed during a particular year, OPM adjusts COLA rates by the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington, DC area. (See 5 CFR 591.224-226.) OPM adopted these regulations pursuant to the stipulation of settlement in *Caraballo et al. v. United States*, No. 1997-0027 (D.V.I), August 17, 2000. *Caraballo* was a class-action lawsuit which resulted in many changes in the COLA methodology and regulations. Although most of the changes were effective in 2002 when the new regulations became effective, this is the first year that OPM will apply the interim adjustments because the settlement and regulations provide that OPM must apply CPI-based interim adjustments beginning with the effective date of the results of the 2005 survey conducted in Puerto Rico and the U.S. Virgin Islands. (See 5 CFR 591.224(b).)

OPM conducted living-cost surveys in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC area in the spring of 2005. We are publishing the results of these surveys in the *2005 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas*, which accompanies this proposed rule.

As described in the 2005 survey report, OPM compared the results of the COLA area surveys with the results of the DC area survey to compute a living-cost index for each of the COLA areas. The results of the living-cost surveys indicate an increase in the COLA rate for the U.S. Virgin Islands from 23 percent to 25 percent and a decrease in the COLA rate for Puerto Rico from 10.5 percent to 9.5 percent.

OPM also computed interim adjustments based on the relative change in the CPI for the Alaska, Hawaii, and Guam and the Northern Mariana Islands COLA areas. We are publishing the calculation of these interim adjustments in a notice, which also accompanies this proposed rule. The interim adjustments indicate that the COLA rates for the Hawaii and Guam COLA areas are currently set at the appropriate level but that the Anchorage, Fairbanks, and Juneau, Alaska, COLA rates should be reduced by 1 percentage point in each area, from 24 percent, which is the current COLA rate in each of these areas, to 23 percent.

However, 5 CFR 591.228(c) limits COLA rate decreases to 1 percentage

point in a 12-month period, and OPM implemented COLA rate decreases in Anchorage, Fairbanks, Juneau, and Puerto Rico effective on the first pay period beginning on or after September 1, 2006. Therefore, under this proposed rule, the COLA rate reductions in these areas would take effect on the first day of the first pay period beginning 12 months after the effective date of the 2006 reduction. For example, if the COLA rate reduction in 2006 was effective on Sunday, September 3, 2006, the 2007 COLA rate reduction would take effect on Sunday, September 16, 2007.

**Executive Order 12866, Regulatory
Review**

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages, Office of Personnel Management.

Linda M. Springer,
Director.

Accordingly, OPM proposes to amend subpart B of 5 CFR part 591 as follows:

**PART 591—ALLOWANCES AND
DIFFERENTIALS**
**Subpart B—Cost-of-Living Allowance
and Post Differential—Nonforeign
Areas**

1. The authority citation for subpart B of 5 CFR part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943-1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Revise appendix A of subpart B to read as follows:

**Appendix A to Subpart B of Part 591—
Places and Rates at Which Allowances
Are Paid**

This appendix lists the places approved for a cost-of-living allowance and shows the authorized allowance rate for each area. The allowance rate shown is paid as a percentage of an employee's rate of basic pay. The rates are subject to change based on the results of future surveys.

Geographic coverage	Allowance rate (percent)
State of Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	¹ 23.0
City of Fairbanks and 80-kilometer (50-mile) radius by road	¹ 23.0
City of Juneau and 80-kilometer (50-mile) radius by road	¹ 23.0
Rest of the State	25.0
State of Hawaii:	
City and County of Honolulu	25.0
Hawaii County, Hawaii	17.0
County of Kauai	25.0
County of Maui and County of Kalawao	25.0
Territory of Guam and Commonwealth of the Northern Mariana Islands	25.0
Commonwealth of Puerto Rico	¹ 9.5
U.S. Virgin Islands	² 25.0

¹ The next COLA rate reductions in these areas would take effect on the first day of the first pay period beginning 12 months after the effective date of the 2006 reduction because 5 CFR 591.228(c) limits COLA rate decreases to 1 percentage point in a 12-month period.

² The effective date for this COLA rate would be the first pay period beginning 30 days on or after the effective date of the final rule implementing the COLA rate.

[FR Doc. E6-17950 Filed 10-26-06; 8:45 am]

BILLING CODE 6325-39-P

**OFFICE OF PERSONNEL
MANAGEMENT**

2005 Nonforeign Area Cost-of-Living Allowance Survey Report: Alaska and Pacific Interim Adjustments

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the interim adjustments for the Alaska and Pacific Nonforeign Area Cost-of-Living Allowance (COLA) areas. The Federal Government conducts COLA surveys in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands to set COLA rates. These surveys are conducted once every 3 years on a rotating basis. In between COLA surveys, the Government adjusts COLA rates for the areas not surveyed using the relative change in the Consumer Price Index (CPI) for the COLA area compared with the Washington-Baltimore CPI. The Alaska and Pacific COLA areas were not surveyed in 2005. Therefore, OPM is calculating and publishing interim adjustments for these COLA areas.

DATES: We will consider comments received on or December 26, 2006.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606-2838; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

SUPPLEMENTARY INFORMATION: Subpart B of part 591 of title 5, Code of Federal Regulations, requires the Office of Personnel Management (OPM) to set nonforeign area cost-of-living allowance (COLA) rates that are paid to U.S. Postal Service and white-collar Federal employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto

Rico, and the U.S. Virgin Islands. Section 591.223(a) prescribes that we conduct these surveys on a rotating basis, once every 3 years. Section 591.224 requires we adjust the previous COLA survey price indexes for the areas not surveyed by using the relative change in the Consumer Price Index (CPI) for the COLA area compared with the change in the Washington, DC area CPI.

In 2005, we surveyed Puerto Rico and the U.S. Virgin Islands. We did not survey the Alaska or Pacific COLA areas. Therefore, we are adjusting the previous Alaska and Pacific survey price indexes using the relative change in the CPIs. As required by § 591.225, we used the CPI, All Urban Consumers (CPI-U's), as published by the Bureau of Labor Statistics (BLS) for Anchorage, Honolulu, and the Washington-Baltimore area.

2003 Alaska Survey Results and Interim Adjustments

The first step is to compute the change in prices for the COLA area compared with the change in prices in the Washington-Baltimore area using the CPI-U's for each area. Table 1, below, shows this process. It also shows prices have increased slightly faster in the Washington-Baltimore area than in Anchorage since the first half of 2003.

TABLE 1.—CHANGE IN ANCHORAGE AND IN THE WASHINGTON-BALTIMORE CPI-US 2003 TO 2005

Survey area	CPI-U
Anchorage 2003 CPI-U first half	161.1
Anchorage 2005 CPI-U second half	174.1
Anchorage change in percent ..	8.0695%
DC-Baltimore 2003 CPI-U first half	115.6
DC-Baltimore 2005 CPI-U second half	125.8
DC-Baltimore change in percent	8.8235%

The second step is to multiply the price indexes from the four 2003 Alaska

surveys (Anchorage, Fairbanks, Juneau, and Rest of the State of Alaska) by the change in the Anchorage CPI-U and divide that by the change in the Washington-Baltimore CPI-U. The price index is the COLA survey index before the addition of the adjustment factor as specified in § 591.227. The adjustment factor reflects differences in need, access to and availability of goods and services, and quality of life in the COLA area relative to the DC area and is a constant amount throughout time. Therefore, it is not adjusted by the change in the CPI.

OPM published the 2003 Alaska survey report in the **Federal Register** on March 12, 2004, at 69 FR 12002. The report included the survey price indexes for each of the Alaska COLA areas. However, OPM revised these price indexes, incorporating methodological changes that OPM adopted pursuant to comments it received. The revised indexes were published recently in the **Federal Register** in a final rule that implemented COLA rate changes. Subsequently, OPM discovered it made a mathematical error in calculating Anchorage utility prices for the 2003 survey. This changed the Anchorage shelter and utilities index from 101.96 to 95.20 and changed the overall index from 113.64 to 111.40. OPM is using the corrected overall index to calculate the interim adjustment for Anchorage.

Table 2 shows the interim adjustment process. For example, the 2003 Fairbanks COLA survey adjusted index, as published in the **Federal Register**, is 115.62. The Fairbanks adjustment factor is 9 points. Therefore, the price index from the 2003 survey is 106.62. We increased this price index by 8.0695% (*i.e.*, multiplied by 1.080695), the change in the Anchorage CPI-U, and reduced it by 8.8235% (*i.e.*, divided by 1.088235), the change in the Washington-Baltimore CPI-U, to give a new price index of 105.88. We then added the 9 point adjustment factor to the new price index, which yields a 2005 Fairbanks Interim Adjustment COLA rate of 114.88.

TABLE 2.—ALASKA COLA AREA CPI-U PRICE INDEX ADJUSTMENTS

	Anchorage	Fairbanks	Juneau	Kodiak
2003 COLA Survey Indexes	111.40	115.62	118.09	135.84
Adjustment Factors	7	9	9	9
2003 COLA Survey Price Indexes	104.40	106.62	109.09	126.84
2005 CPI Adjusted Price Indexes	103.68	105.88	108.33	125.96
2005 COLA Indexes with Adj. Factors	110.68	114.88	117.33	134.96

2004 Pacific Survey Results and Interim Adjustments

The process we used to compute the interim adjustments for the Pacific surveys (*i.e.*, Honolulu, Hawaii, Kauai, Maui, and Guam) is identical to the one described above for Alaska except that we used the BLS CPI-U for Honolulu, as specified in § 591.225. Table 3 shows the relative change in the Honolulu CPI-U compared with the Washington-Baltimore CPI-U. Once again, the table shows prices have increased somewhat faster in the Washington-Baltimore area than in Honolulu since the first half of 2004.

TABLE 3.—CHANGE IN HONOLULU AND IN THE WASHINGTON-BALTIMORE CPI-US 2004 TO 2005

Survey Area	CPI-U
Honolulu 2004 CPI-U first half	189.2
Honolulu 2005 CPI-U second half	200.6
Honolulu change	6.0254%
DC-Baltimore 2004 CPI-U first half	118.3
DC-Baltimore 2005 CPI-U second half	125.8
DC-Baltimore change	6.3398%

The second step is to multiply the price indexes from the five 2004 Pacific surveys by the change in the Honolulu

CPI-U and divide that by the change in the Washington-Baltimore CPI-U. OPM published the 2004 Pacific survey report in the **Federal Register** on August 4, 2005, at 70 FR 44989. This report included the survey price indexes for each of the Pacific COLA areas. However, as with Alaska, OPM subsequently revised the Pacific price indexes, incorporating methodological changes that OPM adopted pursuant to comments it received. The revised indexes were published recently in the **Federal Register** in a final rule that implemented COLA rate changes. Table 4 shows the revised indexes, the interim adjustment process, and the final results.

TABLE 4.—PACIFIC COLA AREA CPI-U PRICE INDEX ADJUSTMENTS

	Honolulu	Hawaii Co	Kauai	Maui	Guam
2004 COLA Survey Indexes	125.80	117.25	127.63	131.50	127.40
Adjustment Factors	5	7	7	7	9
2004 COLA Survey Price Indexes	120.80	110.25	120.63	124.50	118.40
2005 CPI Adjusted Price Indexes	120.44	109.92	120.27	124.13	118.05
2005 COLA Indexes with Adj. Factors	125.44	116.92	127.27	131.13	127.05

Interim Adjustments Summarized

In a proposed rule published with this notice, OPM proposes to adjust COLA rates based on the 2005 Caribbean Survey results and the interim adjustments. The interim adjustments show both Alaska and Pacific prices are falling slightly relative to Washington-Baltimore prices. In the Pacific, the results indicate that COLA rates in all of the areas are currently set at the appropriate levels, and no adjustments are necessary. In Alaska, the results indicate that Anchorage, Fairbanks and Juneau COLA rates should continue to be reduced by an additional 1 percentage point in each area, from 24 percent, which is the current COLA rate in each of these areas, to 23 percent. However, § 591.228(c) limits COLA rate reductions to no more than 1 percentage point in a 12-month period.

Linda M. Springer,
 Director, Office of Personnel Management.
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BILLING CODE 6325-39-P

OFFICE OF PERSONNEL MANAGEMENT

2005 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: This notice publishes the “2005 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas.” The Federal Government uses the results of surveys such as these to set cost-of-living allowance (COLA) rates for General Schedule, U.S. Postal Service, and certain other Federal employees in Alaska, Hawaii, Guam and the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. This report contains the results of the COLA surveys conducted by the Office of Personnel Management in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC area during the spring of 2005.

DATES: Comments on this report must be received on or before December 26, 2006.

ADDRESSES: Send or deliver comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin, (202) 606-2838; fax: (202) 606-4264; or e-mail: COLA@opm.gov.

SUPPLEMENTARY INFORMATION: Section 591.229 of title 5, Code of Federal Regulations, requires the Office of Personnel Management (OPM) to publish nonforeign area cost-of-living

allowance (COLA) survey summary reports in the **Federal Register**. We are publishing the complete “2005 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC, Areas” with this notice. The report contains the results of the COLA surveys we conducted in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC area during the spring of 2005.

Survey Results

Using an index scale with Washington, DC area living costs equal to 100, we computed index values of relative prices in the Puerto Rico and U.S. Virgin Islands COLA areas. Then we added an adjustment factor of 7.0 to the Puerto Rico price index and 9.0 to the U.S. Virgin Islands price index and rounded the results to the nearest whole percentage point. According to the results, the COLA rate for the U.S. Virgin Islands should increase from 23 percent, which is the current rate, to 25 percent; and the COLA rate for Puerto Rico should decrease from 10.5 percent, which is the current rate, to 9.5 percent. Section 591.228(c) limits decreases to 1 percentage point in a 12-month period. In a proposed rule published with this notice, OPM proposes to adjust COLA rate rates based on the results of the 2005 Caribbean surveys.

Office of Personnel Management.

Linda M. Springer,
Director.

2005 Nonforeign Area Cost-of-Living Allowance Survey Report: Caribbean and Washington, DC Areas

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Executive Summary

The Government pays cost-of-living allowances (COLAs) to Federal employees in nonforeign areas in consideration of living costs significantly higher than those in the Washington, DC area. The Office of Personnel Management (OPM) conducts living-cost surveys to set the COLA rates. The methodology for conducting these surveys is prescribed in regulation at subpart B of part 591 of title 5 of the Code of Federal Regulations.

This report provides the results of the COLA surveys OPM conducted in the spring of 2005 in Puerto Rico, the U.S. Virgin Islands, and the Washington, DC area. The report details our comparison of living costs in the Caribbean areas with living costs in the Washington, DC area.

For the surveys, we contacted about 850 outlets and collected approximately 4,000 non-rental prices on more than 250 items representing typical consumer purchases. We also collected about 1,800 rental prices. We then combined the data using consumer expenditure information from the Bureau of Labor Statistics. The final results are living-cost indexes, shown in Table 1. These indexes compare living costs in Puerto Rico and the U.S. Virgin Islands to those in the Washington, DC area. The index for the DC area (not shown) is 100.00 because it is, by law, the reference area. The living-cost indexes shown in Table 1 include the adjustment factor prescribed at 5 CFR 591.227.

TABLE 1.—FINAL LIVING-COST COMPARISON INDEXES

Allowance area	Index
Puerto Rico	103.32
U.S. Virgin Islands	128.21

1. Introduction

1.1 Report Objectives

This report provides the results of the 2005 “Caribbean” nonforeign area cost-of-living allowance (COLA) survey conducted by the Office of Personnel Management (OPM) in the spring of 2005. (Appendix 1 lists prior survey reports and their publication dates.) In addition to providing the results, the report describes how we prepared for and conducted the survey and analyzed the results. The results show comparative living-cost differences between the Caribbean COLA areas, *i.e.*, Puerto Rico and the U.S. Virgin Islands (USVI), and the Washington, DC area. By law, Washington, DC, is the base or “reference” area for the COLA program.

2. Preparing for the Survey

2.1 COLA Advisory Committees

Before conducting the Caribbean survey, OPM established COLA Advisory Committees (CACs) in Puerto Rico, St. Croix (USVI), and St. Thomas/St. John (USVI). The settlement of *Caraballo, et al. v. United States*, No. 1997–0027 (D.V.I.), August 17, 2000, provides for employee involvement in the administration of the COLA program. As in previous surveys, we found it valuable to involve employee

and agency representatives in planning and conducting the surveys and reviewing the results.

Each CAC is composed of approximately 12 agency and employee representatives from the survey area and 2 OPM representatives. The functions of the CACs include the following:

- Advising and assisting OPM in planning COLA surveys;
- Providing or arranging for data collection observers during COLA surveys;
- Advising and assisting OPM in reviewing survey data;
- Advising OPM on its COLA program administration, including survey methodology;
- Assisting OPM in disseminating information to affected employees about the surveys and the COLA program; and
- Advising OPM on special situations or conditions, such as hurricanes and earthquakes, as they relate to OPM’s authority to conduct interim surveys or implement some other change in response to conditions caused by a natural disaster or similar emergency.

2.2 Pre-Survey Meetings

To help us prepare for the COLA surveys, the CACs held 3-day meetings in Puerto Rico, St. Thomas, and St. Croix. The CACs reviewed the preliminary outlet and item lists developed by OPM for the surveys. The committee members researched the outlets and availability and appropriateness of the items in each area and made recommendations to us concerning the survey. We incorporated these recommendations into the survey design.

We found the work of the CACs to be extremely helpful and informative. The CACs’ knowledge of the local area, the popularity of items and outlets, and other information about the COLA area, were invaluable in helping us plan the survey.

2.3 Survey Item Selection

As described in Sections 2.1 and 2.2, we consulted with the CACs as we selected survey items. We identified items to reflect a wide array of items consumers typically purchase. To determine what consumers purchase, OPM uses the Bureau of Labor Statistics (BLS) 2002/2003 Consumer Expenditure Survey (CES). We aggregated CES expenditures into the following nine major expenditure groups (MEGs):

- Food,
- Shelter and Utilities,
- Household Furnishings and Supplies,
- Apparel,

- Transportation,
- Medical,
- Recreation,
- Education and Communication, and
- Miscellaneous.

We further subdivided each MEG into primary expenditure groups (PEGs). In all, there were 45 PEGs. For example, we subdivided Food into the following nine PEGs:

- Cereals and Bakery Products;
- Meats, Poultry, Fish, and Eggs;
- Dairy Products;
- Fresh Fruits and Vegetables;
- Processed Foods;
- Other Food at Home;
- Nonalcoholic Beverages;
- Food Away from Home; and
- Alcoholic Beverages.

To select survey items, we chose a sufficient number of items to represent each PEG and reduce overall price index variability. To do this, we applied the following guidelines: Each survey item should be:

- Relatively important (*i.e.*, represent a fairly large expenditure) within the PEG;
- Relatively easy to find in both COLA and DC areas;
- Relatively common, *i.e.*, what people typically buy;
- Relatively stable over time, *e.g.*, not a fad item; and
- Subject to similar supply and demand functions.

In all, we selected over 250 non-housing items to survey. Appendix 2 shows how OPM organized the CES data into MEGs and PEGs, identifies the Detailed Expenditure Categories (DECs) for which we chose survey items, and shows estimated DC area middle income annual consumer expenditures for each DEC and higher level of aggregations.

Appendix 3 lists the items we surveyed and their descriptions. Each of these items is specifically described with an exact brand, model, type, and size whenever practical. Thus, we priced exactly the same items or the same quality and quantity of items in

both the COLA and DC areas. For example, we priced a 10.5-ounce can of Campbell’s Chicken Noodle Soup in both the COLA and DC areas because it is typical of canned soups, and consumers commonly purchase it.

2.3.1 Special Considerations

Automobile Insurance: We were not able to compare exactly the same level of automobile insurance coverage in all areas. State and local jurisdictions regulate car insurance, and the coverage offered varies among the Caribbean COLA areas and the Washington, DC area. Therefore, we surveyed different levels of automobile insurance coverage in Puerto Rico as compared with the USVI. However, we surveyed both levels of coverage, to the extent possible, in the Washington, DC area. When we made the price comparisons, we based the comparisons on comparable levels of coverage in the COLA survey area and in the DC area. Table 2 shows the coverage we surveyed.

TABLE 2.—AUTOMOBILE INSURANCE COVERAGE

Coverage	Puerto Rico and DC area limits and deductibles	USVI and DC area limits and deductibles
Bodily Injury	\$100,000/\$300,000	\$25,000/\$50,000.
Property Damage	\$25,000	\$25,000.
Medical	\$10,000	\$5,000.
Uninsured Motorist*	\$100,000/\$300,000	\$25,000/\$50,000.
Comprehensive	\$100 Deductible	\$250 Deductible.
Collision	\$250 Deductible	\$500 Deductible.

* Not available in Puerto Rico or the Virgin Islands. Therefore, we excluded the cost of Uninsured Motorist coverage from Washington, DC area policies before comparing prices and computing the price index.

Health Insurance: It is not practical to compare the prices of exactly the same quality and quantity of health insurance between the COLA and Washington, DC areas because the same array of plans is not offered in each area, and a significant proportion of Federal employees in both the COLA and DC areas subscribe to plans not available nationwide. To compare the employee health benefits premiums of these often highly different plans, OPM would have to adjust for differences in benefits and coverage. Research conducted by the parties prior to the *Caraballo* settlement indicated this would not be feasible.

Therefore, OPM uses the non-Postal Service employee’s share of the Federal Employees Health Benefits premiums by plan for each plan offered in each area. OPM maintains these data in its Central Personnel Data File (CPDF), including the number of white-collar Federal employees enrolled in each plan. As described in Section 4.2.3, we used these data to compute the average

“price” of health insurance for Federal employees in the COLA and DC areas.

Housing: For housing items, OPM surveys rental rates for specific kinds or classes of housing and collects detailed information about each housing unit. OPM surveys the following classes of housing:

- Four bedroom, single family unit, not to exceed 3200 square feet;
- Three bedroom, single family unit, not to exceed 2600 square feet;
- Two bedroom, single family unit, not to exceed 2200 square feet;
- Three bedroom apartment unit, not to exceed 2000 square feet;
- Two bedroom apartment unit, not to exceed 1800 square feet; and
- One bedroom apartment unit, not to exceed 1400 square feet.

For each housing unit we surveyed, we obtained approximately 80 characteristics about the unit. For example, we determined the number of bedrooms, bathrooms, square footage, whether there was a garage, air

conditioning, security systems, and recreational activities. Appendix 4 lists the types of detailed information we collected. We did not collect homeowner data, such as mortgage payments, maintenance expenses, or insurance. Under the *Caraballo* settlement, the parties agreed to adopt a rental equivalence approach similar to the one BLS uses for the Consumer Price Index. Rental equivalence compares the shelter value (rental value) of owned homes, rather than total owner costs, because the latter are influenced by the investment value of the home (*i.e.*, influenced by what homeowners hope to realize as a profit when they sell their homes). As a rule, living-cost surveys do not compare how consumers invest their money.

In the 2005 survey, OPM surveyed rents and used them to estimate homeowner rental values (*i.e.*, rental equivalence). In late 2004 and 2005, OPM conducted special research, the General Population Rental Equivalence

Survey (GPRES), to obtain additional rent and rental equivalence information. The goal was to determine whether OPM should adjust the rent index before using it to estimate homeowner rental values. The analyses showed that no adjustments should be made. Therefore, OPM's use of the rents to estimate rental equivalence is appropriate. OPM published the GPRES results in a **Federal Register** notice on July 31, 2006, at 71 FR 43228.

Although we surveyed rental rates for the same classes of housing in each area, the type, style, size, quality, and other 80-plus characteristics of each unit varied within each area and between the COLA and DC areas. As described in Section 4.2.6, we used special statistical analyses to hold these characteristics constant between the COLA and Washington, DC areas to make rental price comparisons.

2.4 Outlet Selection

Just as it is important to select commonly purchased items and survey the same items in both the DC area and COLA areas, it is important to select outlets frequented by consumers and find comparable outlets in both the COLA and DC areas. To identify comparable outlets, OPM categorizes outlets by type (e.g., grocery store, convenience store, discount store, hardware store, auto dealer, and catalog outlet) and then surveys only specific

items at each outlet type. For example, OPM surveys grocery items at supermarkets in all areas because most people purchase their groceries at such stores and because supermarkets exist in nearly all areas. Selecting comparable outlets is particularly important because significant price variations may occur between dissimilar outlets (e.g., comparing the price of milk at a supermarket with the price of milk at a convenience store).

We used the above classification criteria and existing data sources, including previous COLA surveys, phone books, and various business listings, to develop initial outlet lists for the survey. We provided these lists to the CACs and consulted with them on outlet selection. The committees helped us refine the outlet lists and identify other/additional outlets where local consumers generally purchase the survey items.

We also priced some items by catalog, and when we did, we priced the same items by catalog in the COLA areas and in the DC area. We priced 11 items by catalog in the Caribbean and DC areas. All catalog prices included any charges for shipping and handling and all applicable taxes, including excise taxes.

In all, we surveyed prices from approximately 850 outlets. In the COLA survey areas, we attempted to survey three popular outlets of each type, to the extent practical. For some outlet types,

such as local phone service, there were not three outlets. In some areas, there were not a sufficient number of businesses to find three outlets of each particular type. In the Washington, DC area, we attempted to survey nine popular outlets of each type, three in each of the DC survey areas described in Table 3.

There was one major exception to this in the 2005 survey. In the pre-survey meetings, the Puerto Rico CAC recommended against surveying Amigo, one of the Puerto Rico grocery store chains. The CAC believed Amigo was not equivalent to the other two major chains—Grande and Pueblo. Therefore, we dropped Amigo from the Puerto Rico survey and dropped Shoppers Food Warehouse, which we believed was equivalent to Amigo, from the DC area survey. On the other hand, at the USVI CACs' advice, we surveyed several additional grocery stores in the USVI in anticipation that data collection and item matching would be more difficult there. We surveyed four grocery stores on St. Croix and five on St. Thomas and St. John. Because OPM compares average prices, it does not make any difference how many stores we survey provided we find the same types of stores in the COLA and DC areas.

2.5 Geographic Coverage

Table 3 shows the Caribbean COLA and DC survey area boundaries.

TABLE 3.—SURVEY AND DATA COLLECTION AREAS

COLA areas and reference areas	Survey area
Puerto Rico	San Juan/Caguas area and eastern Puerto Rico.*
U.S. Virgin Islands	St. Croix, St. Thomas/St. John area.*
Washington, DC—DC	District of Columbia.
Washington, DC—MD	Montgomery County and Prince Georges County.
Washington, DC—VA	Arlington County, Fairfax County, Prince William County, City of Alexandria, City of Fairfax, City of Falls Church, City of Manassas, and City of Manassas Park.

Note: For selected items, such as golf and air travel, these survey areas include additional geographic locations beyond these jurisdictions. *OPM collects housing data in eastern Puerto Rico and on St. John. OPM also collected non-housing data from selected outlets on St. John.

OPM collected non-housing prices in outlets throughout the Caribbean areas described in Table 3. To collect rental data, OPM contracted with Delta-21 Resources, Incorporated, a research organization with expertise in housing and rental data collection. Delta-21 surveyed rental rates in locations within these areas.

To collect non-rental data in the DC area, OPM divides the area into three survey areas, as shown in Table 3. OPM collects non-rental prices in outlets throughout these areas. As stated in the footnote to Table 3, we surveyed certain items, such as golf, in areas beyond the counties and cities specified in Table 3.

Another example is air travel. We surveyed the cost of air travel from Ronald Reagan Washington National Airport, Washington Dulles International Airport, and Baltimore/Washington International Airport (BWI) and surveyed the price of a 5-mile taxi ride originating at these airports. Both Dulles and BWI are outside the counties and cities shown in Table 3. Nevertheless, DC area residents commonly use both airports.

Delta-21 surveyed rental prices as specified in the COLA areas and throughout the DC area. (**Note:** OPM does not divide the DC area into three separate survey areas for rental data

collection but rather treats the area as a single survey area.) In selecting the locations and sample sizes within each location, OPM used 2000 census data showing the relative number of Federal employees and housing units by zip code. In doing this, we often merged several zip codes to identify a single location. We allocated the rental sample objectively, requiring Delta to attempt to obtain more rental observations in locations with a relatively large number of Federal employees and housing units and fewer observations in locations with a relatively small number of Federal employees and housing units. Although the process provided a rational way to

allocate the sample, Delta was limited ultimately by how many units were available for rent within a location. Under the contract, Delta surveyed only units available for rent. It did not survey all renter-occupied housing.

3. Conducting the Survey

3.1 Pricing Period

OPM collected data from early March through May 2005. We collected non-housing price data concurrently in the Caribbean areas in March and collected the bulk of the DC area data in April and May. Delta-21 collected rental data sequentially in St. Croix, St. Thomas/St. John, Puerto Rico, and in the Washington, DC area beginning on March 1, 2005, and ending on May 31, 2005.

3.2 Non-Housing Price Data Collection

3.2.1 Data Collection Teams

In both the COLA and Washington, DC areas, OPM central office staff collected non-housing price data. In the COLA areas, data collection observers designated by the local CAC accompanied the OPM data collectors. Data collection observers were extremely helpful and advised and assisted the data collectors in contacting outlets, matching items, and selecting substitutes. The observers also advised us on other living-cost and compensation issues relating to their areas.

Because of logistical considerations, cost, and the fact OPM central office staff is very knowledgeable about the DC area, we did not use CAC data collection observers in the Washington, DC area. However, we made all of the DC area data available to the CACs. This included both the rental and non-rental data. The non-rental data showed the individual prices by item, store, and survey location as well as averages. The rental data included a photograph and a rough sketch of the layout of the rental unit. We also provided the CACs with maps showing where each rental unit is located.

3.2.2 Data Collection Process

The data collector/observer teams obtained most of the data by visiting stores, auto dealers, and other outlets. The teams also priced some items, such as car insurance, tax preparation fees, bank interest, and private education tuition, by telephone. As noted in Section 2.4, we surveyed some items via catalog, including all shipping costs and any applicable taxes in the price. We also collected other data, such as sales tax rates and airline fares, from Web sites on the Internet.

For all items subject to sales and/or excise taxes, we added the appropriate amount of tax to the price before computing COLA rates. In the DC area, sales tax rates varied by jurisdiction, and some sales tax rates even varied by item within a location, such as restaurant meals in the Washington, DC area. Puerto Rico and the U.S. Virgin Islands currently have no general sales or business tax passed on to the consumer separately at the time of sale.

The data collectors collected the price of the item at the time of the visit to the outlet. Therefore, with certain exceptions, the data collectors collected the sale price if the item was on sale, and we used sale prices in the COLA calculations. The exceptions include coupon prices, going-out-of-business prices, clearance prices, and area-wide distress sales, which we do not use because they are atypical and/or seasonal. We also do not collect automobile "sale" or negotiated prices. Instead, we obtain the sticker (*i.e.*, non-negotiated) price for the model and specified options. The prices are the manufacturer's suggested retail price (including options), destination charges, additional shipping charges, appropriate dealer-added items or options, dealer mark-up, and taxes, including sales tax and licensing and title fees.

3.3 Housing (Rental) Price Data Collection

As noted in Section 2.5, OPM contracted for the collection of rental data with Delta-21, which collected data in the Caribbean areas and in the DC area. These data included rental prices, comprehensive information about the size and type of dwelling, number and types of rooms, and other important amenities that might influence the rental price. Appendix 4 lists the data elements Delta-21 collected.

The contractor identified units for rent from various sources, including rental property managers, realtor brokers, listing services, newspaper ads, grocery store bulletin boards, and casual drive-by observation. The contractor then visited each rental unit, took a photograph of the unit, made a sketch of the floor plan based on exterior dimensions and shape, and noted the unit's longitude and latitude coordinates. We used longitude and latitude to (1) determine the distance of the rental unit from major commercial and Government centers, (2) to correlate census tract data (*e.g.*, median income) for the tract in which the unit was located, and (3) to map each unit's location. As discussed in Section 4.2.5, we used certain census tract data elements along with the data Delta-21

collected to determine the relative price of rents.

4. Analyzing the Results

4.1 Data Review

During and after the data collection process, the data collectors reviewed the data for errors and omissions. This involved reviewing the data item-by-item and comparing prices across outlets within an area to spot data entry errors, mismatches, and other mistakes.

After all of the data had been collected in both the COLA areas and the Washington, DC area, we again reviewed the data by item across all of the areas. One purpose was to spot errors not previously detected, but the principal reason was to look at substitute items.

A substitute is an item similar to but not exactly the same as the specified survey item. For example, one of the items OPM specified was the 2.4GHz AT&T model 1465ESP cordless telephone. The data collectors in the Caribbean areas, however, discovered some stores did not carry this model. Therefore, the data collectors priced the 2.4GHz AT&T model 1477 instead. We then priced the same model in the DC area and used the substitute price information in place of the prices of the originally specified item.

4.2 Special Price Computations

After completing our data review, we made special price computations for five survey items: K-12 private education, Federal Employees Health Benefits premiums, water utilities, energy utility prices, and rental prices. For each of these, we used special processes to calculate appropriate estimates for each survey area.

4.2.1 K-12 Private Education

One of the items OPM surveys is the average annual tuition for private education, grades K-12. As in previous surveys, we found tuition rates varied by grade level. Therefore, we computed an overall average tuition "price" for each school surveyed by averaging the tuition rates grade-by-grade. Section 4.4.2 below describes the additional special "use factor" OPM applied to the average tuition rates in the price comparison process.

4.2.2 Health Insurance

As noted in Section 2.3.1, OPM surveyed the non-Postal employees' premium for the various Federal Employees Health Benefits (FEHB) plans offered in each survey area. Using enrollment information from the CPDF, we computed two weighted average premium costs—one for self-only

coverage and another for family coverage—for white-collar Federal employees in each of the COLA areas and in the Washington, DC area. As shown in Table 4, we then computed an

overall weighted average premium for each survey area by applying the number of white-collar Federal employees nationwide enrolled in self-only and family plans. We used the

overall weighted average premiums as “prices” in the price averaging process described in Section 4.3 below.

TABLE 4.—2005 AVERAGE FEHB PREMIUMS FOR FULL-TIME PERMANENT EMPLOYEES
[Non-Postal employees’ share]

Location	Self premium	Family premium	Bi-weekly weighted average premium
Puerto Rico	29.54	63.71	49.99
St. Croix	52.20	116.42	90.64
St. Thomas	54.65	121.17	94.46
District of Columbia	48.11	110.14	85.23
Maryland	47.48	108.71	84.12
Virginia	48.43	110.73	85.71
Nationwide Enrollment	624,309	930,567	.....
Enrollment Percentage	40.15%	59.85%	.....

4.2.3 Water Utilities

OPM surveys water utility rates in each of the COLA and Washington, DC, survey areas. To compute the “price” of water utilities, we assumed the average monthly water consumption in each area was 7,600 gallons. We derived this estimate from earlier COLA research, and it reflects the average consumption across all of the COLA areas and the Washington, DC, area. We used this quantity along with the rates charged to compute the average monthly water utility cost by survey area. These average monthly costs were the water utility “prices” we used in the price averaging process described in Section 4.3 below.

Not long after we conducted the survey, the Puerto Rico Aqueduct and Sewer Authority significantly increased water utility rates. Because of the significance of this increase, we re-priced water utilities in Puerto Rico and used the higher prices.

4.2.4 Energy Utilities Model

For energy utilities (i.e., electricity, gas, and oil), OPM collects from local utility companies and suppliers in the COLA and DC survey areas the price of various energy utilities used for lighting, cooking, cooling, and other household needs. We use these prices in a heating and cooling engineering model that estimates how many kilowatt hours of electricity, cubic feet of gas, and/or gallons of fuel oil are needed to maintain a specific model home at a constant ambient temperature of 72 degrees in each area.

The engineering model was developed by an economic consulting company under special research conducted jointly for OPM and the plaintiffs’ representatives after the

Caraballo settlement. The model uses local home construction information and climatic data from the National Oceanic and Atmospheric Administration and also includes the amount of electricity needed to run standard household appliances and lighting. For each survey area, we calculated the cost of heating and cooling the model home using the different heating fuels and electricity for lighting and appliances. Although some homes use additional energy sources, such as wood, coal, kerosene, and solar energy, we did not price or include these in the calculations because, based on the results of the 2000 census, relatively few homes use these as primary energy sources.

For the Caribbean areas, we surveyed the price of electricity to compute home energy costs because the 2000 census indicated electricity is the primary energy source in more than 95 percent of the homes in Puerto Rico and the U.S. Virgin Islands. In the DC area, we surveyed the costs of all three fuels (gas, oil, and electricity). We used percentages based on the usage of the different fuels to compute a weighted average utility fuel cost for the DC area. Appendix 5 shows the energy requirements, relative usage percentages, and total costs by area. We used these total costs as the “price” of utilities in the COLA rate calculations.

4.2.5 Rental Data Hedonic Models

As discussed in Sections 2.5 and 3.3, OPM hired a contractor to collect rental data, including rents and the characteristics of each rental unit. As described in Section 3.3, we collated these rental data with census tract information published by the Bureau of the Census using the longitude and

latitude of the rental properties. We used census tracts, which are relatively small geographically, as surrogates for neighborhoods. We believe the census tract characteristics, such as the percentage of school age children, reflect the character and quality of the neighborhoods in which the rental units are found.

OPM uses hedonic regression analysis, which is a type of multiple linear regression analysis, to compare rents in the COLA areas with rents in the DC area. Multiple linear regression is a type of statistical analysis used to determine how the dependent variable (in this case rent) is influenced by the independent variables (in this case the characteristics of the neighborhood and rental unit). In regression analyses, it is very important to choose the independent variables with great care, making certain only those meeting certain statistically significant thresholds are used in the analysis. To select the independent variables, OPM uses a special procedure developed jointly by OPM and economists advising OPM and the Caraballo plaintiffs’ representatives. We call this the Variable Selection Protocol (VSP).

VSP is a multi-step procedure that uses objective criteria to eliminate independent variables with little statistical significance in the regression. It also removes variables with inexplicable signs and variables that negatively affect the precision of the rent indexes. An example of an inexplicable sign is clothes washer. It had a positive sign in the 2005 Caribbean regression when the landlord did not provide it. In essence, this was the same as saying on average when the landlord did not provide a clothes washer, the property rented for more

than when the landlord provided a clothes washer. Since this is not the expected relationship, VSP dropped the variable.

How VSP drops variables that negatively affect the precision of rent indexes is a bit more complicated to explain. The key variable in the regression is the survey area, *i.e.*, Puerto Rico, St. Croix, St. Thomas/St. John, and the Washington, DC area. As with all variables in the regression, these variables have parameter estimates; but the survey area parameter estimates are especially important because they become the rent indexes for each of the survey areas. Therefore, it is important that the survey area parameter estimates be as accurate as practicable. The accuracy is measured by the standard error of the survey area parameter estimate. In the last steps of VSP, the protocol tests each of the variables in the model and drops variables that if retained would raise the standard errors of the survey area parameter estimates.

Using VSP, we selected variables with the greatest statistical significance. The variables are listed below and are shown in the regression output in Appendix 6.

Age of unit (*i.e.*, number of years since built or extensively remodeled);
Age squared;
Exceptional view (yes/no);
External condition (above average/average or below);
Microwave (yes/no);
Number of square feet combined (*i.e.*, “crossed”) with unit type;
Number of bathrooms
Number of bedrooms;
Percent school age children in census tract;
Percent with BA degree or higher in census tract;
Percent with BA degree squared;
Unit Type (detached house, row/townhouse, duplex/triplex/quadplex, high rise apartment, garden apartment, and other apartments); and
Survey area (Puerto Rico, St. Thomas/St. John, St. Croix, or the DC area).

As is common in this type of analysis and as was done in the research leading to the *Caraballo* settlement, OPM uses semi-logarithmic regressions. As noted above in this section, the regression produces parameter estimates for each independent variable, including survey area. When the regression uses the Washington, DC area as the base, the regression produces parameter estimates for each of the COLA survey areas: Puerto Rico, St. Thomas/St. John, and St. Croix. The exponent of the survey area parameter estimate (*i.e.*, after the estimate is converted from natural logarithms) multiplied by 100

(following the convention used to express indexes) is the survey area’s rent index. This index reflects the difference in rents in each of the COLA survey areas relative to the Washington, DC area, while holding constant important neighborhood and rental unit characteristics captured in the survey and census data.

OPM makes a technical adjustment in the above calculations to correct for a slight bias caused by the use of logarithms because the exponent of the average of the logarithms of a series of numbers is always less than the average of the numbers. Therefore, we added one-half of the standard deviation of the survey area parameter estimate before converting from natural logarithms. (See Arthur Goldberger, “Best Linear Unbiased Prediction in the Generalized Linear Regression Model,” *Journal of the American Statistical Association*, 1962.) Table 6 shows the resulting rent indexes. We used these indexes as “prices” in the price averaging process described in Section 4.3.

TABLE 6.—RENT INDEXES

Area	Rent index
Puerto Rico	68.17
St. Croix, USVI	93.67
St. Thomas/St. John, USVI	107.55
Washington, DC Area	*100.00

*By definition, the index of the base area is always 100.00.

Appendix 6 shows the regression equation in SAS code and the regression results. (SAS is a proprietary statistical analysis computer software package.)

4.3 Averaging Prices by Item and Area

After OPM collects, reviews, and makes special adjustments in the data, OPM averages the prices of each item by COLA survey area. For example, we priced aspirin at three different pharmacies in Puerto Rico and averaged these prices to compute a single average price for aspirin in Puerto Rico. If we collected more than one price for a particular matched item within the same outlet (*e.g.*, priced equivalent brands), we used the lowest price by item and outlet to compute the average. (The concept is that if the item and brands are equivalent, consumers will choose the one with the lowest price.) We repeated this item-by-item averaging process for each area.

For Washington, DC area prices, we first averaged prices within each of the three DC survey areas described in Section 2.5. Then we computed a simple average of the three DC area

survey averages to derive a single DC area average price for each survey item.

4.4 Computing Price Indexes

OPM computes a price index for each of the items found in both the COLA survey area and in the Washington, DC area. To do this with 2005 survey data, we divided the COLA survey area average price by the DC area average price and, following the convention used to express indexes, multiplied the result by 100. For the vast majority of survey items, we next applied consumer expenditure weights to combine price indexes. For a few items, however, OPM first applied special processes as described in Sections 4.4.1 and 4.4.2 below.

4.4.1 Geometric Means

As described in Section 2.3, OPM selects survey items to represent specified detailed expenditure categories (DECs). Generally, OPM surveys only one item per DEC, but in some cases, it surveys multiple items at a single DEC. In these cases, it computes the geometric mean of the price indexes to derive a single price index for the DEC. (A geometric mean is the *n*th root of the product of *n* different numbers and is often used in price index computations.) For example, we surveyed two prescription drugs—Amoxicillin and Nexium in the 2005 Caribbean survey. These two different prescription drugs represent a single DEC called “prescription drugs.” To derive a single price index for the DEC, we computed the geometric mean of the price index for Amoxicillin and the price index for Nexium.

4.4.2 Special Private Education Computations

As noted in Section 4.2.1, OPM surveys K–12 private education in the COLA and DC areas and computes an average tuition “price” reflecting all grade levels. Because not everyone sends children to private school, OPM makes an additional special adjustment for K–12 education by applying “use factors.” These use factors reflect the relative extent to which Federal employees make use of private education in the COLA and DC areas. For example, Table 8 shows a use factor of 4.1066 for Puerto Rico. We computed this by dividing 54.33 percent (the percentage of Federal employees in Puerto Rico with at least 1 child in a private school) by 13.23 percent (the percentage of DC area Federal employees with at least 1 child in a private school). OPM obtained the percentages from the results of the 1992/93 Federal Employee Housing and

Living Patterns Survey, which is the most current comprehensive data available. Table 7 below shows the use

factors and the adjusted price indexes for each COLA survey area.

TABLE 7.—SUMMARY OF PRIVATE EDUCATION USE FACTORS AND INDEXES

COLA survey area	Employees w/children in private schools		Use factor	Price index	Price index w/use factor
	Local area	DC area			
Puerto Rico	54.33	13.23	4.1066	62.67	257.374
St. Croix	57.27	13.23	4.3288	51.37	222.551
St. Thomas	51.90	13.23	3.9229	49.53	194.291

4.5 Applying Consumer Expenditure Weights

Next, OPM applies consumer expenditure weights to aggregate price indexes by expenditure group. As noted in Section 2.3, OPM uses the results of the BLS 2002/2003 Consumer Expenditure Survey to estimate the amounts middle income level consumers in the DC area spend on various items. Using expenditure weights, OPM combines the price indexes according to their relative importance. For example, shelter is the most important expenditure in terms of the COLA survey and represents about 30 percent of total consumer expenditures. On the other hand, the purchase of newspapers at newsstands represents less than 1/10th of 1 percent of total expenditures.

Beginning at the lowest level of expenditure aggregation (e.g., sub-PEG), we computed the relative importance of each survey item within the level of aggregation, multiplied the price index times its expenditure percentage, and summed the cross products for all of the items within the level of aggregation to compute a weighted price index for the level. We repeated this process at each higher level of aggregation (e.g., PEG and MEG). Appendix 7 shows these calculations for each COLA survey area at the PEG and MEG level.

The above process resulted in an overall price index for Puerto Rico (shown in Appendix 7) but not for the U.S. Virgin Islands, which has two separate COLA survey areas. To compute an overall price index for the U.S. Virgin Islands (USVI), OPM computes weights based on the number of General Schedule (GS) and equivalent Federal employees stationed on St. Croix compared with the number stationed on St. Thomas and St. John. OPM then multiplies each of the MEG indexes for St. Croix and St. Thomas/St. John by their respective GS employment weights and sums the cross products to produce an overall price index for the USVI. (See Appendix 7.) Table 8 shows the weights we used.

TABLE 8.—ST. CROIX AND ST. THOMAS/ST. JOHN EMPLOYMENT WEIGHTS

Area	GS employment	Weight (%)
St. Croix, USVI	284	42.26
St. Thomas/St. John, USVI	388	57.74
Total	672	100.00

5. Final Results

To compute the overall living-cost index, OPM adds to the price index a

non-price adjustment factor. The parties in *Caraballo* negotiated these factors to reflect differences in living costs not captured by the surveys, and OPM adopted these factors in regulation as part of the new methodology. The factors for Puerto Rico and the U.S. Virgin Islands are seven and nine index points respectively. The resulting living-cost indexes are shown in Table 9.

TABLE 9.—FINAL LIVING-COST COMPARISON INDEXES

Allowance area	Index
Puerto Rico	103.32
U.S. Virgin Islands	128.21

6. Post Survey Meetings

In July 2005, the St. Thomas, St. Croix, and Puerto Rico CACs held 1-day meetings to review the survey results. We provided the committee members with various reports showing the data we collected, examples of how we reviewed these data, the data we used in our analyses, and the results at the PEG and MEG level, as shown in Appendix 7. We explained how we analyzed the rental data and used expenditure weights to combine price indexes to reflect overall living costs.

APPENDIX 1.—PUBLICATION IN THE FEDERAL REGISTER OF PRIOR SURVEY RESULTS: 1990–2005

Citation	Contents
70 FR 44989	Report on 2004 living-cost surveys conducted in Hawaii and Guam.
69 FR 12002	Report on 2003 living-cost surveys conducted in Alaska.
69 FR 6020	Report on 2002 living-cost surveys conducted in Puerto Rico and the U.S. Virgin Islands.
65 FR 44103	Report on 1998 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
63 FR 56432	Report on 1997 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
62 FR 14190	Report on 1996 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
61 FR 4070	Report on winter 1995 living-cost surveys conducted in Alaska.
60 FR 61332	Report on summer 1994 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
59 FR 45066	Report on winter 1994 living-cost surveys conducted in Alaska.
58 FR 45558	Report on summer 1992 and winter 1993 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
58 FR 27316	Report on summer 1993 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
57 FR 58556	Report on summer 1991 and winter 1992 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.

APPENDIX 1.—PUBLICATION IN THE FEDERAL REGISTER OF PRIOR SURVEY RESULTS: 1990–2005—Continued

Citation	Contents
56 FR 7902	Report on summer 1990 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
1	TOTALEXP ..		Total Expenditure	\$50,478.63
2	FOODTOTL	MEG	Food	6,295.89
3	CERBAKRY	PEG	Cereals and bakery products	469.08
4	CEREAL		Cereals and cereal products	166.15
5	010110		Flour	9.36
5	010120		Prepared flour mixes	15.24
5	010210		Ready-to-eat and cooked cereals *	92.05
5	010310		Rice *	20.51
5	010320		Pasta, cornmeal and other cereal products *	28.98
4	BAKERY		Bakery products	302.94
5	BREAD		Bread	86.62
6	020110		White bread *	36.93
6	020210		Bread, other than white *	49.69
5	CRAKCOOK		Crackers and cookies	69.88
6	020510		Cookies *	45.17
6	020610		Crackers	24.70
5	020810		Frozen and refrigerated bakery products *	23.52
5	OTHBAKRY		Other bakery products	122.92
6	020310		Biscuits and rolls *	41.87
6	020410		Cakes and cupcakes *	38.56
6	020620		Bread and cracker products	3.34
6	020710		Sweetrolls, coffee cakes, doughnuts	28.98
6	020820		Pies, tarts, turnovers	10.17
3	ANIMAL	PEG	Meats, poultry, fish, and eggs	763.51
4	BEEF		Beef	191.96
5	030110		Ground beef *	74.89
5	ROAST		Roast	32.98
6	030210		Chuck roast *	9.82
6	030310		Round roast *	7.66
6	030410		Other roast	15.51
5	STEAK		Steak	70.41
6	030510		Round steak *	11.50
6	030610		Sirloin steak *	21.63
6	030710		Other steak	37.29
5	030810		Other beef	13.67
4	PORK		Pork	117.76
5	040110		Bacon *	19.09
5	040210		Pork chops *	27.43
5	HAM		Ham	27.97
6	040310		Ham, not canned *	26.30
6	040610		Canned ham *	1.67
5	040510		Sausage	19.55
5	040410		Other pork	23.72
4	OTHRMEAT		Other meats	92.84
5	050110		Frankfurters *	19.84
5	LNCHMEAT		Lunch meats (cold cuts)	62.16
6	050210		Bologna, liverwurst, salami *	16.80
6	050310		Other lunchmeats	45.37
5	LAMBOTHR		Lamb, organ meats and others	10.84
6	050410		Lamb and organ meats	5.95
6	050900		Mutton, goat and game	4.89
4	POULTRY		Poultry	158.21
5	CHICKEN		Fresh and frozen chickens	125.84
6	060110		Fresh and frozen whole chicken *	34.20
6	060210		Fresh and frozen chicken parts *	91.63
5	060310		Other poultry	32.37
4	FISHSEA		Fish and seafood	168.07
5	070110		Canned fish and seafood *	23.42
5	070230		Fresh fish and shellfish *	99.54
5	070240		Frozen fish and shellfish *	45.11
4	080110		Eggs	34.67
3	DAIRY	PEG	Dairy products	348.56
4	MILKCRM		Fresh milk and cream	128.13

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
5	090110		Fresh milk, all types *	115.34
5	090210		Cream	12.78
4	OTHDAIRY		Other dairy products	220.43
5	100110		Butter	19.44
5	100210		Cheese *	105.53
5	100410		Ice cream and related products *	64.36
5	100510		Miscellaneous dairy products	31.10
3	FRUITVEG	PEG	Fruits and vegetables	385.44
4	FRSHFRUT		Fresh fruits	194.98
5	110110		Apples *	36.70
5	110210		Bananas *	33.87
5	110310		Oranges *	19.74
5	110510		Citrus fruits, excluding oranges	15.47
5	110410		Other fresh fruits	89.20
4	FRESHVEG		Fresh vegetables	190.46
5	120110		Potatoes *	35.89
5	120210		Lettuce *	24.14
5	120310		Tomatoes *	36.87
5	120410		Other fresh vegetables	93.56
3	PROCFOOD	PEG	Processed Foods	778.76
4	PROCFRUT		Processed fruits	136.45
5	FRZNFRTUT		Frozen fruits and fruit juices	14.23
6	130110		Frozen orange juice *	7.17
6	130121		Frozen fruits	3.39
6	130122		Frozen fruit juices	3.67
5	130310		Canned fruits *	17.39
5	130320		Dried fruit	6.56
5	130211		Fresh fruit juice	26.62
5	130212		Canned and bottled fruit juice *	71.65
4	PROCVEG		Processed vegetables	87.29
5	140110		Frozen vegetables *	29.28
5	CANDVEG		Canned and dried vegetables and juices	58.01
6	140210		Canned beans *	14.02
6	140220		Canned corn	7.68
6	140230		Canned miscellaneous vegetables	17.88
6	140320		Dried peas	0.29
6	140330		Dried beans	2.45
6	140340		Dried miscellaneous vegetables	8.11
6	140310		Dried processed vegetables	0.31
6	140410		Frozen vegetable juices	0.05
6	140420		Fresh and canned vegetable juices	7.22
4	MISCFOOD		Miscellaneous foods	555.03
5	FRZNPREP		Frozen prepared foods	108.93
6	180210		Frozen meals *	30.41
6	180220		Other frozen prepared foods	78.52
5	180110		Canned and packaged soups *	37.66
5	SNACKS		Potato chips, nuts, and other snacks	113.33
6	180310		Potato chips and other snacks *	87.21
6	180320		Nuts	26.12
5	CONDMNTS		Condiments and seasonings	93.03
6	180410		Salt, spices, other seasonings *	22.78
6	180420		Olives, pickles, relishes	8.89
6	180510		Sauces and gravies *	42.23
6	180520		Baking needs and miscellaneous products	19.14
5	OTHRPREP		Other canned and packaged prepared foods	157.25
6	180611		Prepared salads	18.28
6	180612		Prepared desserts *	11.91
6	180620		Baby food *	27.52
6	180710		Miscellaneous prepared foods	99.28
6	180720		Vitamin supplements	0.26
5	190904		Food prepared by consumer on out-of-town trips	44.83
3	OTHRFOOD	PEG	Other food at home	193.31
4	SWEETS		Sugar and other sweets	117.73
5	150110		Candy and chewing gum *	77.44
5	150211		Sugar *	16.18
5	150212		Artificial sweeteners *	3.14
5	150310		Jams, preserves, other sweets *	20.98
4	FATSOILS		Fats and oils	75.57
5	160110		Margarine *	9.66
5	160211		Fats and oils *	22.52
5	160212		Salad dressings *	23.99

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
5	160310		Nondairy cream and imitation milk	8.56
5	160320		Peanut butter	10.85
3	NALCBEVG	PEG	Nonalcoholic beverages	233.77
4	170110		Cola *	80.16
4	170210		Other carbonated drinks	43.68
4	COFFEE		Coffee	32.17
5	170310		Roasted coffee *	21.36
5	170410		Instant and freeze dried coffee	10.80
4	170510		Noncarbonated fruit flavored drinks *	17.37
4	170520		Tea	13.85
4	200112		Nonalcoholic beer	0.82
4	170530		Other nonalcoholic beverages and ice	45.73
3	FOODAWAY	PEG	Food away from home	2,737.32
4	RESTRANT		Meals at restaurants, carry-outs and other	2,320.19
5	LUNCH		Lunch	873.65
6	190111		Lunch at fast food, take-out, delivery, etc. *	506.19
6	190112		Lunch at full service restaurants *	247.12
6	190113		Lunch at vending machines/mobile vendors	10.25
6	190114		Lunch at employer and school cafeterias	110.10
5	DINNER		Dinner	845.00
6	190211		Dinner at fast food, take-out, delivery, etc. *	287.84
6	190212		Dinner at full service restaurants *	550.87
6	190213		Dinner at vending machines/mobile vendors	3.33
6	190214		Dinner at employer and school cafeterias	2.95
5	SNKNABEV		Snacks and nonalcoholic beverages	360.78
6	190311		Snacks/nonalcoholic bev. at fast food, etc. *	244.08
6	190312		Snacks/nonalcoholic bev. at full svc restaurants	41.71
6	190313		Snacks/nonalcoholic bev. at vending mach. etc.	62.77
6	190314		Snacks/nonalcoholic bev. cafeterias	12.23
5	BRKFBRUN		Breakfast and brunch	240.76
6	190321		Breakfast & brunch at fast food, take-out, etc. *	130.52
6	190322		Breakfast & brunch at full service restaurants *	100.86
6	190323		Breakfast & brunch at vending machines	2.48
6	190324		Breakfast & brunch at cafeterias	6.89
4	NONRESME		Non Restaurant Meals	417.13
5	190901		Board (including at school)	22.99
5	190902		Catered affairs	57.90
5	190903		Food on out-of-town trips	227.85
5	790430		School lunches	78.00
5	800700		Meals as pay	30.38
3	ALCBEVG	PEG	Alcoholic beverages	386.15
4	ALCHOME		At home	246.23
5	200111		Beer and ale *	139.90
5	200210		Whiskey	16.41
5	200310		Wine *	59.74
5	200410		Other alcoholic beverages	30.18
4	ALCAWAY		Away from home	139.92
5	BEERNALE		Beer and ale	56.70
6	200511		Beer and ale at fast food, take-out, etc.	11.54
6	200512		Beer and ale at full service restaurants *	37.05
6	200513		Beer and ale at vending machines, etc.	0.25
6	200516		Beer and ale at catered affairs	7.86
5	WINE		Wine	22.78
6	200521		Wine at fast food, take-out, delivery, etc.	4.86
6	200522		Wine at full service restaurants *	17.02
6	200523		Wine at vending machines and mobile vendors	0.00
6	200526		Wine at catered affairs	0.91
5	OTHALCBV		Other alcoholic beverages	60.44
6	200531		Other alcoholic bev. at fast food, take-out, etc.	4.80
6	200532		Other alcoholic bev. at full svc. restaurants	24.64
6	200533		Other alcoholic bev. at vending machines	0.00
6	200536		Other alcoholic bev. at catered affairs	3.46
6	200900		Alcoholic beverages purchased on trips	27.53
2	SHEL&UTL	MEG	Shelter and Utilities	17,855.36
3	SHELTER	PEG	Shelter	15,892.77
4	RNTLEQ		Rental Equivalence (estimated monthly X 12)	12,571.68
4	RENTXX		Rented Dwelling (rent minus tenants ins.) *	2,790.60
4	350110		Tenants Insurance (tenants ins X 2) *	28.36
4	OTHLODGE		Other Lodging (Other minus housing at school)	502.14
3	ENERUT	PEG	Energy Utilities *	1,601.23
3	WATERX	PEG	Water and other public services *	361.36

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
2	HHF&SUPP	MEG	Household Furnishings and Supplies	3,051.71
3	HOPER	PEG	Household operations	748.24
4	HHPERSRV		Personal services	494.17
5	340210		Babysitting and child care *	71.82
6	340211		Child care in own home	25.44
6	340212		Child care outside own home	46.38
5	340906		Care for elderly, invalids, handicapped, etc.	145.28
5	340910		Adult day care centers	3.33
5	670310		Day-care centers, nursery, and preschools *	273.75
4	HHOTHXPN		Other household expenses	254.06
5	340310		Housekeeping services *	53.30
5	340410		Gardening, lawn care service *	68.10
5	340420		Water softening service	4.60
5	340520		Household laundry and dry cleaning, sent out	1.46
5	340530		Coin-operated household laundry & dry cleaning	5.79
5	340914		Services for termite/pest control	16.10
5	340915		Home security system service fee	18.60
5	340903		Other home services	12.33
5	330511		Termite/pest control products	1.05
5	340510		Moving, storage, freight express *	42.65
5	340620		Appliance repair, including service center	13.74
5	340630		Reupholstering, furniture repair	9.70
5	340901		Repairs/rentals of lawn/garden equip.	4.58
5	340907		Appliance rental	0.77
5	340908		Rental of office equipment for non-business use	0.73
5	340913		Repair of miscellaneous household equip.	0.54
5	990900		Rental and installation of dishwashers & disposals	0.00
3	HKPGSUPP	PEG	Housekeeping supplies	659.37
4	LAUNDRY		Laundry and cleaning supplies	147.93
5	330110		Soaps and detergents *	83.46
5	330210		Other laundry cleaning products	64.47
4	HKPGOTHR		Other household products	362.13
5	330310		Cleansing & toilet tissue, paper towels/nap. *	74.28
5	330510		Miscellaneous household products	108.87
5	330610		Lawn and garden supplies *	178.99
4	POSTAGE		Postage and stationery	149.31
5	330410		Stationery, stationery supplies, giftwraps *	63.54
5	340110		Postage	83.73
6	STAMP		Stamp *	79.21
6	PARPST		Parcel Post *	4.52
5	340120		Delivery services	2.04
3	TEX&RUGS	PEG	Textiles and Area Rugs	168.54
4	HHTXTILE		Household textiles	142.15
5	280110		Bathroom linens *	23.02
5	280120		Bedroom linens *	70.60
5	280130		Kitchen and dining room linens	12.92
5	280210		Curtains and draperies	15.88
5	280220		Slipcovers, decorative pillows	5.40
5	280230		Sewing materials for slipcovers, curtains, etc.	12.81
5	280900		Other linens	1.51
4	FLOORCOV		Floor coverings	26.40
5	RNTCARPT		Wall-to-wall carpeting (renter)	2.67
6	230134		Wall-to-wall carpet (renter)	1.02
6	320163		Wall-to-wall carpet (replacement)(renter)	1.65
5	320111		Floor coverings, nonpermanent *	23.72
3	FURNITUR	PEG	Furniture	542.10
4	290110		Mattress and springs *	79.01
4	290120		Other bedroom furniture	90.09
4	290210		Sofas	141.93
4	290310		Living room chairs *	45.85
4	290320		Living room tables	20.16
4	290410		Kitchen, dining room furniture *	74.53
4	290420		Infants' furniture	9.59
4	290430		Outdoor furniture	15.83
4	290440		Wall units, cabinets and other occasional furniture	65.09
3	MAJAPPL	PEG	Major appliances	178.87
4	230116		Dishwashers (built-in), disposals, range hoods	12.58
5	230117		Dishwasher - owned home	1.26
5	230118		Dishwasher rented home	11.31
4	300110		Refrigerators, freezers *	52.04
5	300111		Refrigerators, freezers (renter)	6.39

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
5	300112		Refrigerators, freezers (owned home)	45.65
4	300210		Washing machines *	22.98
5	300211		Washing machines (renter)	2.99
5	300212		Washing machines (owned home)	19.99
4	300220		Clothes dryers	16.68
5	300221		Clothes dryers (renter)	2.91
5	300222		Clothes Dryer (owned home)	13.78
4	300310		Cooking stoves, ovens *	23.86
5	300311		Cooking stoves, ovens (renter)	2.04
5	300312		Cooking stoves, ovens (owned home)	21.81
4	300320		Microwave ovens	9.73
5	300321		Microwave ovens (renter)	2.03
5	300322		Microwave ovens (owned home)	7.70
4	300330		Portable dishwasher	0.70
5	300331		Portable dishwasher (renter)	0.34
5	300332		Portable dishwasher (owned home)	0.36
4	300410		Window air conditioners	40.31
5	300411		Window air conditioners (renter)	1.57
5	300412		Window air conditioners (owned home)	6.62
5	320511		Electric floor cleaning equipment *	24.41
5	320512		Sewing machines	3.22
5	300900		Miscellaneous household appliances	4.48
3	SMAPPHWR	PEG	Small appliances, miscellaneous housewares	124.04
4	HOUSEWARE		Housewares	93.41
5	320310		Plastic dinnerware	1.51
5	320320		China and other dinnerware *	18.87
5	320330		Flatware	4.17
5	320340		Glassware	7.31
5	320350		Silver serving pieces	2.84
5	320360		Other serving pieces	2.08
5	320370		Nonelectric cookware *	31.21
5	320380		Tableware, nonelectric kitchenware	25.42
4	SMLLAPPL		Small appliances	30.64
5	320521		Small electric kitchen appliances *	22.93
5	320522		Portable heating and cooling equipment	7.71
3	MISCHHEQ	PEG	Miscellaneous household equipment	630.55
4	320120		Window coverings	17.09
4	320130		Infants' equipment	15.58
4	320140		Laundry and cleaning equip	22.42
4	320150		Outdoor equipment *	28.38
4	320210		Clocks	8.20
4	320220		Lamps and lighting fixtures	11.65
4	320231		Other household decorative items	169.49
4	320232		Telephones and accessories *	44.27
4	320410		Lawn and garden equipment *	71.89
4	320420		Power tools *	59.20
4	320901		Office furniture for home use *	10.48
4	320902		Hand tools *	12.41
4	320903		Indoor plants, fresh flowers *	60.03
4	320904		Closet and storage items	11.49
4	340904		Rental of furniture	6.66
4	430130		Luggage	6.28
4	690210		Telephone answering devices	1.70
4	690220		Calculators	1.55
4	690230		Business equipment for home use	0.67
4	320430		Other hardware	13.11
4	690242		Smoke alarms (owned home)	1.32
4	690241		Smoke alarms (renter)	0.07
4	690243		Smoke alarms (owned vacation)	0.00
4	690245		Other household appliances (owned home)	10.42
4	690244		Other household appliances (renter)	1.94
4	320905		Miscellaneous household equipment and parts	44.27
2	APPAREL	MEG	Apparel and services	1,894.51
3	MENBOYS	PEG	Men and boys	426.37
4	MENS		Men, 16 and over	356.27
5	360110		Men's suits *	29.16
5	360120		Men's sportcoats, tailored jackets	8.37
5	360210		Men's coats and jackets *	36.38
5	360311		Men's underwear *	19.56
5	360312		Men's hosiery	16.47
5	360320		Men's nightwear	3.57

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
5	360330		Men's accessories	30.14
5	360340		Men's sweaters and vests	12.53
5	360350		Men's active sportswear	14.26
5	360410		Men's shirts *	92.32
5	360511		Men's pants *	70.83
5	360512		Men's shorts, shorts sets	12.00
5	360901		Men's uniforms	4.10
5	360902		Men's costumes	6.60
4	BOYS		Boys, 2 to 15	70.10
5	370110		Boys' coats and jackets	5.67
5	370120		Boys' sweaters	2.84
5	370130		Boys' shirts *	10.74
5	370211		Boys' underwear	3.19
5	370212		Boys' nightwear	2.55
5	370213		Boys' hosiery	3.28
5	370220		Boys' accessories	3.78
5	370311		Boys' suits, sportcoats, vests	2.11
5	370312		Boys' pants *	20.67
5	370313		Boys' shorts, shorts sets	6.58
5	370903		Boys' uniforms	2.44
5	370904		Boys' active sportswear	3.13
5	370902		Boys' costumes	3.11
3	WMNSGRLS	PEG	Women and girls	726.18
4	WOMENS		Women, 16 and over	589.41
5	380110		Women's coats and jackets *	43.46
5	380210		Women's dresses	46.95
5	380311		Women's sportcoats, tailored jackets	4.29
5	380312		Women's vests and sweaters *	39.22
5	380313		Women's shirts, tops, blouses *	124.57
5	380320		Women's skirts	13.81
5	380331		Women's pants *	102.91
5	380332		Women's shorts, shorts sets	15.85
5	380340		Women's active sportswear	26.76
5	380410		Women's sleepwear	29.27
5	380420		Women's undergarments	41.84
5	380430		Women's hosiery	25.45
5	380510		Women's suits	29.07
5	380901		Women's accessories	26.79
5	380902		Women's uniforms	8.34
5	380903		Women's costumes	10.84
4	GIRLS		Girls, 2 to 15	136.77
5	390110		Girls' coats and jackets	7.12
5	390120		Girls' dresses and suits *	15.64
5	390210		Girls' shirts, blouses, sweaters *	38.23
5	390221		Girls' skirts and pants *	28.04
5	390222		Girls' shorts, shorts sets	9.87
5	390230		Girls' active sportswear	8.91
5	390310		Girls' underwear and sleepwear	8.21
5	390321		Girls' hosiery	6.05
5	390322		Girls' accessories	5.53
5	390901		Girls' uniforms	4.13
5	390902		Girls' costumes	5.04
3	INFANT	PEG	Children under 2	98.15
4	410110		Infant coat, jacket, snowsuit	2.88
4	410120		Infant dresses, outerwear	28.72
4	410130		Infant underwear *	54.63
4	410140		Infant nightwear, loungewear *	4.56
4	410901		Infant accessories	7.36
3	FOOTWEAR	PEG	Footwear	361.44
4	400110		Men's footwear *	116.54
4	400210		Boys' footwear	50.37
4	400310		Women's footwear *	150.52
4	400220		Girls' footwear	44.01
3	OTHAPPRL	PEG	Other apparel products and services	282.37
4	420110		Material for making clothes	8.54
4	420120		Sewing patterns and notions	10.97
4	430110		Watches *	15.10
4	430120		Jewelry *	111.63
4	440110		Shoe repair and other shoe service	1.36
4	440120		Coin-operated apparel laundry/dry cleaning *	51.21
4	440130		Alteration, repair and tailoring of apparel	6.71

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
4	440140		Clothing rental	4.10
4	440150		Watch and jewelry repair	6.81
4	440210		Apparel laundry & cleaning not coin-operated *	65.60
4	440900		Clothing storage	0.33
2	TRANS	MEG	Transportation	8,255.95
3	MOTVEHCO	PEG	Motor Vehicle Costs	4,513.14
4	VEHPURCH		Vehicle purchases (net outlay)	3,724.79
5	NEWCARS		Cars and trucks, new *	1,848.01
6	450110		New cars	1,010.59
6	450210		New trucks	837.42
5	USEDCARS		Cars and trucks, used	1,819.71
6	460110		Used cars	1,039.13
6	460901		Used trucks	780.58
5	OTHVEHCL		Other vehicles	57.07
6	450220		New motorcycles	25.25
6	450900		New aircraft	0.00
6	460902		Used motorcycles	31.82
6	460903		Used aircraft	0.00
4	VEHFINCH		Vehicle finance charges	464.39
5	510110		Automobile finance charges *	236.42
5	510901		Truck finance charges	209.55
5	510902		Motorcycle and plane finance charges	3.01
5	850300		Other vehicle finance charges	15.42
4	LEASVEH		Leased vehicles	189.11
5	450310		Car lease payments	97.53
5	450313		Cash downpayment (car lease)	6.32
5	450314		Termination fee (car lease)	0.10
5	450410		Truck lease payments	82.58
5	450413		Cash downpayment (truck lease)	1.92
5	450414		Termination fee (truck lease)	0.66
4	VEHXP&LV		Other Vehicle Expenses and Licenses	134.85
5	520110		State & Local Registration *	74.33
6	520111		Vehicle reg. state	66.78
6	520112		Vehicle reg. local	7.55
5	520310		Driver's license	5.81
5	520410		Vehicle inspection (added to S&L registration)	8.22
5	PARKING		Parking fees	18.60
6	520531		Parking fees in home city, excluding residence	15.60
6	520532		Parking fees, out-of-town trips	3.00
5	520541		Tolls	8.35
5	520542		Tolls on out-of-town trips	3.36
5	520550		Towing charges	5.22
5	620113		Automobile service clubs	10.95
3	GASOIL	PEG	Gasoline and motor oil	1,381.31
4	470111		Gasoline *	1,252.70
4	470112		Diesel fuel	12.91
4	470113		Gasoline on out-of-town trips	101.98
4	470114		Gasohol	0.00
4	470211		Motor oil	12.69
4	470212		Motor oil on out-of-town trips	1.03
3	CARP&R	PEG	Maintenance and repairs	781.44
4	CARPAR		Maintenance and Repair Parts	178.68
5	470220		Coolant, additives, brake, transmission fluids	5.01
5	480110		Tires - purchased, replaced, installed *	102.66
5	480213		Parts, equipment, and accessories *	56.66
5	480214		Vehicle audio equipment, excluding labor	7.11
5	480212		Vehicle products	7.23
4	CARREP		Maintenance and Repair Service *	602.76
5	490000		Misc. auto repair, servicing	33.31
5	490110		Body work and painting	29.25
5	490211		Clutch, transmission repair	57.68
5	490212		Drive shaft and rear-end repair	8.48
5	490221		Brake work, including adjustments	65.88
5	490231		Repair to steering or front-end	17.83
5	490232		Repair to engine cooling system	24.69
5	490311		Motor tune-up	47.42
5	490312		Lube, oil change, and oil filters	75.38
5	490313		Front-end alignment, wheel balance and rotation	14.38
5	490314		Shock absorber replacement	6.83
5	490316		Gas tank repair, replacement	3.96
5	490318		Repair tires and other repair work	46.63

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
5	490319		Vehicle air conditioning repair	17.89
5	490411		Exhaust system repair	15.45
5	490412		Electrical system repair	35.66
5	490413		Motor repair, replacement	90.59
5	490900		Auto repair service policy	11.45
3	500110	PEG	Vehicle insurance *	898.90
3	RENTVEH	PEG	Rented vehicles	27.38
3	PUBTRANS	PEG	Public transportation	653.77
4	530110		Airline fares *	401.70
4	530210		Intercity bus fares	26.64
4	530510		Intercity train fares	23.41
4	530901		Ship fares	58.98
4	LOCTRANS		Local Transportation (Not a CES item)	143.04
5	530311		Intracity mass transit fares	81.26
5	530312		Local trans. on out-of-town trips	16.87
5	530411		Taxi fares and limousine service on trips	9.92
5	530412		Taxi fares and limousine service *	30.95
5	530902		School bus	4.03
2	MEDICAL	MEG	Medical	2,349.45
3	HEALTINS	PEG	Health insurance *	1,200.79
4	COMHLTIN		Commercial health insurance	239.84
5	580111		Traditional fee for service health plan (not BCBS)	78.16
5	580113		Preferred provider health plan (not BCBS)	161.68
4	BCBS		Blue Cross, Blue Shield	356.45
5	580112		Traditional fee for service health plan (BCBS)	62.69
5	580114		Preferred provider health plan (BCBS)	118.30
5	580312		Health maintenance organization (BCBS)	124.28
5	580904		Commercial Medicare supplement (BCBS)	45.03
5	580906		Other health insurance (BCBS)	6.15
4	580311		Health maintenance organization (not BCBS)	301.65
4	580901		Medicare payments	146.35
4	COMEDOTH		Commercial Medicare suppl & health insurance	156.49
5	580903		Commercial Medicare supplement (not BCBS)	88.03
5	580905		Other health insurance (not BCBS)	68.46
3	MEDSERVS	PEG	Medical services	707.61
4	560110		Physician's services *	181.00
4	560210		Dental services *	252.69
4	560310		Eyecare services	50.18
4	560400		Service by professionals other than physician	46.56
4	560330		Lab tests, x-rays	35.40
4	570110		Hospital room *	43.75
4	570210		Hospital service other than room	65.77
4	570240		Medical care in retirement community	0.00
4	570220		Care in convalescent or nursing home	15.11
4	570902		Repair of medical equipment	0.00
4	570230		Other medical care services	17.15
3	DRUGS&ME	PEG	Drugs and Medical Supplies	441.05
4	DRUGS		Drugs	346.85
5	550210		Nonprescription drugs *	49.88
5	550410		Nonprescription vitamins	30.82
5	540000		Prescription drugs *	266.14
4	MEDSUPPL		Medical supplies	94.20
5	550110		Eyeglasses and contact lenses *	52.60
5	550340		Hearing aids	8.94
5	550310		Topicals and dressings *	23.57
5	550320		Medical equipment for general use	2.89
5	550330		Supportive and convalescent medical equipment	4.55
5	570901		Rental of medical equipment	0.44
5	570903		Rental of supportive, convalescent equipment	1.22
2	RECREATN	MEG	Recreation	2,850.41
3	FEESADM	PEG	Fees and admissions	606.30
4	610900		Recreation expenses, out-of-town trips	32.13
4	620111		Social, recreation, civic club membership *	106.53
4	620121		Fees for participant sports *	91.47
4	620122		Participant sports, out-of-town trips	27.09
4	620211		Movie, theater, opera, ballet *	129.68
4	620212		Movie, other admissions, out-of-town trips	56.76
4	620221		Admission to sporting events	37.01
4	620222		Admission to sports events, out-of-town trips	18.92
4	620310		Fees for recreational lessons *	74.57
4	620903		Other entertainment services, out-of-town trips	32.13

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
3	TVAUDIO	PEG	Television, radios, sound equipment	361.69
4	TELEVSN		Televisions	186.16
5	310110		Black and white tv	0.90
5	310120		Color TV - console	37.90
5	310130		Color TV - portable, table model *	46.70
5	310210		VCR's and video disc players *	25.53
5	310220		Video cassettes, tapes, and discs *	43.39
5	310230		Video game hardware and software	27.73
5	340610		Repair of tv, radio, and sound equipment	3.11
5	340902		Rental of televisions	0.90
4	AUDIO		Radios, sound equipment	175.53
5	310311		Radios	3.65
5	310312		Phonographs	0.00
5	310313		Tape recorders and players	7.66
5	310320		Sound components and component systems *	19.50
5	310331		Miscellaneous sound equipment	7.64
5	310332		Sound equipment accessories	11.33
5	310334		Satellite dishes	0.76
5	310341		CD, tape, record and video mail order clubs	9.07
5	310342		Records, CDs, audio tapes, needles *	41.52
5	340905		Rental of VCR, radio, and sound equipment	0.11
5	610130		Musical instruments and accessories	25.03
5	620904		Rental and repair of musical instruments	1.18
5	620912		Rental of video cassettes, tapes & discs *	48.09
3	PETSPLAY	PEG	Pets, toys, and playground equipment	436.27
4	PETS		Pets	290.79
5	610310		Pet food *	134.54
5	610320		Pet purchase, supplies, medicine	67.85
5	620410		Pet services	15.87
5	620420		Vet services *	72.53
4	610110		Toys, games, hobbies, and tricycles *	141.49
4	610120		Playground equipment	4.00
3	ENTEROTH	PEG	Other entertainment supplies, equipment, and services	646.69
4	UNMTRBOT		Unmotored recreational vehicles	104.54
5	600121		Boat without motor and boat trailers	34.98
5	600122		Trailer and other attachable campers	69.56
4	PWRSPVEH		Motorized recreational vehicles	156.56
5	600141		Purchase of motorized camper	32.89
5	600142		Purchase of other vehicle *	60.89
5	600132		Purchase of boat with motor	62.79
4	RNTSPVEH		Rental of recreational vehicles	1.60
5	520904		Rental noncamper trailer	0.00
5	520907		Boat and trailer rental out-of-town trips	0.04
5	620909		Rental of campers on out-of-town trips	0.18
5	620919		Rental of other vehicles on out-of-town trips	1.03
5	620906		Rental of boat	0.06
5	620921		Rental of motorized camper	0.00
5	620922		Rental of other RV's	0.29
4	600110		Outboard motors	2.57
4	520901		Docking and landing fees	4.92
4	RECEQUIP		Sports, recreation and exercise equipment	220.78
5	600210		Athletic gear, game tables, exercise equip *	93.79
5	600310		Bicycles	24.50
5	600410		Camping equipment	19.39
5	600420		Hunting and fishing equipment	34.74
5	600430		Winter sports equipment	6.76
5	600901		Water sports equipment	18.22
5	600902		Other sports equipment	20.61
5	620908		Rental and repair of miscellaneous sports equipment	2.77
4	PHOTOEQ		Photographic equipment, supplies and services	135.73
5	610210		Film *	29.15
5	610220		Other photographic supplies	3.11
5	620330		Film processing *	42.28
5	620905		Repair and rental of photographic equipment	0.18
5	610230		Photographic equipment	33.25
5	620320		Photographer fees	27.77
4	610901		Fireworks	3.25
4	610902		Souvenirs	5.16
4	610903		Visual goods	1.41
4	620913		Pinball, electronic video games	10.16
3	PERSPROD	PEG	Personal care products	362.62

APPENDIX 2.—ESTIMATED DC AREA MIDDLE INCOME ANNUAL CONSUMER EXPENDITURES—Continued

[Asterisks show Detailed Expenditure Categories (DECs) for which OPM surveyed items.]

Level	Code	Group	Category name	Expenditures
4	640110		Hair care products *	74.26
4	640120		Nonelectric articles for the hair	8.90
4	640130		Wigs and hairpieces	1.36
4	640210		Oral hygiene products, articles	34.58
4	640220		Shaving needs	21.06
4	640310		Cosmetics, perfume, bath preparation *	171.16
4	640410		Deodorants, feminine hygiene, misc. pers. care	38.52
4	640420		Electric personal care appliances	12.79
3	PERSSERV	PEG	Personal care services	272.89
4	650310		Personal care service *	272.47
4	650900		Repair of personal care appliances	0.43
3	READING	PEG	Reading	163.94
4	590110		Newspapers	64.70
5	590111		Newspaper subscriptions *	49.33
5	590112		Newspaper, non-subscriptions *	15.36
4	590210		Magazines	31.86
5	590211		Magazine subscriptions *	20.28
5	590212		Magazines, non-subscriptions *	11.58
4	590900		Newsletters	0.00
4	590220		Books thru book clubs	9.41
4	590230		Books not thru book clubs *	57.67
4	660310		Encyclopedia and other sets of reference books	0.30
2	EDU&COMM	MEG	Education and Communication	2,023.31
3	EDUCATN	PEG	Education	81.28
4	670210		Elementary and high school tuition *	65.50
4	660210		School books, supplies, for elem. and H.S.	15.79
3	COMMICAT	PEG	Communications	1,726.83
4	PHONE		Telephone services	1,130.84
5	270101		Telephone svcs in home city, excluding car *	744.36
5	270102		Telephone services for mobile car phones	362.15
5	270103		Pager service	2.10
5	270104		Phone cards	22.24
4	690114		Computer information services *	143.34
4	270310		Community antenna or cable TV *	452.65
3	COMP&SVC	PEG	Computers and Computer Services	215.19
4	690113		Repair of computer systems for nonbus. use	3.75
4	690111		Computers & hardware nonbusiness use *	188.93
4	690112		Computer software/accessories for nonbus. use	22.50
2	MISCMEG	MEG	Miscellaneous	5,902.05
3	TOBACCO	PEG	Tobacco products and smoking supplies	231.85
4	630110		Cigarettes *	213.08
4	630210		Other tobacco products	17.35
4	630220		Smoking accessories	1.42
3	MISC	PEG	Miscellaneous	852.67
4	620925		Miscellaneous fees	3.31
4	620926		Lotteries and pari-mutuel losses	60.83
4	680110		Legal fees *	141.87
4	680140		Funeral expenses *	51.84
4	680210		Safe deposit box rental	4.18
4	680220		Checking accounts, other bank service charges	32.14
4	680901		Cemetery lots, vaults, maintenance fees	17.21
4	680902		Accounting fees *	49.48
4	680903		Miscellaneous personal services	51.76
4	710110		Credit card interest and annual fees *	341.82
4	900002		Occupational expenses	39.66
4	790600		Expenses for other properties	51.98
4	880210		Interest paid, home equity line of credit	0.00
4	620115		Shopping club membership fees	6.58
3	INSPENSN	PEG	Personal insurance and pensions	4,817.54
4	LIFEINSR		Life and other personal insurance *	465.85
5	700110		Life, endowment, annuity, other personal ins.	447.53
5	002120		Other nonhealth insurance	18.31
4	PENSIONS		Pensions and Social Security	4,351.69
5	800910		Deductions for government retirement *	103.66
5	800920		Deductions for railroad retirement	3.15
5	800931		Deductions for private pensions	401.77
5	800932		Non-payroll deposit to retirement plans	433.87
5	800940		Deductions for Social Security	3,409.24

Appendix 3.—COLA Survey Items and Descriptions

Adhesive Bandages. One box of 40 adhesive bandages. Assorted sizes. Clear or flexible okay to use. (**Note:** in Virginia, add tax to this item.) Use: Band-Aid Bandages Sheer.

Airfare Los Angeles (LAX). Lowest cost round trip ticket to Los Angeles, CA, 3-week advance reservation, departing and returning midweek and including Saturday night stay. Price non-refundable ticket. Disregard restrictions, super-saver fares, and special promotions. In reference area, price flights from BWI for Maryland, Reagan National for the District of Columbia, and Dulles for Virginia. Price all flights via Internet on same day during the DC area survey. Use: Major carrier.

Airfare Miami (MIA). Lowest cost round trip ticket to Miami, FL, 3-week advance reservation, departing and returning midweek and including Saturday night stay. Price non-refundable ticket. Disregard restrictions, super-saver fares, and special promotions. In reference area, price flights from BWI for Maryland, Reagan National for the District of Columbia, and Dulles for Virginia. Price all flights via Internet on same day during the DC area survey. Use: Major carrier.

Airfare Seattle (SEA). Lowest cost round trip ticket to Seattle, WA, 3-week advance reservation, departing and returning midweek and including Saturday night stay. Price non-refundable ticket. Disregard restrictions, super-saver fares, and special promotions. In reference area, price flights from BWI for Maryland, Reagan National for the District of Columbia, and Dulles for Virginia. Price all flights via Internet on same day during the DC area survey. Use: Major carrier.

Airfare St. Louis (STL). Lowest cost round trip ticket to St. Louis, MO, 3-week advance reservation, departing and returning midweek and including Saturday night stay. Price non-refundable ticket. Disregard restrictions, super-saver fares, and special promotions. In reference area, price flights from BWI for Maryland, Reagan National for the District of Columbia, and Dulles for Virginia. Price all flights via Internet on same day during the DC area survey. Use: Major carrier.

Alternator (Ford). Price of a remanufactured 130-amp alternator for a 2001 Ford Explorer 4.0L Fuel Injected V6 Vin:E with A/C and automatic transmission to the consumer at a dealership. Report price net of core charge (*i.e.*, price after core is returned). Report core charge in comments. If only

new alternator available, report new price as match. If price varies whether dealer installs, assume dealer installs but do not price labor. (Use auto dealer worksheet.) Use: Dealer recommended brand.

Alternator (Honda). Price of a remanufactured alternator for a 2001 Honda Civic LX sedan, 4 door, 1.7 liter, fuel injected, L4, 4 cylinder, automatic transmission, to the consumer at a dealership. Report price net of core charge (*i.e.*, price after core is returned). Report core charge in comments. If only new alternator available, report new price as match. If price varies whether dealer installs, assume dealer installs but do not price labor. (Use auto dealer worksheet.) Use: Dealer recommended brand.

Alternator (Nissan). Price of a remanufactured alternator for a 2001 Nissan Altima SE sedan, 4 door, automatic transmission. Report price net of core charge (*i.e.*, price after core is returned). Report core charge in comments. If only new alternator available, report new price as match. If price varies whether dealer installs, assume dealer installs but do not price labor. (Use auto dealer worksheet.) Use: Dealer recommended brand.

Alternator (Toyota). Price of a remanufactured alternator for a 2001 Toyota Corolla LE sedan, 4 door, automatic transmission. Report price net of core charge (*i.e.*, price after core is returned). Report core charge in comments. If only new alternator available, report new price as match. If price varies whether dealer installs, assume dealer installs but do not price labor. (Use auto dealer worksheet.) Use: Dealer recommended brand.

Antacid. Ninety-six-count size of extra strength tablets. Use: Tums EX 96 tablets.

Antibacterial Ointment. Half-ounce tube of antibacterial ointment. Do not price pain reliever ointment. Use: Neosporin Original 1/2 oz.

Antibacterial Ointment. One-ounce tube of antibacterial ointment. Do not price pain reliever ointment. Use: Neosporin Original 1 oz.

Apples. Price per pound, loose (not bagged) apples. If only bagged apples available, report bag weight. Use: Red Delicious.

Area Rug (Catalog). Approximately 8 foot by 11 foot oval braided rug, flat woven, 3-ply yarn, wool/nylon/rayon blend, with multi-colored accents. JC Penney catalog number: A751-0449. Include sales tax and shipping and handling. Use: American Traditions.

Artificial Sweetener. Fifty-count package of artificial sweetener. Use: Equal.

Aspirin. Fifty tablets of regular strength aspirin. Use: Bayer, Regular Strength.

Auto Finance Rate. Interest rate for a 4-year loan on a new car with a down payment of 20 percent. Assume the loan applicant is a current bank customer who will make payments by cash/check and not by automatic deduction from the account. Enter 7.65 percent as \$7.650. If bank needs to know type of car, use specified Ford. Obtain interest rate and verify phone number. Rate will be checked again during the DC survey to see if it has changed. Use: Interest percentage rate.

Baby Food Formula. Thirty-two fluid-ounce bottle of infant formula with iron R-T-F. Look for blue print on label. There are at least four other types of Similac with different color print and different prices. Use: Similac Infant Formula with Iron R-T-F.

Baby Food. Four-ounce jar strained vegetables or fruit. Use: Gerber 2nd.

Babysitter. Minimum hourly wage appropriate to area. Use: nnnnnnn Government wage data.

Baking Dish 8 × 8. Glass baking dish, 8 inch square glass, clear or tinted. Exclude baking dish with cover or lid. Use: Anchor Hocking, 8 × 8.

Baking Dish 9 × 13. Glass baking dish, 9 × 13 × 2 inch glass, clear or tinted. Exclude baking dish with cover or lid. Use: Pyrex, 9 × 13, 3 quart.

Bananas. Price per pound of bananas. If sold by bunch, report price and weight of average sized bunch. Use: Available brand.

Bath Towel (Bed Bath & Beyond). Bath towel, approximately 30 inch × 54 inch, 100 percent pima cotton with pima cotton loops. Use: Wamsutta, Regency Pima.

Bath Towel (K-Mart). Bath towel, approximately 66 inch × 35 inch wide, 100 percent cotton, medium weight. Side hem is woven selvage. Bottom hem may be folded. Use: Martha Stewart 3 Star Big Towel.

Bath Towel (Wal-Mart). Approximately 56 inch × 30 inch wide, 100 percent cotton, medium weight. Side hem is woven selvage. Bottom hem may be folded. Price Springmaid Pima. Use: Springmaid.

Beer at Home (Bottles). Six-pack of 12 ounce bottles of Budweiser. Do not price refrigerated beer unless that is the only type available. Use: Budweiser.

Beer at Home (Cans). Six-pack of 12 ounce cans of Budweiser. Do not price refrigerated beer unless that is the only type available. Use: Budweiser.

Beer Away. All restaurant types. One glass of Budweiser beer. Check sales tax and include in price. Use: Budweiser.

Board Game. Price standard edition, not deluxe. Use: Sorry!

Book, Paperback. Store price (not publishers list price unless that is the store price) for top-selling fiction, paperback book. During the DC area survey price via Amazon.com and include any additional shipping cost to the Caribbean. Use: *The Last Juror*, John Grisham, *The Calhouns*, Nora Roberts.

Bowling. One game of open (or non-league) 10-pin bowling on a weekday (Monday–Friday) between the hours of 10 a.m. to 5 p.m. Exclude shoe rental. If priced by the hour, report hourly rate divided by 5 (*i.e.*, estimated number of games per hour) and note hourly rate in comments. Do not price duck-pin bowling. Use: Bowling.

Boys Jeans. Relaxed fit, size range 9 to 14, pre-washed jeans, not bleached, stone-washed or designer jeans. Use: Levis 550 Relaxed Fit.

Boys Polo Shirt. Knit polo-type short sleeve shirt with collar, solid color, Cotton/polyester, size range 8 to 14. Use: Ralph Lauren (Macys), Polo Club (JC Penney/Sears).

Boys T-Shirt. Screen-printed t-shirt for boys ages 8 thru 10 (sizes 7 to 14). Pullover with crew neck, short sleeves, cotton or polyester/cotton blend. Do not price team logo shirts. Use: Green Dog Blues (Macys), Canyon River Blues (JC Penney/Sears), Osh Gosh or equivalent.

Bread, Wheat, Butter Top. Loaf of sliced wheat bread, 20 to 24 ounces. Holsum Integral is an equivalent brand. Do not price store brand. Use: Home Pride.

Bread, White. Loaf of sliced white bread, 22 to 24 ounces. Wonder is an equivalent brand. Do not price store brand. Use: Holsum.

Breakfast Full Service. Two to four strips of bacon or sausages, two eggs, toast, hash browns, coffee, and small juice. Check sales tax and include in price. At Denny's, price the Two-Egg Breakfast. At IHOP, price the Quick Two-Egg Breakfast. Use: Bacon and eggs.

Cable TV Service. One month of cable service. Include converter and universal remote fees. Do not price value packages or premium channels; *i.e.*, Showtime, HBO, Cinemax. Do not report hook-up charges. Itemize taxes and fees as percent rates or amounts and add to price. Note in comments whether digital or analog service. Use: Local provider.

Camera Film. Four-pack, 35 millimeter, 24 exposure, 400 ASA (speed). Use: Kodak Max 400.

Candy Bar. One regular size candy bar, weight approximately 1.55 to 2.13 ounces. Do not price king-size or multi-pack. Use: Snickers.

Canned Chopped Ham. Twelve-ounce can of processed luncheon meat. Do not

price turkey, light, or smoked varieties. Use: SPAM.

Canned Green Beans. Fourteen to 15-ounce can of plain-cut green beans. Use: Del Monte.

Canned Ham. Three-pound canned ham. Use: Hormel, Black Label.

Canned Peaches. Fifteen to 16-ounce can of sliced peaches. Use: Del Monte.

Canned Soup. Regular size (approximately 10.7 ounces) can of condensed soup. Not hearty, reduced-fat or salt-free varieties. Use: Campbell's Chicken Noodle Soup.

Canned Tuna. Chunk light tuna, packed in spring water (approximately 6 ounces). Do not price fancy style or albacore. Use: Star Kist.

Cellular Phone 500 Minute Plan. Cellular phone service with 500 anytime minutes per month. Price via Internet all areas at the same time during the DC area survey. Call for fee information. Itemize taxes and fees and add to price. Use: Major provider.

Cellular Phone 600 Minute Plan. Cellular phone service with 600 anytime minutes per month. Price via Internet all areas at the same time during the DC area survey. Call for fee information. Itemize taxes and fees and add to price. Use: Major provider.

Cereal. Raisin bran cereal, approximately 20-ounce box. Use: Kellogg's Raisin Bran.

Charcoal Grill. Charcoal grill, heavy gauge, porcelain-enameled, steel lid, approximately 22.5 inches diameter. Use: Weber 1 Touch Silver 22½-inch, model 741001.

Cheese. Twelve-ounce package cheese, 16 slices. Okay to price yellow or white, but do not price reduced-fat or fat-free varieties. Use: Kraft Singles, American.

Chicken Breast, Skinless, Boneless. Price per pound of USDA grade boneless, skinless, fresh chicken breasts. Price store brand if available, otherwise record brand. Use: Store brand.

Chicken, Whole Fryer, Fresh. Price per pound of USDA graded, whole fryer, fresh chicken. If multiple brands available, match the lowest priced item and note in comments. If only frozen chicken available, price as substitute. Use: Available brand.

Chuck Roast, Bone-in. Price per pound, fresh (not frozen or previously frozen) bone-in beef chuck pot roast. Price USDA Select or un-graded if available. If not available, note USDA grade in comments. Use average size package; *i.e.*, not family-pack, value-pack, super-saver pack, or equivalent. If multiple brands available (*e.g.*, Angus), match the lowest priced item and note in comments. Use: Available brand.

Cigarettes. One pack filter kings. Include State and/or Federal tobacco tax in price if normally part of the price. Report sales tax in the same manner as any other taxable item. Use: Marlboro.

Claw Hammer. Twenty-ounce, straight claw hammer with shock reduction grip. Head and handle forged in one piece. Use: Estwing (E3–20S).

Coffee, Ground. Thirteen-ounce can. Do not price decaffeinated or special roasts. Use: Maxwell House, Original.

Compact Disc. Current best-selling CD. Do not price double CDs. Use: *Breakaway*, Kelly Clarkson, *Genius Loves Company*, Ray Charles.

Contact Lenses. One box of disposable contact lenses, three pairs in the box. A pair lasts 2 weeks. Use: Bausch & Lomb, Acuvue II.

Cookies. Approximately 16-ounce package of chocolate chip cookies. Use: Nabisco Chips Ahoy.

Cooking Oil. Forty-eight fluid ounce plastic bottle of vegetable oil. Use: Crisco.

Cordless Phone 2.4 GHz. Cordless phone with Caller ID and digital answering machine. Use: GE 27998GE6 (Wal-Mart), AT&T 1465ESP (K-Mart).

Cordless Phone 900 MHz (K-Mart). Cordless phone, 900 MHz. Use: Uniden EZi996 (Wal-Mart), GE 26998GE1 (K-Mart).

Credit Card Gold Interest & Annual Fee. Obtain credit card interest rate of a gold card and apply it to the national average balance (\$8,562) plus any annual fees charged by the bank. Price standard plan without airline miles or other special offers. (Use bank worksheet). Use: Gold VISA/MasterCard.

Cremation. Direct cremation. Includes removal of remains, local transportation to crematory, necessary body care and minimal services of the staff. Include crematory fee. Do not include price of urn. Ask if crematory fee, Medical Examiner fee, and minimum basic container are included. Ask if anything other than basic service, such as a funeral service, is included. Use: Cremation.

Cured Ham, Boneless. Price per pound of a boneless cured ham. If multiple brands available, match the lowest priced item and note in comments. Use: Hormel, Cure 81.

Curved Claw Hammer. Sixteen-ounce, curved claw hammer with jacketed graphite handle and nylon vinyl grip. Use: Stanley (51–505).

Day Care. One month of day care for a 3-year-old child, 5 days a week, about 10 hours per day. If monthly rate is not available, (1) obtain weekly rate, (2) record rate in the comments section,

and (3) multiply weekly rate by 4.33 to obtain monthly rate. Use: Day care.

Dental Clean and Check-Up. Current adult patient charge for routine exam, including two bite-wing x-rays and cleaning of teeth with light scaling and polishing. No special treatment of gums or teeth. Do not price an initial visit or specialist or oral surgeon. (Dental codes: 0120, 0272, 1110.) Use: Dentist.

Dental Crown. Cost of a full crown on a lower molar, porcelain fused to a high noble metal. Include price of preparation or restoration of tooth to accept crown. Price for an adult. (Dental code: 2750.) Use: Dentist.

Dental Filling. Lower molar, two surfaces resin-based composite filling. Price for an adult. (Dental code: 2392.) Use: Dentist.

Dining Table Set (Catalog). Solid hardwood butcher-block top dining table with six coordinating slat-back chairs, plus two bonus side chairs free. Table measures 42 inches by 60 inches. JC Penney catalog number: A796-1323. Include sales tax and shipping and handling. Use: 5-piece casual dining set.

Dinner Full Service—Filet Mignon. Extra fine dining, fine dining, and Outback-type restaurants. Filet mignon (6 to 10 ounce) with one or two small side dishes (e.g., rice or potato), salad and coffee. Do not include tip. Check sales tax and include in price. Use: Filet mignon.

Dinner Full Service—Steak, Large. Extra fine dining, fine dining, and Outback-type restaurants. NY strip steak (10 to 16 ounce) with one or two small side dishes (e.g., rice or potato), salad and coffee. Do not include tip. Check sales tax and include in price. Use: Steak dinner, large.

Dinner Full Service—Steak, Medium. Casual and pancake house restaurants. Approximately 8 to 12 ounce steak, with one or two small side dishes (e.g., rice or potato), side salad or salad bar, and coffee. Meal should not include dessert. If 8 to 12 ounce unavailable, price closest size and note in comments. Check sales tax and include in price. Use: Steak dinner, medium.

Dish Set. Patterned tableware, 16 to 20 piece set. Use: Corelle Chutney 20 piece set (Wal-Mart), Martha Stewart Everyday 16 piece striped set (K-Mart).

Disposable Diapers. Grocery and discount stores. Pampers: Forty-eight count package, Stage 2 (child 12 to 18 pounds), Jumbo disposable diapers with koala fit grips. If Stage 2 is not available, price a different stage Pampers Jumbo diaper, report as match, and note stage in comments. Huggies: Forty-eight count package, Step 2 (child 12 to 18 pounds), Jumbo, Ultratrim disposable diapers with stretch waist. If Step 2 is not

available, price a different step Huggies Jumbo diaper, report as match, and note step in comments. Use: Pampers, Baby Dry, Jumbo, Stage 2; Huggies, Ultratrim, Jumbo, Step 2.

Doctor Office Visit. Typical fee for office visit for an adult when medical advice or simple treatment is needed. Do not price initial visit. Exclude regular physical examination, injections, medications, or lab tests. Use general practitioner not pediatrician or other specialist. Medical code: 99213. Use: Doctor.

Drill, Cord. Variable speed, 3/8-inch electric drill, keyless chuck, approximately 5 amp. Use: Black & Decker (DR220K).

Drill, Cordless. Variable speed, reversible, 3/8-inch keyless chuck, 14.4 volt, electric drill with fast recharge, with battery charger. Use: DeWalt (DC728KA).

Dry Clean Man's Suit. Dry cleaning of a two-piece man's suit of typical fabric. Do not price for silk, suede or other unusual materials. Use: Dry cleaning.

DVD Movie. Current best-selling DVD movie. Use: *Friday Night Lights, The Village* (K-Mart); *Ray, Mulan II* (Wal-Mart).

DVD Player. Progressive scan one-disc DVD player with remote control. **Note:** Model numbers may vary slightly. Use: Panasonic DVD-S27 (K-Mart), RCA DRC233N (Wal-Mart), Sony DVPNS575P/S.

Education, Private K-12. Cost of tuition and all access fees, materials fees, books, and registration fees that are not included in tuition. If price varies by grade, record in comments price for each grade. Note any annual, recurring fees; i.e., registration, computer, activity, etc. If pricing at church-affiliated schools, note any rate differences for church members versus others. Use: Private School K-12.

Eggs (White, Large). One dozen large white Grade A eggs. If multiple brands available, match the lowest priced item and note in comments. Use: Available brand.

Electric Bill. Total utility rates for electricity from utility function model, including all taxes and surcharges, etc. Also try to obtain a bill from a local resident for comparison purposes. Obtain rates for the last 12 months to include any seasonal rate changes and energy charges, which vary monthly. Use: Local provider.

Electric Vacuum. Electric vacuum cleaner with 2-amp motor. Use: K-Mart: Eureka Boss Superbroom (164D6); Wal-Mart: Eureka Boss SuperLite (402A).

Eye Round Roast, Boneless. Price per pound, fresh (not frozen or previously frozen) boneless eye round roast. Price

USDA Select or un-graded if available. If not available, note USDA grade in comments. Use average size package, i.e., not family-pack, value-pack, super-saver pack, or equivalent. If multiple brands available (e.g., Angus), match the lowest priced item and note in comments. Use: Available brand.

Fast Food Breakfast. Ham or Bacon, Egg & Cheese Bagel value meal, includes hash browns and coffee. Check sales tax and include in price. Use: Ham or Bacon, Egg & Cheese Bagel (medium).

Fast Food Dinner Burger. Hamburger, fries (or other side), and soft drink. Check sales tax and include in price. Use: Wendy's: Classic Single Combo (medium); McDonald's: Big Mac Value Meal (medium).

Fast Food Dinner Pizza. Medium cheese pizza (without extra cheese) with salad and small soft drink. Check sales tax and include in price. Use: Medium cheese pizza.

Fast Food Lunch Burger. Hamburger, fries (or other side), and soft drink. Check sales tax and include in price. Use: Wendy's: Classic Single Combo (medium); McDonald's: Big Mac Value Meal (medium).

Fast Food Lunch Pizza. Personal size cheese pizza (without extra cheese) or one slice of cheese pizza. Include price of a small soft drink. Do not include price of salad or other side dishes. Check sales tax and include in price. Use: Cheese pizza.

FEGLI (Life Insurance). Federal life insurance. This item is not surveyed locally because it is constant across all areas. Use: FEGLI.

FEHB Insurance. Self only and family. This item is not surveyed locally. OPM estimates insurance prices from employee premiums and enrollment data from Central Personnel Data File. Use: FEHB.

FERS/CSRS Contributions. Federal retirement contributions. This item is not surveyed locally because it is constant across all areas. Use: FERS/CSRS.

Filing Cabinet. Two-drawer file cabinet. One drawer has lock. File drawers accommodate hanging files. Use: K-Mart: Home Essentials; Wal-Mart: Space Solutions Ready File (10002).

Film Processing 1 Hour. One-hour color film processing for 24 exposure, 35 mm prints. Use: K-Mart: In-store processing, 4 x 6 double prints; Wal-Mart: In-store processing, 3 x 5 or 4 x 6 single prints.

Ford Explorer 4WD. Purchase price of a 2005 Ford Explorer XLT, 4-wheel drive, 4 door, 4.6 liter, 8 cylinder, 5-speed automatic overdrive transmission, model number U73/225A. Please note

the price of any special option packages. (Use auto dealer worksheet.) Use: 2005 Ford Explorer XLT.

Ford License, Registration, Taxes, and Inspection. License, registration, periodic taxes (e.g., road or personal property tax, but NOT one-time taxes such as sales tax), and inspection (e.g., safety and emissions) on the Ford specified for survey. (Use auto dealer worksheet.) Use: Specified Ford.

Fresh Mahi-Mahi (Dorado). Price per pound of fresh Mahi-Mahi fillet. Do not price previously frozen (PF) or specially prepared varieties. Do not price family-pack, value-pack, super-save pack, or equivalent. If multiple brands available, match the lowest priced item and note in comments. Use: Available brand.

Fresh Salmon. Price per pound of Atlantic farm-raised salmon skinless fillet, fresh. Use: Available brand Atlantic farm-raised.

Frozen Fish Fillet. Price of one box of frozen ocean whitefish crispy battered fillets. Use: Gorton's Crispy Battered Fillets (10 count), Gorton's Beer Batter Fish Fillets (10 count), Mrs. Paul's Crispy Battered Fillets (6 count).

Frozen Meal. Price of frozen dinner. Use: Healthy Choice Chicken Teriyaki (11 ounce), Lean Cuisine Chicken Glazed (8.5 ounce).

Frozen Orange Juice. Twelve-fluid-ounce can of orange juice concentrate (makes 48 fluid ounces). Do not price calcium fortified, pulp-free, country style, etc. Use: Minute Maid.

Frozen Peas. Nine-ounce package of frozen petite or baby peas, no sauce or onions. Use: Green Giant Baby Sweet Peas.

Frozen Waffles. Ten-count box of frozen waffles per package. Do not price fat-free or whole wheat varieties. Use: Eggo (10 count).

Fruit Drink. Ten pack of fruit drink, not juice, any flavor. Capri Sun 10 count is an equivalent brand. Use: Hi-C fruit punch drink 10-pack.

Fruit Juice. Sixty-four-ounce bottle of cranberry juice. Use: Ocean Spray Cranberry Juice.

Gas. Price per gallon for self-service unleaded regular gasoline. Use: Major brand.

Gelatin. Three-ounce box gelatin dessert. Use: JELL-O.

General Admission Evening Film. Adult price for evening showing, current release (currently advertised on television). Report weekend evening price if different from weekday. Use: Movie.

Girls Dress. Girls print chiffon dress. Simple lines, short sleeves. Machine washable. Use: JC Penney/Sears: Store brand; Macys: Tommy Hilfiger.

Girls Dress (Catalog). Floral design. Ruffle sleeves and hemline. Polyester. Machine wash, line dry. Include sales tax and shipping and handling. Use: JC Penney Hype Spring Fantasy Dress (catalog number A380-9913).

Girls Jeans. Slim fit in the seat and thighs with flared legs and traditional 5-pocket styling, for girls ages 8 to 10 (size 7 to 14). Use: JC Penney/Sears: Levis 517; Macys: Ralph Lauren.

Girls Polo Type Top. Girls polo cotton blend, striped or solid pattern. Price sizes 7 to 14 or S, M, and L in girls sizes. Use: JC Penney/Sears: Lands End; Macys: Ralph Lauren.

Gold Ball Earrings (Jewelry Store): One pair 6mm, 14K hollow, gold ball earrings for pierced ears. If not available, but 4, 5, 7 or 8mm are available, record each separately as a substitute. Do not price gold filled. Use: Store brand.

Golf, Resort. Eighteen holes of golf on weekend with cart, tee-time approximately 2 p.m. Do not price par 3 courses. If only nine holes available, double price. If only daily rate available (unlimited number of holes), report the Saturday or Sunday rate. Price local resident fee (not hotel guest fee). Price outside of local jurisdiction if necessary. Use: Golf, resort.

Ground Beef. Price per pound, fresh (not frozen or previously frozen) ground beef or ground chuck. Use average size package; i.e., not family-pack, value-pack, super-saver pack, or equivalent. If multiple brands available (e.g., Angus), match the lowest priced item and note in comments. Use: Available brand, 7 percent fat and 20 percent fat.

Hamburger Buns. Eight-count package of sliced enriched white hamburger buns. Holsun is an equivalent brand. Do not price store brand. Use: Wonder.

Hand-Held Vacuum. Cordless hand-held 9.6 volt cyclonic vacuum with crevice tool and upholstery brush. Use: Black and Decker 9.6 volt Cyclonic DustBuster.

Health Club Membership. One-year regular, individual membership for existing member. Do not price special offers. If no yearly rate, price month and prorate. Service must include free weights, cardiovascular equipment, and aerobic classes. Note if pool, tennis, racquetball, or other service included. Use: Gold's Gym type.

Honda Civic. Purchase price of a 2005 Honda Civic LX sedan, 4 door, 1.7 liter, 4 cylinder, automatic transmission without side air bags, # ES1655PW. Please note the price of any special option packages. (Use auto dealer worksheet.) Use: 2005 Honda Civic LX sedan.

Honda License, Registration, Taxes, and Inspection. License, registration, periodic taxes (e.g., road or personal property tax, but NOT one-time taxes such as sales tax), and inspection (e.g., safety and emissions) on the Honda specified for survey. (Use auto dealer worksheet.) Use: Specified Honda.

Hospital Room. Daily charge for private and semi-private rooms. Include food and routine care. Exclude cost of operating room, surgery, medicine, lab fees, etc. Do not price specialty rooms; e.g., those in cardiac care units. Use: Private and semi-private room.

Hot Dogs, Beef Franks. Sixteen-ounce package, 10 count, USDA graded, all beef franks. Do not price chicken, turkey, extra lean, or fat free frankfurters. Use: Oscar Mayer Beef Franks.

Housekeeping (Hourly Wage). Local hourly wage for a housekeeper or janitor. BLS code 37-2012. Try to obtain from the local department of labor. Use: Government Wage Data.

Ice Cream Cup. One scoop, vanilla ice cream in a cup. Do not price frozen yogurt or soft-serve ice cream. Use: Baskin Robbins type and Ben & Jerry's type.

Ice Cream. Fifty-six-ounce (1.75 quart) vanilla flavored ice cream. Do not price ice milk, fat free, or frozen yogurt. Use: Edys Grand Ice Cream.

Infants Sleeper. One-piece sleeping garment with legs, covering the body including the feet. Stretch cotton/polyester terry. Washable. Can be packaged or hanging. Size: Newborn. Use: Carters Starters.

Insurance, Ford and Honda. Annual premium for Ford and Honda surveyed. Thirty-five-year-old married male, currently insured, no accidents/violations. Commute is 15 miles one-way/day, annual 15,000 miles. Bodily injury 100/300; property damage 25; medical 15 or personal injury protection 50; uninsured motorist 100/300; comprehensive deductible 100; and collision deductible 250. If this level of coverage is not available, price the policy with the closest coverage. Ford car value: \$32,045; Honda car value: \$16,095. Use: National company, if available.

Insurance, Ford and Honda (VI and DC Only). Annual minimum premium for Ford and Honda surveyed. Thirty-five-year-old married male, currently insured, no accidents/violations. Commute is 15 miles one-way/day, annual 15,000 miles. Bodily injury 25/30; property damage 25; medical 5 or personal injury protection 25, uninsured motorist 25/30; comprehensive deductible 250; and collision deductible 500. If this level of coverage is not

available, price the policy with the closest coverage. Ford car value: \$32,045; Honda car value: \$16,095. Use: National company, if available.

Internet Service. Monthly charge for unlimited Internet access. Itemize taxes and fees and add to price. Use: Local cable provider and local DSL provider.

Jelly. Eighteen-ounce jar of grape jam or jelly. Use: Smuckers Concord Grape.

Jet Ski. 2005 Yamaha jet ski WaveRunner XLT1200, 155 hp, 3 cylinder, 3 seater. (If only Sea-Doo GTI LE RFI is available, record as a substitute). Use: Yamaha WaveRunner XLT1200.

Jewelry Earring Set. A box set of fake diamond earrings and necklace. Use: JC Penney/Sears: Store brand; Macys: Sterling Silver Collection.

Ketchup. Twenty-four ounce plastic squeeze bottle. Use: Heinz.

Kitchen Range (Electric coil). Thirty-inch, free-standing electric range with coil burners and standard size (small) glass window on oven door. Model numbers may vary slightly by dealer. Use: Kenmore 91032 and General Electric JBP25DJWH.

Kitchen Range (Gas). Thirty-inch, free-standing, self-cleaning oven. Large window. Four burners, stainless steel. Use: General Electric JGBP33SEHSS.

Kitchen Range (Smooth Top). Thirty-inch, free-standing, smooth-top, self-cleaning, with stainless steel front, large window. Four radiant burners and a warmer. Use: General Electric JBP80SHSS.

Laptop Computer. Laptop with Intel Pentium 4, 512MB DDR, DVD-ROM/CD-RW, XGA, Windows XP. (Include tax and shipping and handling, if applicable.) Use: HP/Compaq Presario RS 3320US (DT 3.0HT, 60GB hard drive) and Toshiba Satellite P30 (3.2GHz, 80GB hard drive).

Laundry Soap. One hundred fluid ounces of liquid household laundry detergent. Use: Wisk.

Lawn Care (Hourly Wage). Local wage for gardener/grounds keeper. BLS code 37-3011. Try to obtain from the local department of labor. Use: Government Wage Data.

Lawn Mower, Self-Propelled. Twenty-one to 22 inch, self-propelled approximately 6.5 horsepower gas lawn mower. Use: Craftsman 37482 rear bag mower and Toro 20012 high-wheel recycler.

Lawn Trimmer, Gas. Gas powered, approximately 18-inch wide cut. Straight or curved shaft okay. Bump or automatic line feed. **Note:** Model numbers may vary slightly by dealer. Use: Homelite UT20778 (25cc 2-cycle engine) and Craftsman 79612 (34cc 4-cycle engine).

LD Call Chicago. Cost of a 10-minute call using regional carrier, received on a weekday in Chicago at 8 p.m. (Chicago time); direct dial. Itemize taxes and fees and add to price. Use: AT&T/Sprint.

LD Call Los Angeles. Cost of a 10-minute call using regional carrier, received on a weekday in Los Angeles at 8 p.m. (LA time); direct dial. Itemize taxes and fees and add to price. Use: AT&T/Sprint.

LD Call New York. Cost of a 10-minute call using regional carrier, received on a weekday in New York at 8 p.m. (NY time); direct dial. Itemize taxes and fees and add to price. Use: AT&T/Sprint.

Lettuce, Iceberg. One head of iceberg lettuce. Use: Available brand.

Lettuce, Romaine. Price of 1 pound of romaine lettuce, not hearts. If only sold by each, note an average weight in comments. Use: Available brand.

Lipstick. One tube, any color. Use: Maybelline Moisture Whip and Revlon Super Lustrous.

Living Room Chair (Catalog). Channel back rocker recliner. Lumbar area offers heat and massage. Arm lifts to access storage compartment and cup holder. Reflex foam seat cushion. Fabrics are stain-resistant. Microfiber, polyester. Chenille, olefin/acrylic. Velvet, polyester/olefin. Include sales tax and shipping and handling. Use: JC Penney Channel Back Rocker Recliner, catalog number A792-9654.

Lunch, Full Service. Pancake house and casual restaurants. Cheeseburger platter with fries and small soft drink. Check sales tax and include in price. Use: Cheeseburger platter.

Lunch Meat, All Beef. Eight-ounce package, all-beef variety, sliced bologna. Use: Oscar Mayer Beef Bologna.

Magazine Subscription. One-year home-delivery price of a magazine. This is priced during the DC area survey via the Internet. Include any special mailing cost to the Caribbean. Use: Time.com.

Magazine. Store price (not publisher list price unless that is the store price) for a single copy. Use: InStyle.

Man's Athletic Shoe (Shoe Store). Man's walking shoe, soft leather upper. Full-length Phylon midsole with low-pressure Air-Sole units in heel and forefoot. Composition rubber outsole. Use: Reebok Classic.

Man's Boat Shoe. Full leather, slip-on boat shoe. Use: Timberland.

Man's Dress Shirt. White or solid color long sleeve button cuff dress shirt, 100 percent cotton or cotton blend. Use: Calvin Klein Satin Poplin; JC Penney/Sears: Dockers; Macys: Polo Ralph Lauren.

Man's Dress Shoe, Leather Sole. Full leather lining, oak tanned/buffed leather

outsoles, polished leather uppers, steel shank. Use: Bostonian Akron.

Man's Dress Shoe, Rubber Sole. Leather oxford with cushioned insole and heel pad. Shoe has combination leather and rubber sole. Use: Rockport.

Man's Jacket (Catalog). Man's lightweight jacket with stand-up collar, fabric strap, zip front, one chest pocket, and two front slant pockets. Rib-knit cuffs. Cotton/polyester with nylon lining, washable. Price regular size. Include sales tax and shipping and handling. Use: JC Penney Latch Collar Jacket-Regular, catalog number A518-5206.

Man's Jeans. Relaxed-fit jeans, five pocket, zip-fly, cotton, straight leg. Use: Tommy Hilfiger Relaxed-Fit; JC Penney/Sears/Macys: Levis Red Tab 550.

Man's Khaki Pants. Man's casual khakis, any color, relaxed fit or classic fit, flat-front or pleated, cotton twill. Use: Kenneth Cole Slubbed Sateen; JC Penney/Sears/Macys: Dockers.

Man's Leather Dress Shoe (catalog). Full-grain leather captoe oxford, leather upper, leather outsole, with leather lining and a comfort heel cup. Slip-resistant sole. Include sales tax and shipping and handling. Use: Florsheim Lexington Captoe, JC Penney catalog number A014-9043.

Man's Regular Haircut. Regular haircut for short to medium length hair. Use: Hair salon cut.

Man's Sport Watch. Water-resistant strap, digital compass, 100-hour chronograph, INDIGLO night-light, water-resistant up to 100 meters, digital display, alarm, countdown timer, strap/watch colors may vary. Different models represent different color of face or strap. If available, also price same watch without digital compass as a substitute. Use: Timex Expedition Digital Compass.

Man's Suit (Catalog). Six-button, double-breasted worsted wool suit coat, flap pockets, chest pocket, dry clean only. Regular size with full acetate lining. Price coat as a separate, not combo with trousers. Include sales tax and shipping and handling. Use: Stafford Suit Coat, JC Penney catalog number A957-0249.

Man's Undershirt. One package of three men's T-shirts, white, 100 percent cotton undershirts with short sleeves, regular size. Use: Tommy Hilfiger Crewneck; JC Penney/Sears: Hanes V-neck; Macys: Jockey V-neck.

Man's Wedding Band. Men's 14K gold 4mm plain wedding band, size 10 or less, non-comfort fit. Do not price gold filled rings. Use: Store brand.

Margarine. One pound (four sticks) of regular margarine. Do not price reduced fat variety. Use: Parkay.

Mattress and Foundation (Catalog). Full-size mattress and foundation. Nine layers of soft materials. Continuous support innerspring. Triple beam foundation. Approximate mattress thickness: 12 inches. Mattress cover of cotton/polyester damask in bridal white. Foundations are unitized steel with wood frames. Include sales tax and shipping and handling. Use: Serta, Lindsey Castle Pillowtop, JC Penney catalog numbers: A799-7662 and A799-7663.

Mayonnaise. Thirty-two-ounce jar of mayonnaise. Do not price light or fat free. Use: Hellmann's Real Mayonnaise.

Measuring Tape. Twenty-five-foot tape measure with blade armor coating. Use: Stanley 25 Ft. FatMax (33-725H).

Milk, Low Fat. One-half gallon, 1.5 or 2 percent milk. If multiple brands available, match the lowest priced item and note in comments. Use: Available brand.

Mover Driver (Hourly Wage). Local government hourly rate for a light truck driver. BLS code 53-3033. Try to obtain from the local department of labor. Use: Government wage data.

Moving (Hourly Wage). Local hourly wage for a mover/material handler. BLS code 53-7062. Try to obtain from the local department of labor. Use: Government wage data.

Newspaper Subscription, Local. One-year of home delivery of the largest selling daily local paper (including Sunday edition) distributed in the area. Do not include tip. Use: Major local newspaper.

Newspaper, Newsstand, Local. Price of a local newspaper at a newsstand (in box), weekday issue. If a newsstand box is not available, price at a newsstand and indicate whether price includes tax. Use: Newspaper, newsstand, local.

Newspaper, Newsstand, NY Times. Price of the New York Times newspaper at a newsstand (in box), weekday issue. If a newsstand box is not available, price at a newsstand and indicate whether price includes tax. Use: New York Times, weekday.

Nissan License, Registration, Taxes, and Inspection. License, registration, periodic taxes (e.g., road or personal property tax, but NOT one-time taxes such as sales tax), and inspection (e.g., safety and emissions) on the Nissan specified for survey. Use: Specified Nissan.

Nissan Altima. Purchase price of a 2005 Nissan Altima, 3.5 SE 4-door sedan with 5-speed automatic transmission, model number 05915. Please note the price of any special option packages. (Use auto dealer worksheet.) Use: 2005 Nissan Altima 3.5 SE (for Puerto Rico and DC area only).

Non-Aspirin Pain Reliever (50 count). Fifty gels of acetaminophen 500 mg. Use: Tylenol Extra Strength Gels (50 count).

Non-Aspirin Pain Reliever (100 count). One hundred gels of acetaminophen 500 mg. Use: Tylenol Extra Strength Gels (100 count).

Oranges. Price per pound of loose, large, Navel oranges. If only bagged oranges are available, also report the weight of the bag. Use: Available brand.

Oregano Leaves. Three-quarter-ounce bottle of oregano leaves. Use: McCormick.

Parcel Post. Cost to mail a 5-pound package to Chicago, Los Angeles, and New York using regular mail delivery service. Use: United States Postal Service.

Pen. Ten-pack round stick medium point pen. Do not price crystal or clear type pens. Use: BIC and Paper Mate.

Pet Food. Twenty-two-pound bag of adult dry dog food. Use: Pedigree Complete Nutrition.

Piano Lessons. Monthly fee for half-hour beginner private piano lessons for an adult, one lesson per week. Price through a music studio if possible. If only per-lesson price is available, prorate using 1/2-hour lesson price times 52 divided by 12. If only 1-hour lesson is available, prorate accordingly. Use: Piano lessons.

Plant Food. Twenty-four-ounce container of granulated all purpose plant food. Use: Miracle Gro.

Pork Chops Center Cut, Boneless. Price per pound for fresh (not frozen or previously frozen) pork chops, center cut, boneless, loin chops. Use average size package, i.e., not family-pack, value-pack, super-saver pack, or equivalent. If multiple brands available, match the lowest priced brand and note in comments. Use: Available brand.

Portable CD Player. Portable ATRAC3plus, ATRAC3, MP3 and CD-R/RW, with headphones, anti-skip technology, 2-line dot matrix display, 85-hour battery life. **Note:** Color may vary. Use: Sony Walkman (D-NE300).

Potato Chips. One, 5- to 6-ounce container of regular potato chips. Do not price fat free. Use: Pringles.

Potatoes. Price per pound of loose potatoes. If only bag potatoes available, report smallest size bag as substitute and note weight. Use: Russet or Idaho Baking.

Prescription Drug 1. Nexium, 30 capsules, 40 mg. Do not price generic. Use: Nexium (40 mg).

Prescription Drug 2. Generic Amoxicillin (i.e., Amoxicillin), 30 capsules, 250 mg. Use: Amoxicillin.

Printer, Color, Photo. Color inkjet all-in-one printer, flatbed scanner, copier

with media slots. Prints up to 4800 dpi., 12 ppm color, 17 ppm black and white, 8 MB memory. USB cable is not included. (Include tax and shipping and handling, if applicable.) Use: HP PSC 1350 All-In-One.

Red Roses. One-dozen long stemmed, fresh-cut red roses wrapped in floral paper, purchased in store, not delivered. Do not price boxed or roses arranged in vase. Also price roses, each, and record in comments. Use: Dozen red roses.

Refrigerator (Side-by-Side). Side-by-side refrigerator, approximately 25 cubic feet, with chilled water, cubed ice or crushed ice dispenser (but no dispenser lock). Up-front manual temperature controls. **Note:** Model usually carried by Home Depot and Sears. Use: General Electric GSS25JFPWW.

Refrigerator (Top Mount). Top mount refrigerator with reversible doors, glass shelves, and crisper drawers. Door contains one or more covered compartments and adjustable bins. Freezer has wire shelf and door bins. Use: Whirlpool ET1MTEXMQ (includes ice maker) and Maytag MTB1953HEW (no ice maker).

Rental Data. Rental index from hedonic regressions. Use: Monthly rental data from OPM.

Renter Insurance. One-year renters insurance (HO-4) coverage for \$25,000 (low), \$30,000 (middle), and \$35,000 (upper) of contents. In COLA area, policy must cover hurricane, earthquake, and other catastrophic damage. Note amount of liability coverage in comments; price minimum liability coverage if it varies. Assume concrete structure. Use: Major carrier.

Rice. White rice, not instant type. Use: Uncle Ben's Converted Rice Original 5-lb bag long grain enriched; Goya 3-lb bag medium grain.

Salt. Twenty-six-ounce box of iodized salt. Sterling is an equivalent brand. Use: Morton.

Shampoo. Fifteen-ounce bottle for normal hair. Use: VO5.

Sheets. Sheets, 250 and 300 thread count cotton or cotton polyester blend. Queen-size fitted or flat sheet, not a set. Use: Martha Stewart Everyday 4 Star, 250 thread count (K-Mart), Springmaid, 300 thread count (Wal-Mart), and Wamsutta Egyptian Sateen, 300 thread count (Bed Bath and Beyond).

Shop Rate. Hourly shop rate for a mechanic at Ford, Honda, Nissan, and Toyota dealerships. (Use auto dealer worksheet.) Use: Dealer shop rate.

Soy Milk. One half gallon vanilla soy milk. Use: White Wave Silk Soy Milk.

Sirloin Steak, Boneless. Price per pound, fresh (not frozen or previously frozen) boneless beef top sirloin steak. Price USDA Select or un-graded if

available. If not available, note USDA grade in comments. Use average size package; *i.e.*, not family-pack, value-pack, super-saver pack, or equivalent. If multiple brands available (*e.g.*, store brand and "Angus"), match the lowest priced item and note in comments. Use: Available brand.

Sliced Bacon. Sixteen-ounce package USDA grade, regular slice. Use: Oscar Mayer.

Snack Cake. One 10-count box of cream-filled type cake deserts. Use: Hostess Twinkies.

Soft Drink. Twelve-pack of Coca-Cola 12-ounce cans. Use: Coca-Cola 12-pack (cans).

Spaghetti, Dry (National Brand). Sixteen-ounce box or bag of pasta spaghetti. Use: Muellers.

Stamp. Cost of mailing a 1-ounce, first-class letter. Use: USPS.

Stand Mixer. Stand mixer with tilt-up head, 10 speeds, and stainless steel bowl. Includes flat beater, dough hook, wire whip. Use: JC Penney/Sears/Macys/Bed Bath and Beyond; KitchenAid 325 watt (KSM150PSWW); Wal-Mart: KitchenAid 250 watt (K45SSWH).

Sugar. Five-pound bag of granulated cane or beet name brand sugar. Do not price superfine, store brand, or generic. Use: National brand.

Tax Preparation. Flat rate for preparing individual tax Federal 1040 (long form), Schedule A, plus State or local equivalents. (**Note:** Some areas only have local income taxes.) Note number of forms in comments. Assume typical itemized deductions. If only hourly rate available, obtain estimate of the time necessary to prepare forms, prorate, and report as a substitute. Use: H&R Block type.

Taxi Fare. Cab fare, one way, from major airport to destination 5 miles away. Price fare for one passenger with two suitcases. In reference area, price rides from BWI for Maryland, Reagan National for the District of Columbia, and Dulles for Virginia. Use: Taxi fare.

Telephone Service. Monthly cost for unmeasured touchtone service. Exclude options such as call waiting, call forwarding, or fees for equipment rental. Itemize taxes and fees and add to price. Use: Local provider.

Television 13". 13-inch color TV with remote. **Note:** Model numbers may vary slightly. Use: K-Mart: RCA E13320.

Television 27". Flat-screen, 27 inch, stereo, color TV with remote. **Note:** Model numbers may vary slightly. Use: Sony KV-27FS120 and Panasonic CT27SL14; Wal-Mart: Philips 27PT6441.

Tennis Balls. One can of three pressurized tennis balls designed for

recreational play. Do not price premium type balls. Use: Wilson Championship.

Tire Regular (Ford). One tire, size P235/75 R15 service description 105S load rating SL, "original equipment" quality, black sidewall for a 2001 Ford Explorer XLT. Do not include mounting, balancing, or road hazard warranty. Use: Goodyear Wrangler RT/S (Goodyear, Sears), Michelin XCX/APT (Sears).

Tire Regular (Honda). One tire, size P185/70 R14, "original equipment" quality for a 2001 Honda Civic LX sedan. Do not include mounting, balancing, or road hazard warranty. Use: Goodyear Integrity (Goodyear), Bridgestone Weatherforce (Goodyear, Sears).

Toilet Tissue. Twelve-count single-roll type package of toilet tissue. Use: Angel Soft.

Tomatoes. Price per pound of medium-size tomatoes. If only available in cellophane pack, note price and weight of average size package. Do not price organic, hydro, plum, or extra fancy tomatoes. Use: Available brand.

Top Round Steak, Boneless. Price per pound, fresh (not frozen or previously frozen) boneless beef top round steak. Price USDA Select or un-graded, if available. If not available, note USDA grade in comments. Use average size package; *i.e.*, not family-pack, value-pack, super-saver pack, or equivalent. If multiple brands available (*e.g.*, store brand and "Angus"), match the lowest priced item and note in comments. Use: Available brand.

Toyota License, Registration, Taxes, & Inspection. License, registration, periodic taxes (*e.g.*, road or personal property tax, but NOT one-time taxes such as sales tax), and inspection (*e.g.*, safety and emissions) on the Toyota specified for survey. Use: Specified Toyota.

Toyota. Purchase price of a 2005 Toyota Corolla LE 4-door sedan, model number 1822, with 4-speed automatic transmission. Please note the price of any special option packages. (Use auto dealer worksheet.) Use: 2005 Toyota Corolla LE (for U.S. Virgin Islands and DC area only).

Veterinary Services. Routine annual exam for a small dog (approximately 25 to 30 pounds). Do not price booster shots, medication, or other extras such as nail clipping, ear cleaning, etc. Use: Veterinary services.

Video Rental. Minimum rental rate to rent *Finding Nemo* on DVD, rented on a Saturday night. Use: *Finding Nemo* DVD.

Wash, Single Load. One load, regular size wash using a front loading washing machine. Approximate capacity 2.8

cubic feet or 18 pounds. Exclude cost of drying. Use: Coin laundry.

Washing Machine (Front Load). Front load washer, white, 3.34 cubic feet, 27 inch width, 14 cycles, 4 wash temperatures, with LED touchpad controls. Use: Maytag MAH55FLBWW, Maytag Neptune MAH6500AWW.

Washing Machine (Top Load). Top load washer, 3.2 cubic feet. Use: Kenmore Elite 24952, General Electric WDSR2080DWW.

Water Bill. Average monthly consumption in gallons and dollars (*e.g.*, cost for first __ gallons; cost for over __ gallons), sewage and related charges, and customer service charge. Use: Water bill.

Will Preparation. Hourly rate for a lawyer (not a paralegal) to prepare a simple will. If only flat rate available, record flat rate amount and divide by average number of hours it would take to prepare will. Note in comments. Use: Legal service.

Wine At Home. Chardonnay wine, 750 milliliter, any vintage. Use: Turning Leaf.

Wine Away. Casual, fine dining, extra fine dining, and Outback type restaurants. One glass of the least expensive house white wine. Check sales tax and include in price. Use: House wine.

Woman's Athletic Shoe. Woman's walking shoe, soft leather upper. Full-length Phylon midsole with low-pressure Air-Sole units in heel and forefoot. Composition rubber outsole. Use: Reebok Classic.

Woman's Blouse. Button front blouse with minimum or no trim. Washable. May or may not have shoulder pads. Price regular size. Do not price in Woman's or Plus size. Note brand in comments. Use: Laura Scott (Sears), Liz Baker (JC Penney), Charter Club (Macys).

Woman's Blue Jeans. Blue jeans. Machine washable, five pockets with zipper fly, loose fit, straight leg or tapered. Price regular size. Do not price in Woman's or Plus size sections. Do not price elastic waist. Use: Calvin Klein (Macys), Lee original relaxed fit (JC Penney/Sears).

Woman's Casual Khakis. Woman's casual khakis, any color, flat front or pleated pants, machine washable, all cotton. Price regular size. Do not price in Woman's or Plus size sections. Use: Style & Company (Macys), Lands End (JC Penney/Sears).

Woman's Cut and Style. Wash, cut, and styled blow dry for medium length hair. Exclude curling iron if extra. Price hair salons in major department stores and malls where available. Use: Medium length hair.

Woman's Dress. Price regular size. Do not price in Woman's or Plus size. Use: Tommy Hilfiger Seersucker, striped, v-neck front and back, button details, cotton. Macys: Nine West Triple-Tiered Dress, black, velvet bodice trimmed in silk charmeuse with a bow at empire waist, spaghetti straps, side zip, silk/rayon, silk lining. JC Penney/Sears: Store brand, patterned, rayon, misses print dress, simple lines, no lace or special stitching.

Woman's Dress (Catalog). Price regular size. Do not price in Woman's or Plus size. Include sales tax and shipping and handling. Use: JC Penney: Print Button-Front Dress, Misses, catalog number A208-3311, vintage print dress, floral design, scoop neck, button front, cap sleeves, princess seams and back darts. Nordstrom: Donna Ricco Print-Overlay Surplice, sleeveless print dress, faux wrap with side drape, secure closure, sheer silk chiffon layered over silk charmeuse, and a bias-cut skirt. Spiegel: Houndstooth-print dress, catalog number 627 K7053, jewel neckline, waist-cinching attached tie belt, 3/4-length slightly-belled sleeves, back zipper, cotton twill with spandex stretch. Cold Water Creek: Double-V print dress, catalog number H14725, cotton sateen with spandex, back zip, polyester-lined.

Woman's Jacket (Catalog). Price regular size. Do not price in Woman's or Plus size. Include sales tax and shipping and handling. Use: JC Penney: Floral Embroidered Jacket, catalog number A816-5016. Nordstrom: Microfiber Anorak, water-repellent jacket with hideaway hood that zips into collar, zip pocket at left chest, adjustable drawstring waist, unlined, polyester/nylon.

Woman's Pump Shoes. Plain pump (not open toed or open back style) with tapered approximately one and a half to two-inch heel. Heel color matches shoe color (e.g., not stacked/wooden type). Shoe has leather uppers. Rest is man-made materials. No extra ornamentation or extra thick heels. Do not price leather sole shoe. Use: Naturalizer; Laura Scott (JC Penney/Sears); Liz Claiborne (Macys).

Woman's Suit. Woman's two-piece polyester suit with plain jacket and plain pants or skirt. Price regular size. Do not price in Woman's or Plus size. Use: Le Suit.

Woman's Sweater. No buttons or collar, 100 percent cotton or cotton blend. Price regular size. Do not price in Woman's or Plus size. Use: Tommy Hilfiger Cricket, long sleeve, v-neck, stripe ribbed trim; Sag Harbor (JC

Penney/Sears), short sleeve; Style & Company (Macys), short sleeve.

Woman's Sweater (Catalog). Striped Sweater, 3/4-length sleeves. Cotton/rayon. Dry clean. Include sales tax and shipping and handling. Use: Striped Sweater, Spiegel catalog number 627 T8062.

Woman's Wallet. Clutch/checkbook style wallet, split-grain cowhide leather. Do not price eel skin, snake skin, or other varieties. Use: Liz Claiborne.

Appendix 4.—COLA Rental Survey Data Collection Elements

Survey Year: Year of survey.

Comparable ID Code: A unique five-character code is applied to each rental observation (i.e., comparable). Position One is the letter corresponding to the COLA survey area in which the comparable is located (e.g., A, B, C, D). Position Two is the letter corresponding to the location in the COLA survey area in which the comparable is located. Position Three is the letter corresponding to the class of housing (i.e., A, B, C, D, E, F) as shown in the table below. Positions Four and Five contain the sequential numbers 01-99 that identify the order in which the comparable was collected relative to the other comparable in the same area, location, and class.

HOUSING CLASSES

Class	Description
A	Four bedroom, single family unit not to exceed 3200 square feet.
B	Three bedroom, single family unit not to exceed 2600 square feet.
C	Two bedroom, single family unit not to exceed 2200 square feet.
D	Three bedroom apartment unit not to exceed 2000 square feet.
E	Two bedroom apartment unit not to exceed 1800 square feet.
F	One bedroom apartment unit not to exceed 1400 square feet.

Community Name: The name of the community in which the comparable is located.

Comparable's Address: The complete address of the physical location of the comparable, including city, State, and zip code.

Data Source: The name and title (such as owner, agent, landlord, or tenant) of the person providing rental survey data and rental rates. **Note:** The respondent might not provide and cannot be compelled to provide this or any other survey information.

Address of Data Source: The Data Source's mailing address, phone number(s), and e-mail address, if available.

Year Constructed: The year the structure was built or last remodeled, provided the remodeling affected about half of the structure or more.

Finished Living Space: Total square feet of finished living area, including finished basement space.

Basement: Whether there is a basement (finished or unfinished). Y = Yes or N = No.

Bedrooms: The total number of rooms that currently are or could be used as bedrooms.

Bathrooms: Total number of baths, where 1/2 bath contains toilet and sink; 3/4 bath contains toilet, sink, and shower; and full bath contains toilet, sink, shower, and tub.

Balcony: An elevated structure, sometimes called a "terrace," that is either covered or uncovered and usually made of wood or cement. It is distinguished from a deck because it does not have a ground-level exit. A = Covered, B = Uncovered, C = None.

Deck: A wooden structure either covered or uncovered that is elevated or at ground level. An elevated deck is distinguished from a balcony because a deck has a ground-level exit (e.g., stairs). A = Covered, B = Uncovered, C = None.

Patio: A cement, brick, or stone structure either covered or uncovered built at ground level. A ground-level wooden structure is a deck, not a patio. A = Covered, B = Uncovered, C = None.

External Condition: The external condition of the rental unit. Above average condition means the unit is new or in like new condition (e.g., recently remodeled, refurbished, or restored). Average condition means the unit shows signs of age but is in good repair (e.g., the paint is not peeling; no broken windows, sagging fences, or missing gutters; the yard is maintained; there are no disabled vehicles, appliances, or

trash around the property). Below average condition means the unit is habitable but needs repair and the property needs maintenance and/or trash removal. A = Above Average, B = Average, C = Below Average.

Neighborhood Condition: The condition of the neighborhood in which the rental unit is located. A desirable neighborhood generally has above average and average homes. Commercial services are separate (e.g., clustered in strip malls or business parks). There are parks and/or open public spaces. Roads and parks are well-maintained and clean. An average neighborhood generally has homes in average condition with a balance of homes in above average and below average condition. Commercial services are separate. Roads and parks are in good condition but may need cleaning or maintenance. An undesirable neighborhood generally has homes in poor condition. Commercial units may be intermingled with residential units. Roads are often poorly maintained and have litter. There are few parks, and/or parks are poorly maintained. A = Desirable, B = Average, C = Undesirable.

Central Air Conditioning: A ducted system designed to cool all or essentially all of the living area of a house or apartment. Y = Yes or N = No.

Multi-Room Air Conditioning: A non-window unit designed to cool more than one room but not usually the entire house or apartment. Y = Yes and number of units or N = No.

Window Air Conditioning: An air conditioning unit, designed to cool one room, usually placed in a window. Y = Yes and number of units or N = No.

Garage: A covered area attached to or near the house that can be secured for parking one or more cars. If the landlord charges an extra fee for garage parking, garage is coded as "none," and the monthly parking fee is reported separately. A = Single, B = Double, C = Triple or More, D = None.

Heated Garage: A garage of any type that typically is heated during the winter. Y = Yes or N = No.

Carport: A covered area attached to or near the house that cannot be secured for parking one or more cars. If the landlord charges an extra fee for carport parking, carport is coded as "no," and the monthly parking fee is reported separately. Y = Yes or N = No.

Reserved Parking Space: A specific parking space assigned to a rental unit. The space may be located outside or in a common carport or garage. If the landlord charges an extra fee for reserved parking, reserved parking is coded as "no," and the monthly parking fee is reported separately. Y = Yes or N = No.

Security: Security measures relating to the rental unit. A gated community usually has one entry into the housing area, and prominent walls (brick, block, fencing, wire, or other type barriers) that delineate the borders of the community. Access control restricts pedestrian and/or vehicular access via key, keypad,

barcode, or other entry device to the community or apartment building. Guards are security personnel who monitor entrance/exit of vehicular and pedestrian traffic in/out of the community or apartment building. Alarm systems are security systems that may or may not be monitored by an outside company. Y = Yes or N = No for each type of security feature.

Type of unit: Types of units are coded A through H. Unit types A, B, C, and D are single-family dwellings; and unit types E, F, and G are apartments. A single-family dwelling has at least two doorway entrances that provide direct access between the living area and outdoors, usually at or near ground level. A sliding glass door is considered a doorway entrance if it allows direct access to the outdoors and to ground level. An apartment is a unit other than a single-family dwelling that has at least one doorway entrance that provides access between the living area and outdoors. Such access may be through a lobby, hallway, shared stairwell, or other common area but cannot be through the living area of other units. Sliding glass doors on balconies are not doorway entrances. Ground-level or essentially ground-level units in an apartment structure are not single-family dwellings. Apartments have their own bathroom and kitchen facilities. Units in an operating motel are not apartment units, even if they do contain their own bathroom and kitchen facilities.

RENTAL UNIT TYPES

Unit type	Description
A	Detached single-family house.
B	Duplex: One of two single-family units in a freestanding building.
C	Triplex or Quadplex: One of three or four single-family units in a freestanding building.
D	Town or Row House: One of five or more single-family units in a freestanding building.
E	In-Home Apartment: An apartment in a private residence.
F	Garden or Walk-Up Apartment: An apartment in a structure of three stories or less.
G	High Rise Apartment: An apartment in a structure of four stories or more.
H	Other types of dwellings.

Lot Size: Size of lot in square feet. (Detached houses only).

End Unit: End unit. (Town and row houses only.) Y = Yes or N = No.

Number of floors: Number of floors in the apartment structure. (Walk-up and high rise apartments only.)

Furnishings Provided: Whether the landlord provides most or all interior furnishings in the comparable. Y = Yes or N = No

Appliances Provided: Whether the landlord provides a refrigerator, range, oven, microwave, dish washer, clothes washer, clothes dryer, and/or free-

standing freezer. Y = Yes or N = No for each type of appliance.

Services Paid by Landlord: Whether the landlord pays for water, sewer/septic, garbage, lawn care, cable television, satellite dish (digital or analog), electricity, heating energy, firewood, and/or snow removal. Y = Yes or N = No for each item.

Sewer: A = Public, B = Septic or Leach Field, C = None.

Water Source: A = Public, B = Well, C = Cistern, D = None.

Pets Allowed: Whether the landlord allows dogs and/or cats. Y = Yes or

N = No. If the landlord charges an extra monthly fee, pets allowed is coded as "no," and the monthly pet fees are reported separately. Deposits are not reported.

Exceptional View: Whether the unit has a view of a park, ocean, mountain, valley, golf course, etc. that is unusually beautiful for the area and may increase the rental value of the property. **Note:** Properties with direct access to such an amenity (e.g., are on a beach or golf course) are not to be surveyed. Y = Yes or N = No.

Miscellaneous Amenities: Whether any of the following amenities are available: fireplace, paved roads, streetlights, and sidewalks. Y = Yes or N = No for each.

Recreational Facilities: Whether there is a pool, tennis court, clubhouse, exercise room, and/or other facilities available to all of the residents of the community, complex, or building for no additional membership fees. Y = Yes or N = No for each.

Vacant: Whether the unit is vacant at time of survey. If unit is vacant, how long the unit has been vacant and on the rental market is also reported. Y = Yes or N = No.

Monthly Rent: The monthly rent or lease amount to the nearest U.S. dollar.

Deposits or additional fees reported separately (e.g., parking, homeowner association, and pet fees) are not included.

Additional Fees: Additional periodic or scheduled fees or charges that the tenant pays; e.g., condo or Home Owner Association fees. Y = Yes or N = No. If yes, the fee is reported. Annual fees are prorated and reported as monthly. Deposits, first or last months' rent, utilities, tenant's insurance, and discretionary fees (e.g., cable TV and community pool memberships) are not reported.

Source of Rental Listing: How the rental unit was identified. A = Local Newspaper, B = Internet, C = Agent/

Broker, D = Drive By/Sign Posted, E = Other.

Date of Rental Listing: Date the rental data for the unit were collected, or if for a different time period, the date associated with the data and rent.

Latitude and Longitude of the Unit: Housing unit latitude and longitude recorded in degrees and decimal degrees.

Comment(s): Any comment or note of significance that helps clarify the above data elements as they apply to the comparable.

Appendix 5—Utility Usage and Calculations

2005 Energy Requirements and Prices

TABLE A5-1.—CARIBBEAN AREAS

All electric home			
Month	KHW	Puerto Rico	USVI
Jan	2,318	\$322.14	\$511.92
Feb	2,225	302.47	491.58
Mar	2,649	387.42	584.31
Apr	2,746	353.22	483.36
May	2,980	383.18	568.24
Jun	3,086	396.34	588.28
Jul	3,197	410.07	609.26
Aug	3,226	444.98	602.90
Sep	2,938	376.86	583.86
Oct	2,921	374.68	605.58
Nov	2,546	356.92	551.58
Dec	2,348	338.14	508.86
Total Cost	33,180	4,446.42	6,689.72
Avg Monthly Cost		370.54	557.48

TABLE A5-2.—WASHINGTON, DC, AREA

Month	All electric home		Home with gas heat					Home with oil heat				
	KWH	Cost	Therms	Cost	KHW ¹	Cost	Total cost	Gallons	Cost	KHW ¹	Cost	Total cost
Jan	3,326	\$263.52	126	\$177.30	362	\$31.84	\$209.15	72	\$159.18	1,007	\$85.54	\$244.72
Feb	2,688	262.40	101	143.44	320	31.48	174.91	56	123.81	891	89.55	213.36
Mar	1,812	177.83	68	93.71	322	31.69	125.39	27	59.69	938	94.16	153.85
Apr	966	74.36	34	51.66	316	26.23	77.88	2	4.42	909	70.52	74.94
May	1,170	88.15	34	54.88	544	43.15	98.04	0	0.00	1,166	87.87	87.87
Jun	1,377	132.98	32	55.10	784	72.59	127.69	0	0.00	1,369	132.15	132.15
Jul	1,648	165.46	34	56.13	1,022	99.78	155.91	0	0.00	1,636	162.85	162.85
Aug	1,566	157.85	33	55.12	957	93.56	148.68	0	0.00	1,555	155.40	155.40
Sep	1,246	124.07	32	50.50	653	62.26	112.76	0	0.00	1,241	122.53	122.53
Oct	975	93.81	35	53.06	315	30.02	83.09	1	2.21	941	89.78	91.99
Nov	1,797	145.72	67	102.74	311	28.07	130.81	28	61.90	911	78.08	139.98
Dec	2,797	231.32	106	147.80	344	32.63	180.43	58	128.23	952	85.23	213.45
Total Cost		1,917.47		1,041.44		583.30	1,624.74		539.44		1,253.66	1,793.09
Avg Monthly Cost		159.79		86.79		48.61	135.39					149.42
Relative Usage		33.20%					60.74%					6.06%
Weighted Avg Cost		\$53.05					\$82.24					\$9.06
Total Energy Utility Cost (sum of the weighted average cost of Electric + Gas + Oil Heat)												144.34

¹ KWH required for lighting, appliances, and furnace. Model used gas for stove and oven with gas heat.

Appendix 6—Hedonic Rental Data Equations and Results

SAS Regression Program Using Proc Freq
Data temp;

```
set opm.all_areas_with_census;
survey_area = 'XX';
location = substr(compnumber,1,1);
if location = 'A' then survey_area = 'SC';
if location = 'B' then survey_area = 'ST';
```

```
if location = 'C' then survey_area = 'PR';
if location = 'D' then survey_area = 'DC';
age = 2005-yrbuilt;
agesq = age**2;
```

```

baths = fullbaths + halfbaths*.5 +
  threeqtrbaths*.75;
if unittype = 'A' then typeunit = 'ZDetached
(A)';
if unittype = 'D' then typeunit = 'Town/Row
(D)';
if unittype in ('B' 'C') then typeunit = 'Plex
(BC)';
if unittype in ('E' 'H') then typeunit =
'OtherInHome (EH)';
if unittype = 'F' then typeunit = 'Garden (F)';
if unittype = 'G' then typeunit = 'High Rise
(G)';
AptOtherInHome = 0;
if unittype in ('E' 'H') then AptOtherInHome
= 1;
SqftXApt_Other_InHome = 0;
if unittype in ('E' 'H') then
  SqftXApt_Other_InHome = sqfootage;
Plexed = 0;
if unittype in ('B' 'C') then Plexed = 1;
SqftXPlexed = 0;
if unittype in ('B' 'C') then SqftXPlexed =
  sqfootage;
HighRise = 0;
if unittype = 'G' then HighRise = 1;
SqftXHighRise = 0;
if unittype = 'G' then SqftXHighRise =
  sqfootage;
Garden = 0;
if unittype = 'F' then Garden = 1;
SqftXGarden = 0;
if unittype = 'F' then SqftXGarden =
  sqfootage;
Townrow = 0;
if unittype = 'D' then Townrow = 1;
SqftXTownrow = 0;
if unittype = 'D' then SqftXTownrow =
  sqfootage;
SqftXDetached = 0;
if unittype in ('A') then SqftXDetached =
  sqfootage;
hasmicrowave = 0;
exceptional_view = 0;
if excvview = 'Y' then exceptional_view = 1;
if microwave = 'Y' then hasmicrowave = 1;
external_condition = 0;
if extrcond = 'A' then external_condition = 1;
pctallbasq = pctallba_**2;
ST_CROIX = 0;
if survey_area = 'SC' then ST_CROIX = 1;
ST_THOMAS = 0;
if survey_area = 'ST' then ST_THOMAS = 1;
Puerto_Rico = 0;
if survey_area = 'PR' then Puerto_Rico = 1;
Wash_DC = 0;
lrent = log(rent);
run;
PROC REG DATA = temp;
MODEL lrent = SqftXApt_Other_InHome
  SqftXPlexed SqftXGarden
  SqftXHighRise SqftXTownrow
  SqftXDetached AptOtherInHome Plexed
  HighRise Garden
  Townrow age agesq baths bedrooms
  hasmicrowave external_condition
  exceptional_view pctallba_pctallbasq
  pctschoolage
  ST_CROIX ST_THOMAS Puerto_Rico;
Title1 '2005 CARIBBEAN RENTAL DATA';
Title2 'RENTAL ANALYSIS Federal Register
MODEL';
run;
SAS Regression Output From Proc Freq
    
```

2005 CARIBBEAN RENTAL DATA.—RENTAL ANALYSIS FEDERAL REGISTER MODEL

[The REG Procedure Model: MODEL1 Dependent Variable: lrent]

Number of Observations Read	1815
Number of Observations Used	1815

Analysis of Variance

Source	DF	Sum of squares	Mean square	F Value	Pr > F
Model	24	346.73868	14.44745	321.07	<.0001
Error	1790	80.54676	0.04500		
Corrected Total	1814	427.28544			

Root MSE	0.21213	R-Square	0.8115
Dependent Mean	7.10830	Adj R-Sq	0.8090
Coeff Var	2.98423		

PARAMETER ESTIMATES

Variable	DF	Parameter estimate	Standard error	t Value	Pr > |t|
Intercept	1	6.62494	0.05446	121.66	<.0001
SqftXApt_Other_InHome	1	0.00095295	0.00009853	9.67	<.0001
SqftXPlexed	1	0.00026758	0.00005370	4.98	<.0001
SqftXGarden	1	0.00026216	0.00005074	5.17	<.0001
SqftXHighRise	1	0.00039949	0.00004163	9.60	<.0001
SqftXTownrow	1	-9.03293E-7	0.00003901	-0.02	0.9815
SqftXDetached	1	0.00017163	0.00002080	8.25	<.0001
AptOtherInHome	1	-0.82482	0.07898	-10.44	<.0001
Plexed	1	-0.25498	0.06672	-3.82	0.0001
HighRise	1	-0.23650	0.04997	-4.73	<.0001
Garden	1	-0.13519	0.05508	-2.45	0.0142
Townrow	1	0.21238	0.06091	3.49	0.0005
age	1	-0.00469	0.00077154	-6.08	<.0001
agesq	1	0.00006550	0.00000819	8.00	<.0001
baths	1	0.13097	0.01076	12.18	<.0001
BEDROOMS	1	0.09847	0.00919	10.71	<.0001
hasmicrowave	1	0.10119	0.01227	8.25	<.0001
external_condition	1	0.15923	0.02201	7.23	<.0001
exceptional_view	1	0.26800	0.02529	10.60	<.0001
PCTAIIIBA_	1	0.19366	0.11555	1.68	0.0939
pctallbasq	1	0.20591	0.12432	1.66	0.0978
PctSchoolAge	1	-0.73645	0.11733	-6.28	<.0001
ST_CROIX	1	-0.07718	0.02348	-3.29	0.0010

PARAMETER ESTIMATES—Continued

Variable	DF	Parameter estimate	Standard error	t Value	Pr > |t|
ST_THOMAS	1	0.06129	0.02291	2.68	0.0075
Puerto_Rico	1	-0.39106	0.01564	-25.01	<.0001

APPENDIX 7.—FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS

Major expenditure group (MEG)	Primary expenditure group (PEG)	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
Puerto Rico					
1. Food		13.35			103.54
	Cereals and bakery products	0.87	6.52	107.96	
	Meats, poultry, fish, and eggs	1.62	12.11	103.44	
	Dairy products	0.64	4.77	129.91	
	Fruits and vegetables	0.80	6.00	107.12	
	Processed foods	1.55	11.58	114.54	
	Other food at home	0.34	2.56	103.01	
	Nonalcoholic beverages	0.46	3.43	115.71	
	Food away from home	5.91	44.23	93.76	
	Alcoholic beverages	1.17	8.79	113.82	
	PEG Total		100.00		
2. Shelter and Utilities		35.59			86.44
	Shelter	31.86	89.50	69.96	
	Energy utilities	3.06	8.59	256.71	
	Water and other public services	0.68	1.91	92.50	
	PEG Total		100.00		
3. Household Furnishings and Supplies.		5.44			97.46
	Household operations	1.14	21.00	60.24	
	Housekeeping supplies	1.18	21.71	100.92	
	Textiles and area rugs	0.34	6.30	106.78	
	Furniture	0.95	17.51	109.31	
	Major appliances	0.37	6.76	106.81	
	Small appliances, misc. housewares	0.27	4.96	105.62	
	Misc. household equipment	1.18	21.76	112.91	
	PEG Total		100.00		
4. Apparel and Services		4.11			106.06
	Men and boys	0.94	22.85	104.12	
	Women and girls	1.73	42.11	118.19	
	Children under 2	0.17	4.11	79.44	
	Footwear	0.73	17.81	88.89	
	Other apparel products and svcs	0.54	13.12	102.20	
	PEG Total		100.00		
5. Transportation		15.78			111.28
	Motor vehicle costs	8.54	54.10	108.89	
	Gasoline and motor oil	2.82	17.85	89.59	
	Maintenance and repairs	1.49	9.42	90.07	
	Vehicle insurance	1.83	11.62	154.29	
	Public transportation	1.11	7.02	142.20	
	PEG Total		100.00		
6. Medical		4.65			67.07
	Health insurance	2.50	53.86	58.79	
	Medical services	1.29	27.75	57.64	
	Drugs and medical supplies	0.86	18.39	105.53	
	PEG Total		100.00		
7. Recreation		4.61			98.61
	Fees and admissions	1.04	22.50	91.98	
	Television, radios, sound equipment	0.69	15.01	106.48	
	Pets, toys, and playground equip	0.74	16.13	93.42	
	Other entertainment supplies, etc	0.64	13.80	108.47	
	Personal care products	0.66	14.30	104.46	
	Personal care services	0.55	11.84	80.83	
	Reading	0.30	6.41	115.02	

APPENDIX 7.—FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS—Continued

Major expenditure group (MEG)	Primary expenditure group (PEG)	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
8. Education and Communication	PEG Total	4.30	100.00		110.77
	Education	0.22	5.23	257.37	
	Communications	3.72	86.50	102.06	
	Computers and computer svcs	0.36	8.28	109.22	
9. Miscellaneous	PEG Total	12.16	100.00		99.33
	Tobacco products, etc	0.41	3.37	91.91	
	Miscellaneous	1.53	12.58	96.85	
	Personal insurance and pensions	10.22	84.05	100.00	
Overall Price Index	PEG Total		100.00		
Plus Adjustment Factor	MEG Total	100.00			96.32
Index Plus Adjustment Factor					7.00
					103.32

St. Croix

1. Food		13.35			114.20
	Cereals and bakery products	0.87	6.52	123.59	
	Meats, poultry, fish, and eggs	1.62	12.11	123.89	
	Dairy products	0.64	4.77	148.44	
	Fruits and vegetables	0.80	6.00	106.19	
	Processed foods	1.55	11.58	134.21	
	Other food at home	0.34	2.56	112.17	
	Nonalcoholic beverages	0.46	3.43	118.58	
	Food away from home	5.91	44.23	107.57	
	Alcoholic beverages	1.17	8.79	86.66	
2. Shelter and Utilities	PEG Total	35.59	100.00		126.46
	Shelter	31.86	89.50	98.78	
	Energy utilities	3.06	8.59	386.23	
	Water and other public services	0.68	1.91	254.81	
3. Household Furnishings and Supplies.	PEG Total	5.44	100.00		114.56
	Household operations	1.14	21.00	55.84	
	Housekeeping supplies	1.18	21.71	122.60	
	Textiles and area rugs	0.34	6.30	130.69	
	Furniture	0.95	17.51	142.39	
	Major appliances	0.37	6.76	118.37	
	Small appliances, misc. housewares	0.27	4.96	110.74	
	Misc. household equipment	1.18	21.76	135.83	
	PEG Total	4.11	100.00		101.55
4. Apparel and Services	Men and boys	0.94	22.85	107.81	
	Women and girls	1.73	42.11	108.25	
	Children under 2	0.17	4.11	121.87	
	Footwear	0.73	17.81	79.41	
	Other apparel products and services.	0.54	13.12	92.83	
	PEG Total	15.78	100.00		113.50
5. Transportation	Motor vehicle costs	8.54	54.10	111.23	
	Gasoline and motor oil	2.82	17.85	92.74	
	Maintenance and repairs	1.49	9.42	83.02	
	Vehicle insurance	1.83	11.62	125.60	
	Public transportation	1.11	7.02	204.73	
	PEG Total	4.65	100.00		100.68
6. Medical	Health insurance	2.50	53.86	106.59	
	Medical services	1.29	27.75	75.57	
	Drugs and medical supplies	0.86	18.39	121.23	
	PEG Total		100.00		

APPENDIX 7.—FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS—Continued

Major expenditure group (MEG)	Primary expenditure group (PEG)	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
7. Recreation .....	.....	4.61	.....	.....	106.28
	Fees and admissions	1.04	22.50	95.63	.....
	Television, radios, sound equipment	0.69	15.01	112.34	.....
	Pets, toys, and playground equip	0.74	16.13	107.40	.....
	Other entertainment supplies, etc	0.64	13.80	109.60	.....
	Personal care products	0.66	14.30	116.54	.....
	Personal care services	0.55	11.84	91.26	.....
	Reading	0.30	6.41	124.39	.....
	PEG Total .....	.....	100.00	.....	.....
8. Education and Communication .....	.....	4.30	.....	.....	103.04
	Education	0.22	5.23	222.55	.....
	Communications	3.72	86.50	95.29	.....
	Computers and computer services ..	0.36	8.28	108.60	.....
	PEG Total .....	.....	100.00	.....	.....
9. Miscellaneous .....	.....	12.16	.....	.....	103.45
	Tobacco products, etc	0.41	3.37	50.84	.....
	Miscellaneous	1.53	12.58	140.60	.....
	Personal insurance and pensions ...	10.22	84.05	100.00	.....
	PEG Total .....	.....	100.00	.....	.....
St. Thomas/St. John					
1. Food .....	.....	13.35	.....	.....	118.16
	Cereals and bakery products	0.87	6.52	124.14	.....
	Meats, poultry, fish, and eggs	1.62	12.11	120.40	.....
	Dairy products	0.64	4.77	169.39	.....
	Fruits and vegetables	0.80	6.00	111.56	.....
	Processed foods	1.55	11.58	145.53	.....
	Other food at home	0.34	2.56	124.58	.....
	Nonalcoholic beverages	0.46	3.43	116.22	.....
	Food away from home	5.91	44.23	109.43	.....
	Alcoholic beverages	1.17	8.79	94.19	.....
	PEG Total .....	.....	100.00	.....	.....
2. Shelter and Utilities .....	.....	35.59	.....	.....	138.16
	Shelter	31.86	89.50	111.85	.....
	Energy utilities	3.06	8.59	386.23	.....
	Water and other public services	0.68	1.91	254.81	.....
	PEG Total .....	.....	100.00	.....	.....
3. Household Furnishings and Supplies.	.....	5.44	.....	.....	112.17
	Household operations	1.14	21.00	55.68	.....
	Housekeeping supplies	1.18	21.71	122.15	.....
	Textiles and area rugs	0.34	6.30	128.61	.....
	Furniture	0.95	17.51	134.05	.....
	Major appliances	0.37	6.76	116.73	.....
	Small appliances, misc. housewares ..	0.27	4.96	110.74	.....
	Misc. household equipment	1.18	21.76	133.27	.....
	PEG Total .....	.....	100.00	.....	.....
4. Apparel and Services .....	.....	4.11	.....	.....	108.04
	Men and boys	0.94	22.85	107.81	.....
	Women and girls	1.73	42.11	108.25	.....
	Children under 2	0.17	4.11	138.20	.....
	Footwear	0.73	17.81	102.75	.....
	Other apparel products and services.	0.54	13.12	105.51	.....
	PEG Total .....	.....	100.00	.....	.....
5. Transportation .....	.....	15.78	.....	.....	122.90
	Motor vehicle costs	8.54	54.10	119.22	.....
	Gasoline and motor oil	2.82	17.85	124.59	.....
	Maintenance and repairs	1.49	9.42	76.56	.....
	Vehicle insurance	1.83	11.62	129.01	.....
	Public transportation	1.11	7.02	199.11	.....
	PEG Total .....	.....	100.00	.....	.....

APPENDIX 7.—FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREAS—Continued

Major expenditure group (MEG)	Primary expenditure group (PEG)	MEG weight (percent)	PEG weight (percent)	PEG index	MEG index
6. Medical .....	.....	4.65	.....	.....	117.93
	Health insurance	2.50	53.86	111.09	.....
	Medical services	1.29	27.75	124.53	.....
	Drugs and medical supplies	0.86	18.39	128.02	.....
	PEG Total .....	.....	100.00	.....	.....
7. Recreation .....	.....	4.61	.....	.....	107.17
	Fees and admissions	1.04	22.50	75.62	.....
	Television, radios, sound equipment	0.69	15.01	118.66	.....
	Pets, toys, and playground equipment	0.74	16.13	111.52	.....
	Other entertainment supplies, etc	0.64	13.80	109.60	.....
	Personal care products	0.66	14.30	141.87	.....
	Personal care services	0.55	11.84	92.33	.....
	Reading	0.30	6.41	124.85	.....
	PEG Total .....	.....	100.00	.....	.....
8. Education and Communication .....	.....	4.30	.....	.....	102.59
	Education	0.22	5.23	194.29	.....
	Communications	3.72	86.50	95.29	.....
	Computers and computer services	0.36	8.28	121.02	.....
	PEG Total .....	.....	100.00	.....	.....
9. Miscellaneous .....	.....	12.16	.....	.....	102.30
	Tobacco products, etc	0.41	3.37	57.80	.....
	Miscellaneous	1.53	12.58	129.60	.....
	Personal insurance and pensions	10.22	84.05	100.00	.....
	PEG Total .....	.....	100.00	.....	.....

APPENDIX 7.—FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREA

Major expenditure group (MEG)	Primary expenditure group (PEG)	St. Croix index (percent)	St. Thomas/St. John index (percent)	U.S. Virgin Islands Wtd index
U.S. Virgin Islands				
Employment Weights .....	.....	42.26	57.74	.....
1. Food .....	.....	114.20	118.16	116.49
	Cereals and bakery products	123.59	124.14	123.91
	Meats, poultry, fish, and eggs	123.89	120.40	121.88
	Dairy products	148.44	169.39	160.54
	Fruits and vegetables	106.19	111.56	109.29
	Processed foods	134.21	145.53	140.75
	Other food at home	112.17	124.58	119.34
	Nonalcoholic beverages	118.58	116.22	117.22
	Food away from home	107.57	109.43	108.64
	Alcoholic beverages	86.66	94.19	91.01
	PEG Total	126.46	138.16	133.22
2. Shelter and Utilities	Shelter	98.78	111.85	106.33
	Energy utilities	386.23	386.23	386.23
	Water and other public services	254.81	254.81	254.81
	PEG Total	114.56	112.17	113.18
3. Household Furnishings and Supplies	Household operations	55.84	55.68	55.75
	Housekeeping supplies	122.60	122.15	122.34
	Textiles and area rugs	130.69	128.61	129.49
	Furniture	142.39	134.05	137.57
	Major appliances	118.37	116.73	117.42
	Small appliances, misc. housewares	110.74	110.74	110.74
	Misc. household equipment	135.83	133.27	134.35
	PEG Total	101.55	108.04	105.30
4. Apparel and Services	Men and boys	107.81	107.81	107.81
	Women and girls	108.25	108.25	108.25
	Children under 2	121.87	138.20	131.30
	Footwear	79.41	102.75	92.88
	Other apparel products and services	92.83	105.51	100.15
	PEG Total	113.50	122.90	118.93
5. Transportation	Motor vehicle costs	111.23	119.22	115.84

APPENDIX 7.—FINAL LIVING-COST RESULTS FOR THE CARIBBEAN COLA AREA—Continued

Major expenditure group (MEG)	Primary expenditure group (PEG)	St. Croix index (percent)	St. Thomas/ St. John index (percent)	U.S. Virgin Islands Wtd index
	Gasoline and motor oil	92.74	124.59	111.13
	Maintenance and repairs	83.02	76.56	79.29
	Vehicle insurance	125.60	129.01	127.57
	Public transportation	204.73	199.11	201.49
6. Medical .....	.....	100.68	117.93	110.64
	Health insurance	106.59	111.09	109.19
	Medical services	75.57	124.53	103.84
	Drugs and medical supplies	121.23	128.02	125.15
7. Recreation .....	.....	106.28	107.17	106.80
	Fees and admissions	95.63	75.62	84.08
	Television, radios, sound equipment	112.34	118.66	115.99
	Pets, toys, and playground equipment	107.40	111.52	109.77
	Other entertainment supplies, etc	109.60	109.60	109.60
	Personal care products	116.54	141.87	131.17
	Personal care services	91.26	92.33	91.88
	Reading	124.39	124.85	124.66
8. Education and Communication .....	.....	103.04	102.59	102.78
	Education	222.55	194.29	206.23
	Communications	95.29	95.29	95.29
	Computers and computer services	108.60	121.02	115.77
9. Miscellaneous .....	.....	103.45	102.30	102.79
	Tobacco products, etc	50.84	57.80	54.86
	Miscellaneous	140.60	129.60	134.25
	Personal insurance and pensions	100.00	100.00	100.00
Overall Price Index	119.21
Plus Adjustment Factor	9.00
Preliminary COLA Index	128.21

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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)

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